

INDIRECT TAX LAWS & PRACTICE

FINAL

STUDY NOTES



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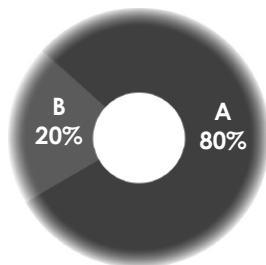
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Syllabus

Paper 18: INDIRECT TAX LAWS AND PRACTICE

Syllabus Structure

A	Advanced Indirect Tax and Practice	80%
B	Tax Practice and Procedures	20%



ASSESSMENT STRATEGY

There will be written examination paper of three hours

OBJECTIVES

To gain expert knowledge about the indirect tax laws in force and the relevant rules and principles emerging from leading cases, to provide an insight into practical aspects and apply the provisions of laws to various situations and to understand the various external auditing requirements under tax laws.

Learning Aims

The syllabus aims to test the student's ability to:

- Tax planning and management under Indirect Taxes
- Explain case laws governing core provisions of the relevant Acts
- Explain foreign trade policy related issues
- Explain powers of various assessing authorities

Skill Set Required

Level C: Requiring skill levels of knowledge, comprehension, application, analysis, synthesis and evaluation.

Syllabus Structure

Paper 18: Indirect Tax Laws and Practice

Contents	Weightage
Section A : Advanced Indirect Tax and Practice	
1. Goods and Services Tax Act & Rules	50%
2. Customs law	20%
3. Foreign Trade Policy	10%
Section B : Tax Practice and Procedures	
4. Case Study Analysis	20%

SECTION A: ADVANCED INDIRECT TAX AND PRACTICE

1. Goods and Services Tax Act & Rules

1.1 Introduction

What is GST

Need for GST in India

- Cascading effect of tax

- Non-integration of VAT and Service Tax causes double taxation

- No CENVAT Credit after manufacturing stage to a dealer:

- Cascading of taxes on account of levy of CST Inter-State purchases:

- The existing Indirect Tax frame work in India suffer from various duties and taxes at Central as well as at State level:

- Non Availment of Seamless ITC

- Tedious Process of Issuance and collection of CST Forms and losses suffered due to them

- Sharing of Data between Centre and States and various Boards

One Nation-One Tax

Dual GST Model

- Central Goods and Services Tax Act, 2017 (CGST)

- State Goods and Services Tax Act, 2017 (SGST)/

- Union Territory Goods and Services Tax Act, 2017 (UTGST)

- Integrated Goods and Services Tax Act, 2017 (IGST)

Methodology of Flow of Revenue between Centre and States

Goods and Services Tax Network (GSTN)

- The functions of the GSTN (i.e. Role assigned to GSTN)

- Constitution (101st Amendment) Act, 2016 GST Council

- Guiding principle of the GST Council

- Functions of the GST Council

- Body of GST Law

Definitions under CGST Laws

1.2 Levy and Collection of Tax

Scope of supply (Section 7 of CGST Act, 2017)

Section 7(1)(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

Section 7(1)(b) of CGST Act, 2017, import of services for a consideration whether or not in the course or furtherance of business

Section 7(1)(c) of the CGST Act, 2017 the activities specified in Schedule I, made or agreed to be made without a consideration

- Permanent transfer/disposal of business assets
- Supply between related persons or distinct persons
- Supply to agents or by agents
- Importation of Services

Section 7(1)(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II

- Un-divided share in goods
- Job work
- Transfer of business assets
- Renting of Immovable Property
- Construction Service
- Information Technology software
- Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act
- Transfer of the right to use any goods for any purpose
- Composite supply
- Supply of goods, by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

Non-taxable Supplies under CGST Act, 2017

Section 7(2) (a) activities or transactions specified in Schedule III;

Section 7(2)(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

Section 7(3) the transactions that are to be treated as—

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

Composite and Mixed Supplies (Section 8 of CGST Act, 2017)

Meaning of Composite and Mixed Supplies

Composite Supply

Mixed supply, Levy and Collection, Composition Levy, Exemption from tax, Person liable to pay tax

Forward Charge

Reverse Charge

Person who are required to pay tax under section 9(5) of CGST (i.e. Electronic Commerce Operator)

Exempt Supply, Non Taxable Supply and Non-GST Supply

Rates of GST

1.3 Classification of Goods and Services under GST – Reading the Rate Schedule

1.4 Time of Supply under GST

Time of Supply in case of Goods

Time of Supply in case of Services

Time of Supply in case of change in Rate of Tax

1.5 Value of Supply under GST

1.6 Place of Supply under GST

Need for determination of Place of Supply

Place of Supply in case of Goods

Place of Supply in case of Services

Place of Supply in case of Online Information Database Access and Retrieval (OIDAR) Services

1.7 Input Tax Credit

Eligibility for taking Input Tax Credit (ITC)

Blocked Credits

Method of Reversal of Credits

Input Tax credit in special circumstances

Input Tax Credit in respect of goods sent for Job-Work

Distribution of credit by Input Service Distributor (ISD)

Recovery of Input Tax Credit

1.8 Registration under GST Law

Persons not liable for registration

Compulsory registration

Concept of Distinct Persons under GST

Procedure for registration

Deemed registration

Casual taxable person

Non-resident taxable person

Cancellation vs. Revocation of registration

- 1.9 Tax Invoice, Credit and Debit Notes and other documents under GST**
- 1.10 Accounts, Other Records under GST**
- 1.11 Payment of Tax**
 - Computation of Tax liability and payment of tax
 - Interest on delay payment of tax
- 1.12 TDS & TCS under GST**
 - TDS (Tax Deducted at Source)
 - TCS (Tax Collected at Source)
- 1.13 Returns**
 - Sample of Proposed New Returns under GST
 - GSTR 1
 - GSTR 3B
- 1.14 Matching Concept under GST**
 - What is matching?
 - GSTR 2A
- 1.15 Exports, Imports and Refunds under GST**
 - Export of Goods and Services
 - Import of Goods and Services
 - Zero Rated Supply
 - Deemed Export
 - Refunds in case of Exports
 - Refunds in case of Inverted Duty Structure
 - Cash Ledger Refunds
- 1.16 Assessments, Inspection, Search & Seizure**
- 1.17 Audit under GST**
 - Audit by Revenue Authorities
 - Audit by Professionals
- 1.18 The Goods and Services Tax (Compensation to States) Act, 2017**
- 1.19 Advance concepts under GST**
 - Introduction
 - Demand and recovery Offence and Penalties
 - Appeals and Revision
 - Advance Ruling
 - Miscellaneous Provisions

1.20 Job Work Under GST

Definitions

Procedure of Job Work

1.21 E _Waybills under GST

1.22 Transitional Provisions

1.23 Anti-profiteering

1.24 Replying to Department Notices under GST – Sample Cases

1.25 Operation of GST Portal – A Walkthrough

2. Customs Law

2.1 Basic Concepts

Introduction

Definitions

Circumstances of Levy

Circumstance under which no duty will be levied

Tax Planning v Tax Management

Remission/ Abatement of Duty – Pilfered Goods, Damaged or Deteriorated Goods, Lost or Destroyed Goods

Derelict, Flotsam etc., Denatured or Mutilated Goods, Re- imported Goods

2.2 Classification under Customs

Customs Tariff Act, 1975

General Rules for the Interpretation of Import Tariff

2.3 Types of Duties

Introduction

Types of Duties

When can provisional measures are imposed

Refund on anti-dumping duty

Project Imports and Eligible Projects

2.4 Valuation under Customs

Introduction

Valuation of Imported Goods : Transaction Value, Related Persons, Valuation in Case Goods are Sold to Related Persons Adjustments for Costs and Services for Valuation of Imported Goods

Meaning of Identical Goods, Similar Goods, Transaction Value of Identical Goods and Similar Goods

Deductive Value, Computed Value and Residual Method of Valuation

Valuation of Export Goods

2.5 Import and Export Procedure

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- Export Procedures
- Deemed Exports
- Stores
- Transit and Transshipment of Goods
- High Seas Sales

2.6 Warehousing

- Licensing of Public Warehouses, Private Warehouses and Special Warehouses
- Warehousing Bond, Warehousing Period, Control Over Warehouse Goods
- Owner's Right to Deal with Warehoused Goods,
- Manufacture in Warehouse
- Removal of Goods from Warehouse
- Improper Removal of Goods from Warehouse

2.7 Duty Drawback

- Duty Drawback Allowable on Re- Export of Duty Paid Goods
- Re- Export of Imported Goods (Drawback of Customs Duties) Rules, 1995
- Duty Drawback on Imported Materials used in the Manufacture of Goods which are Exported
- Customs and Central Excise Duties Drawback Rules, 2017
- Interest on Drawback and Prohibition or Regulation of Duty Drawback Certification

2.8 Baggage & Postal Articles

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- Baggage
- Postal Articles
- Import of Samples
- Baggage Rules, 2016

2.9 Administrative and other Aspects

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- Appointment of officers of customs
- Appointment of customs ports, airports, etc.
- First & Second Appraisalment System
- Self-assessment of Customs Duty
- Refund of Customs Duty
- Risk Management System
- Penalties under Customs
- Offences and Prosecutions under Customs
- Integrated Declaration under Indian Customs Single Window Project

2.10 Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017

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Search of Persons, Premises and Conveyances

Seizure of Goods, Documents and Things

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Offences

Appeals under Customs

Authority for Advance Ruling

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FTP – Certain Definitions

General Provisions Regarding Imports and Exports

Export Promotion Schemes:

Merchandise Exports From India Scheme (MEIS)

Service Exports From India Scheme (SEIS)

Advance Authorization Scheme

Duty Free Import Authorization (DFIA) Scheme

Export Promotion Capital Goods Scheme (EPCG)

EOU, EHTP, STP & BTP Schemes

Deemed Exports

Special Economic Zone Scheme (With Amended SEZ Rules)

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GOODS & SERVICE TAX (GST)



Study Note - 1

INTRODUCTION



This Study Note includes

- 1.1 Fundamentals of GST
- 1.2 Constitution [101st Amendment] Act, 2016
- 1.3 What is GST
- 1.4 Advantages of GST
- 1.5 Need for GST in India
- 1.6 One Nation - One Tax
- 1.7 Dual GST Model
- 1.8 Inter-state Vs Intra-state Stock Transfers
- 1.9 Goods and Services Tax Network [GSTN]
- 1.10 GST Council
- 1.11 Body of GST Law
- 1.12 Important Definitions under CGST Law

1.1 FUNDAMENTALS OF GST

Difference between Direct Taxes and Indirect Taxes – illustrative list:

Direct Taxes	Indirect Taxes
1. Payer of tax and sufferer of tax one and same (i.e. impact and incidence on the same person)	1. Payer of tax not sufferer of tax whereas sufferer of tax is not paying directly to the Government (i.e. impact on one head and incidence on other head)
2. Income based taxes	2. Supply based taxes
3. Rate of taxes are different from person to person	3. Rate of duties are not differ from person to person
4. Entire revenue goes to Central Government of India	4. Revenue source to Central Government of India as well as State Governments (i.e. CGST and SGST)
5. Previous year income assessed in the assessment year	5. There is no previous year and assessment year concept
6. Central Board of Direct Taxes (CBDT) is an important part of Department of Revenue.	6. Central Board of Excise and Customs (CBEC) is an important part of Department of Revenue. The Central Board of Excise & Customs is being renamed as the Central Board of Indirect Taxes & Customs (CBIC), after getting legislative approval.
7. Progressive nature.	7. Regressive nature.

1.2 CONSTITUTION [101ST AMENDMENT] ACT, 2016

Constitution (122nd Amendment) Bill, 2014 received the assent of the President of India on 8th September, 2016 and became Constitution (101st Amendment) Act, 2016, which paved the way for introduction of GST in India.

Constitution (101st Amendment) Act, 2016 was enacted on 8th September, 2016, with following significant amendments:

(a) Concurrent powers on Parliament and State Legislatures to make laws governing goods and services. It means



there will be dual control of State and Central authorities for all assesseees.

- (b) As per Article 246A, the power to levy GST has been given to the Parliament as well as to Legislature of every State.
- CGST – enacted by Central Government of India.
 - IGST – enacted by Central Government of India.
 - SGST – enacted by respective State Governments
 - UTGST – enacted by Central Government of India
- (c) IGST will be apportioned between Centre and the States in the manner provided by Parliament by Law as per the recommendation of the GST Council.
- (d) GST will be levied on all supply of goods and services except alcoholic liquor for human consumption.
- (e) The explanation to Article 269A of Constitution of India provides that the import of goods or services will be deemed as supply of goods or services or both in the course of inter-State trade or commerce. In case of import of goods IGST will be levied along with the Basic Customs duty. It means IGST is levied in replacement of CVD + Spl. CVD. In case of import of services only IGST will be levied.
- (f) Principles for determining the place of supply and when a supply takes place in the course of inter-state trade or commerce shall be decided by the Parliament.
- (g) The power to levy Central Excise duty on goods manufactured or produced in India is available in respect of the following products:
- Petroleum crude;
 - High speed diesel;
 - Motor spirit (commonly known as petrol);
 - Natural gas;
 - Aviation turbine fuel; and
 - Tobacco and tobacco products.
- However, once GST is imposed there will be no duty on manufacture of these goods.
- (h) The power to impose tax on sale of the following products is still provided to the State Governments:
- Petroleum crude;
 - High speed diesel;
 - Motor spirit (commonly known as petrol);
 - Natural gas;
 - Aviation turbine fuel; and
 - Alcoholic liquor for human consumption.

However, once GST Council is recommend the date from which GST is imposed on these products (except alcoholic liquor for human consumption), and no sales tax will be imposed on these products.

As per definition given in article 366(12A), GST covers all the goods except alcoholic liquor for human consumption. It means no GST can be levied on Alcoholic liquor for human consumption. Present system of State Excise duty and sales tax on Alcoholic liquor for human consumption will continue.

As a result, the following bills became an Act on 12th April 2017:

- Central Goods and Services Tax Bill, 2017
- Integrated Goods and Services Tax Bill, 2017
- Union Territory Goods and Services Tax Bill, 2017
- Goods and Services Tax (Compensation to States) Bill, 2017

The Central Government notified 1st July, 2017 as the date from which the much awaited indirect tax reform in India, i.e., Goods and Services Tax (GST) will be implemented.

Accordingly, Goods and Services Tax (GST) has been implemented in India w.e.f. 1st July, 2017.

1.3 WHAT IS GST

- Goods and services tax means a tax on supply of goods or services, or both, except taxes on supply of alcoholic liquor for human consumption (Article 366 (12A) of Constitution of India).
- GST is a value added tax levy on sale or service or both.
- GST is a destination based consumption tax.
- GST offers comprehensive and continuous chain of tax credit.
- GST where burden borne by final consumer.
- GST eliminate cascading effect of tax.
- GST brings uniform tax structure all over India.

1.4 ADVANTAGES OF GST

- (a) One Nation One Tax.
- (b) Removal of bundled indirect taxes such as VAT, CST, Service tax, CAD, SAD, and Excise.
- (c) Removal of cascading effect of taxes i.e. removes tax on tax.
- (d) Increased ease of doing business;
- (e) Lower cost of production, increases demand will lead to increase supply. Hence, this will ultimately lead to rise in the production of goods. Resultantly boost to make in India initiative.
- (f) It will boost export and manufacturing activity, generate more employment and thus increase GDP with gainful employment leading to substantive economic growth;

1.5 NEED FOR GST IN INDIA

The following deficiencies in the existing Indirect Tax Laws cause need to bring GST in India as a cure for ills of existing Indirect Tax regime.

GST is a Cure for ills of existing Indirect Tax:

The given statement is true. Cascading affect of tax is one of the vital cause-to-cause ill of existing Indirect Tax. It means, a tax that is levied on a good at each stage of the production process up to the point of being sold to the final consumer. It is also known as tax on tax.

One of the fundamental features of GST is the seamless flow of input credit across the chain (from the manufacture of goods till it is consumed) and across the country.

Let us understand it in the following cases:

(1) Non-integration of VAT and Service Tax causes double taxation:

In the present regime, restaurant services provider is liable to pay VAT on sale of food and service tax on supply of services. There is no set-off. It means VAT is not allowed as input tax credit against service tax and vice versa.

Example 1:	
Service Tax and VAT on Restaurant Bill:	
<i>Particulars</i>	<i>Amount (₹)</i>
Total Food Bill	1,000
Service charges @ 10%	100
Total	1,100
VAT @ 14.5% on ₹ 1,100	159.50
Total Bill (before Service Tax)	1,259.50
Service Tax @ 14% on ₹ 440 (i.e., 1,100 × 40%)	61.60
Add: Swachh Bharat Cess 0.5% on ₹ 440	2.20
Add: Krishi Kalyan Cess 0.5% on ₹ 440	2.20
Total Bill payable by customer	1,325.50
Rounded off	1,326.00

Case Law : 1

Whether section 66E(i) of the Finance Act, 1994 which levies service tax on the service portion of activity whether in goods being food or any other article for human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of activity, is ultra vires the Article 366(29A)(f) of the Constitution?

Hotel East Park v. UOI 2014 (35) STR 433 (Chhatisgarh)

Decision:

The quantum of services to be taxed is explained under rule 2C of the Service Tax (Determination of Value) Rules, 2006.

The High court held that section 66E (i) of the Finance Act, 1994 is intra vires (i.e. within the legal power) the Article 366(29A)(f) of the Constitution of India.

Further, the High Court held that no VAT can be charged over the amount meant for service and that the amount over which service tax has been charged should not be subject to VAT.

The High Court directed the State Government to frame such rules and issue clarifications to this effect to ensure that the customers are not double taxed over the same amount. The rules may be in conformity with the bifurcation as provided under the Finance Act, 1994 or ensure that the Commercial Tax authorities do not charge VAT on that part of the value of the food and drink on which service tax is being assessed.

(2) No CENVAT Credit after manufacturing stage to a dealer:

In the present regime, a manufacturer of dutiable goods charge excise duty and value added tax on intra-state sale of goods or CST on inter-state sale of goods. VAT or CST is levied inclusive of excise duty.

Example 2:

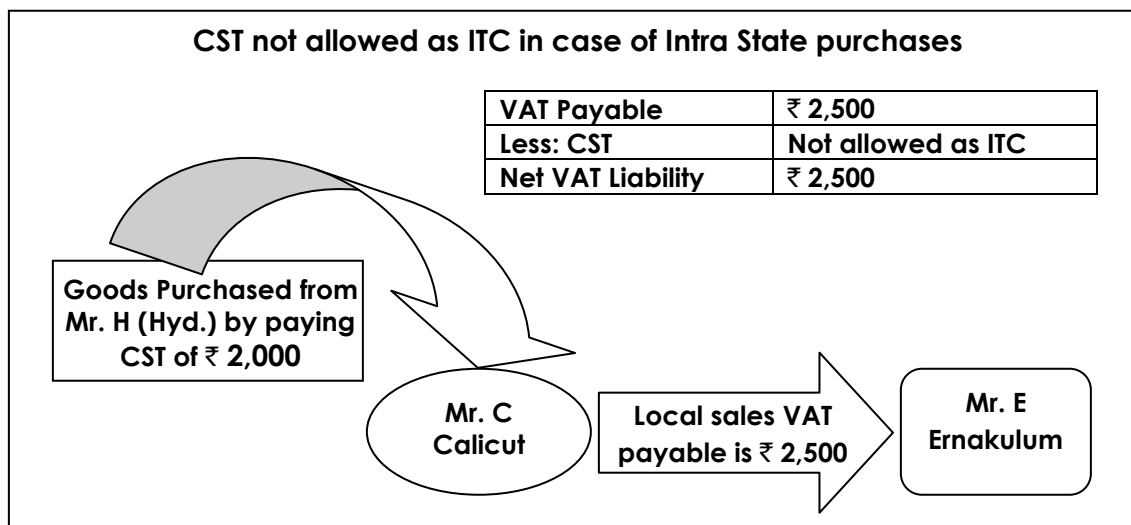
Invoice of a manufacturer cum seller:

<i>Particulars</i>	<i>Value in (₹)</i>
Value of Goods	1,00,000
Add: Excise duty 12.5%	12,500
Taxable Turnover	1,12,500
Add: VAT 14.5%	16,313
Invoice Price	1,28,813

(3) Cascading of taxes on account of levy of CST Inter-state purchases:

Example 3:

Mr. C of Calicut being a dealer purchased goods from Mr. H of Hyderabad by paying central sales tax of ₹ 2,000. Since, CST is not allowed as Input Tax Credit against VAT payable on local sales, VAT is calculated inclusive of CST causing cascading of tax.



(4) The existing Indirect Tax frame work in India suffer from various duties and taxes at Central as well as at State level:

Central Indirect taxes	State Indirect Taxes
Central Excise duty	State Value Added Tax
Excise duty levied under Medicinal and Toilet preparations (Excise duty) Act, 1955	Entertainment tax
Service Tax	Central Sales Tax
CVD on import	Entry tax
Spl. CVD on import	Purchase tax
Central surcharge	Luxury tax
Central Cesses	Betting and Gambling tax
	State surcharges
	State Cesses

In the GST regime, all the above taxes have been subsumed in the ambit of GST.

- (5) **Non Availment of Seamless ITC** – VAT dealers were not able to take credit of excise duty charged by manufacturers. Duties paid under excise law were subsumed into cost beyond the manufacturing level. Like excise duty, VAT dealers were not able to take credit of service tax charged by the service providers on various input services.

Since GST is a destination based consumption tax, revenue of SGST ordinarily accrues to the consuming States. The inter-state supplier in the exporting State is allowed to set off the available credit of IGST, CGST and SGST/ UTGST against the IGST payable on inter-state supply made by him.

(6) Tedious Process of issuance and collection of CST Forms and losses suffered due to them

To avoid cascading effects of CST and to avail concessions or exemptions, various forms, like 'C Form', 'F Form', 'H Form', etc. had been prescribed which were issued / utilized by adhering to certain procedures. The forms prescribed under central sales tax rules 1957, include form C for making interstate purchase at lower



rate, form F used to transfer goods from one branch to other in different state. The industry faced a lot of problems regarding the collection of forms and other procedural aspects. Therefore, they had to suffer losses due to the same. These are now done away with the introduction of GST in India.

(7) Sharing of Data between Centre and States and various Boards

The division of assesses between Centre and State is decided by the Centre and State Governments. GSTN got an application developed using which Central and State tax authorities have uploaded the data on allocation of migrated taxpayers in the GST System database. In order to ensure single interface for assesses under GST, the State Level Committees comprising of Chief Commissioner/ Commissioner of Central Tax and Commissioner of State tax have assigned the taxpayers to be under either the Central Tax or State Tax administration based on the turnover of the assesses on a proportionate basis. The assesses having turnover above ₹ 1.5 crores are to be assigned in the ratio of 50:50 between the Centre and the respective State while those having turnover less than ₹ 1.5 Crores have to be assigned in the ratio of 10:90 between the Centre and the respective State. No choice has been given to assesses to opt for a particular tax administration i.e. Centre and State

1.6 ONE NATION - ONE TAX

GST will extend to whole of India including the State of Jammu and Kashmir.

On 7th July, 2017, the Jammu and Kashmir Goods and Services Tax Bill, 2017 was passed by the State Legislature, empowering the State to levy State GST on intra-state supplies with effect from 8th July, 2017.

Concomitantly, the President of India has promulgated two ordinances, namely, the Central Goods and Services Tax (Extension to Jammu and Kashmir) Ordinance, 2017 and the Integrated Goods and Services Tax (Extension to Jammu and Kashmir) Ordinance, 2017 extending the domain of Central GST Act and the Integrated GST Act to the State of Jammu and Kashmir, with effect from 8th July, 2017.

With this, the State of Jammu and Kashmir has become part of the GST regime, making GST truly a "one nation, one tax" regime.

1.7 DUAL GST MODEL

India adopted a dual GST where tax imposed concurrently by the Central and States.

Dual GST model

SGST	- State GST - Collected by the State Government
CGST	- Central GST - Collected by the Central Government
IGST	- Integrated GST - Collected by the Central Government on inter-state supply of Goods and Services

Central Goods and Services Tax Act, 2017 (CGST):

CGST levied and collected by Central Government. It is a revenue source to the Central Government of India, on intra-state supplies of taxable goods or services or both.

State Goods and Services Tax Act, 2017 (SGST):

SGST levied and collected by State Governments/Union Territories with State Legislatures (namely Delhi and Pondicherry) on intra-state supplies of taxable goods or services or both.

It is a revenue source of the respective State Government.

Union Territory Goods and Services Tax (UTGST):

UTGST levied and collected by Union Territories without State Legislatures, on intra-state supplies of taxable goods or services or both.



Note: India is a Union of States. The territory of India comprises of the territories of the States and the Union Territories. Currently, there are 29 States and 7 Union Territories; of which, two (Delhi and Pondicherry) are having Legislature.

Methodology of Flow of Revenue between Centre and States

Under GST, the tax levied on consumption of goods or rendering of service is split 50:50 between the Centre and the state (where the goods are consumed).

GST, being a consumption-based tax, the state where the goods are consumed (i.e., recipient State) will receive the GST amount and the state from where goods are sold (i.e., supplier State) should not get any taxes.

Let us try to understand the revenue sharing methodology between the Centre and State with the help of an example.

Suppose that goods worth ₹ 10,000 are sold by manufacturer A from Maharashtra to Dealer B in Maharashtra. Dealer B resells them to Trader C in Rajasthan for ₹ 17,500. Suppose the applicable tax rates for the goods sold are CGST= 9%, SGST=9%, and IGST=9+9=18%.

Since A is selling this to B in Maharashtra itself, it is an intra-state sale and so, CGST@9% and SGST@9% will apply. Dealer B (Maharashtra) is selling to Trader C (Rajasthan). Hence, this is an interstate sale, with IGST@18%. Trader C (Rajasthan) is selling to end user D also in Rajasthan. Once again, it is an intra-state sale and hence, CGST@9% and SGST@9% will apply.

GST being a consumption-based tax the state where the goods were consumed (Rajasthan) will receive GST. By that logic, Maharashtra (where goods were sold) should not get any taxes. State Rajasthan and Central Government should have got $(30,000 \times 9\%) = 2,700$ each. Thus, Maharashtra (exporting state) will have to transfer credit of SGST of ₹ 900 (used in payment of IGST) to the Centre. [Any IGST credit will first be applied to set off in this order: First set off against IGST liability, then CGST and the balance credit will be used to set off SGST]

In turn, Central Government will transfer to state Rajasthan (importing state) ₹ 450 IGST.

Step		Sale Price	Amount Received as Tax by			
			Maharashtra	Rajasthan	Central	
I	A to B	10,000	$10,000 \times 9\% = 900$	-----	$10,000 \times 9\% = 900$	
II	B to C	17,500	-----	-----	$17,500 \times \text{IGST@}18\%$	3,150
					(-) CGST Credit	900
					(-) SGST Credit	900
					Net	1,350
III	C to D	30,000	-----	$30,000 \times \text{SGST@}9\%$	2,700	$30,000 \times \text{CGST@}9\%$
				(-) IGST Credit balance (3150-2700)	450	(-) IGST Crediti ***
				Net	2,250	Net
	Total Receipt		900		2,250	2,250
IV	Adjustment		(-) 900 Going to Centre	(+) 450 Coming from Centre		(+) 450
	Final		0	2,700		2,700



GST – in Union Territories without Legislature:

Supplies within such Union territory, Central GST will apply to whole of India and hence, it would be applicable to all Union Territories, with or without Legislature.

To replicate the law similar to State GST to Union Territories without Legislature, the Parliament has the powers under Article 246(4) to make such laws. Alternatively, the President of India may use his general powers to formulate such laws.

Hence, law same as similar to State GST can be formulated for Union Territory without Legislature, by the Parliament.

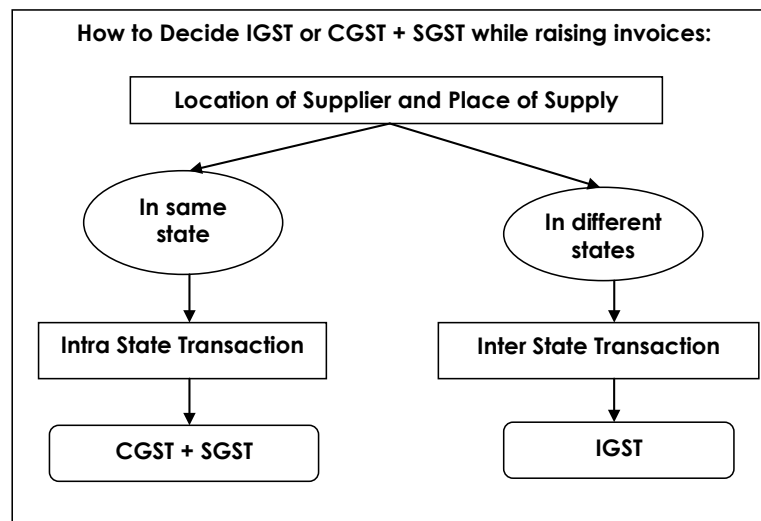
The following are Union Territories without Legislature:

1. Chandigarh
2. Lakshadweep
3. Daman and Diu
4. Dadra and Nagar Haveli
5. Andaman and Nicobar Islands

Integrated Goods and Services Tax Act, 2017 (IGST):

IGST is a mechanism to monitor the inter-state trade of goods and services and ensure that the SGST component accrues to the Consumer State. It would maintain the integrity of ITC chain in inter-state supplies. The IGST rate would broadly be equal to CGST rate plus SGST rate. IGST would be levied and collected by the Central Government on all inter-State transactions of taxable goods or services.

The revenue of inter-state sales will not accrue to the exporting state and the exporting state will be required to transfer to the Centre the credit of SGST/UTGST used in payment of IGST.

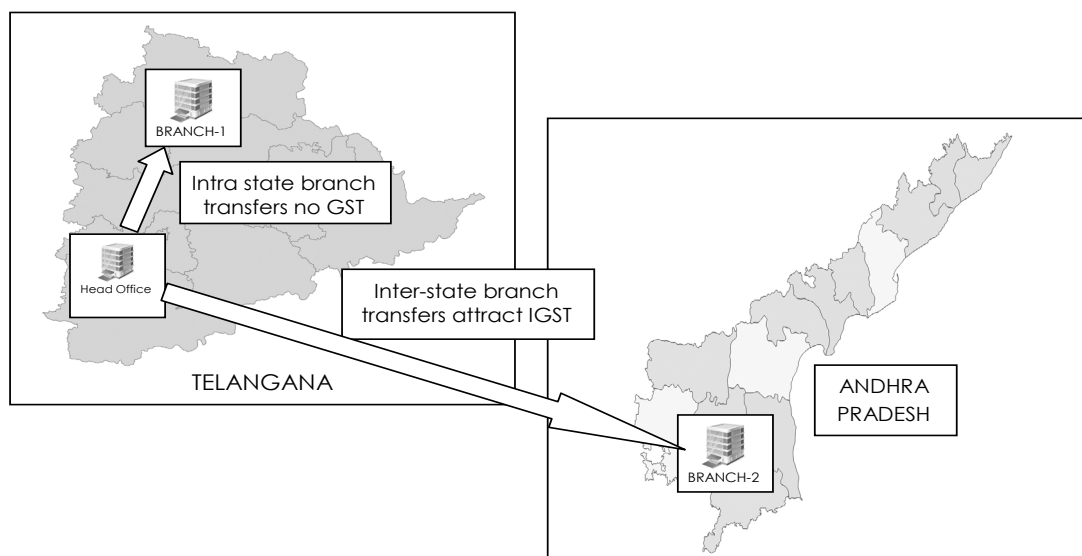


1.8 INTER-STATE VS INTRA-STATE STOCK TRANSFERS

Intra-state stock transfer is taxable only when entity has more than one registration in one state. For example, Factory located in Tamil Nadu and warehouse is also located in the same state (i.e. Tamil Nadu) however, registered separately under GST, transfers between them treated as supply. Hence, CGST plus SGST will be levied. Inter-State stock transfer is taxable. It means IGST will be levied.

Example 4:

Ganesh Trading has head office in Telangana and two branches (i.e. Branch office -I in Telangana and Branch office -II in Andhra Pradesh). Stock transfers between Head office and Branch office within the same state where no separate registrations, GST is not levied. Whereas stock transfers between Head office and Branch office at inter state level, IGST will be levied.

GST Inter / Intra State Branch Transfers**Conclusion:**

From the above it is evident that revenue of inter-State sale will not accrue to the exporting State and the exporting State will be required to transfer to the Centre the credit of SGST/UTGST used in payment of IGST.

The Centre will transfer to the importing State the credit of IGST used in payment of SGST/UTGST.

The inter-state adjustment will be made by central clearing agency, hence assesseees will not be concerned with such adjustment at all.

Intra-state supply of goods or services or both:**Example 5:**

Mr. C of Chennai supplied goods/services for ₹ 20,000 to Mr. M of Madurai. SGST and CGST rate on supply of goods and services is 9% each. IGST rate is 18%. Find the following:

- (a) Total price charged by Mr. C.
(b) Who is liable to pay GST?

Answer:

Particulars	Value in (₹)
Supply of goods/services	20,000
Add: CGST 9%	1,800
Add: SGST 9%	1,800
(a) Total price charged by Mr. C from Mr. M for local supply of goods or services.	23,600
(b) Mr. C is liable to pay GST.	

**Note:**

- (1) Location of supplier and place of supply both within the same State of Tamil Nadu. Therefore, CGST & SGST applicable.
- (2) The CGST & SGST charged on Mr. M for supply of goods/services will be remitted by Mr. C to the appropriate account of the Central and State Government respectively.

Example 6:

Mr. M of Madurai supplied goods/services for ₹ 24,000 to Mr. S of Selam. Mr. M purchased goods/services for ₹ 23,600 (inclusive of CGST 9% and SGST 9%) from Mr. C of Chennai. Find the following:

- (a) Total price charged by Mr. M for supply of goods/services and
- (b) Who is liable to pay GST.
- (c) Net liability of GST.

Answer:

Particulars	Value in (₹)
Value charged for supply of goods/services	24,000
Add: CGST 9%	2,160
Add: SGST 9%	2,160
(a) Total price charged by Mr. M from Mr. S for local supply of goods/services.	28,320
(b) Mr. M is liable to pay GST.	

Particulars	CGST (₹)	SGST (₹)
Output tax	2,160	2,160
Less: Input Tax Credit (ITC)	(1,800)	(1,800)
(c) Net tax liability of Mr. M	360	360

Note:

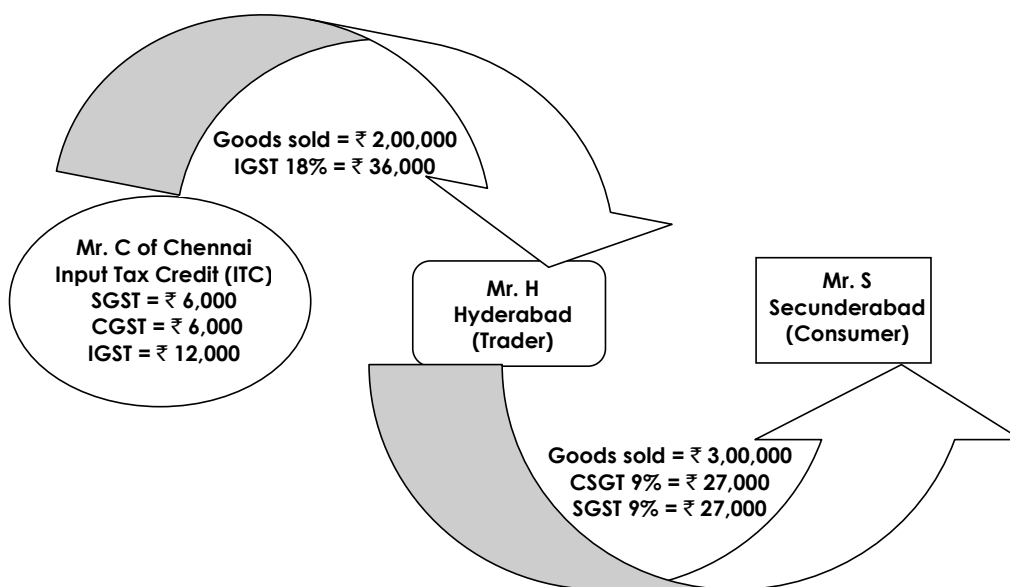
- (1) By giving input tax credit, Government is not loser of revenue.

Particulars	Revenue to Central Government (₹)	Revenue to State Government (₹)
Supply of goods/services by Mr. C to Mr. M	1,800	1,800
Add: supply of goods/services by Mr. M to Mr. S	360	360
Total	2,160	2,160

Inter-state supply of goods or services or both:**Example 7:**

Mr. C of Chennai purchased goods at intra state as well as at inter state level by paying SGST ₹ 6,000, CGST ₹ 6,000 and IGST ₹12,000. Subsequently Mr. C sold these goods to Mr. H of Hyderabad (Trader) for ₹ 2,00,000 (IGST applicable @18%). Thereafter Mr. H of Hyderabad sold these goods to Mr. S of Secunderabad (Consumer) for ₹ 3,00,000 (CGST & SGST @18%). Find the Net GST liability of Mr. C and Mr. H. Also find net revenue to the State and Central Government.

Answer:



Particulars of Mr. C of Chennai	Value in (₹)	ITC ALLOWED
Output tax IGST	36,000	
Less: Input Tax Credit (ITC)		
IGST	(12,000)	1st IGST
CGST	(6,000)	2nd CGST
SGST	(6,000)	3rd SGST
Net tax paid to Central Government by Mr. C	12,000	

Since, dealer has used SGST of Tamil Nadu to the extent of ₹ 6,000/- in pyament of IGST, Tamil Nadu State (i.e. exporting State) has to transfer ₹ 6,000/- to the credit of the Centre.

IGST of ₹ 36,000/- is availed as credit by Telangana buyer (i.e. Mr. H of Hyderabad).

Particulars of Mr. H of Hyderabad	CGST (₹)	SGST (₹)	ITC ALLOWED
Output tax	27,000	27,000	
Less: Input Tax Credit (ITC)			
IGST	(27,000)	(9,000)	1st IGST
2nd CGST			
3rd SGST			
Net tax paid to State Government by Mr. H	Nil	18,000	

Since, dealer has used IGST of ₹ 9,000/- to pay the SGST of Telangana State, the Centre has to transfer ₹ 9,000/- to the Telanaga State (i.e importing State).

Revenue to the Centre = ₹ 36,000 – 9,000 = ₹ 27,000 (i.e. 9%)

Revenue to the State = ₹ 18,000 + 9,000 = ₹ 27,000 (i.e. 9%)

Total Revenue to the Government = 18% (One Nation-One Tax)

**Example 8:**

Mr. A registered person under GST located in Tamil Nadu, sold goods worth ₹ 10,000 after manufacture to Mr. C of Chennai. Subsequently, Mr. C sold these goods to Mr. H of Hyderabad for ₹ 17,500. Mr. H being a trader finally sold these goods to customer Mr. S of Secunderabad for ₹ 30,000.

Applicable rates of CGST= 9%, SGST=9% and IGST=18%.

Find the net tax liability of each supplier of goods and revenue to the government.

Answer:

Since, Mr. A supplied goods to Mr. C in Tamil Nadu itself, it is an intra-state sale and both CGST @ 9% and SGST @ 9% will apply.

Mr. C of Chennai supplied goods to Mr. H of Hyderabad. Since, it is an interstate sale, IGST@18% will apply.

Mr. H of Hyderabad (Telangana) supplied goods to Mr. S of Secunderabad (Telangana). Once again it is an intra-state sale and both CGST @ 9% and SGST @ 9% will apply.

Statement showing Net tax liability of Mr. A and revenue to Government:

Particulars	Value in (₹)	CGST in (₹)	SGST in (₹)	IGST in (₹)	Remarks
Mr. A to Mr. C	10,000	900	900	Nil	Value addition ₹ 10,000
Less: ITC	Nil	Nil	Nil	Nil	
Net liability of Mr. A		900	900	Nil	
		Revenue to Centre ₹ 900	Revenue to Tamil Nadu ₹ 900		

Statement showing net tax liability of Mr. C and revenue to the Government

Particulars	Value in (₹)	CGST in (₹)	SGST in (₹)	IGST in (₹)	Remarks
Mr. C to Mr. H	17,500	Nil	Nil	3,150	
Less: ITC		(900)	(900)	(1,800)	1st CGST
					[2nd SGST]
Net liability of Mr. C		Nil	Nil	1,350	Value added ₹ 7,500 x 18%

Since, Mr. C a dealer has used SGST of Tamil Nadu to the extent of ₹ 900/- in payment of IGST, Tamil Nadu State (i.e. exporting State) has to transfer ₹ 900/- to the credit of the Centre.

Tamil Nadu (exporting state) revenue = ₹ 0 (i.e. 900 - 900)

Total revenue to the Centre = ₹ 3,150

(i.e. ₹ 1,350 + 900 received from Tamilnadu + 900 CGST already collected from Mr. A in 1st intra-state supply)

Statement showing net tax liability of Mr. H and revenue to the Government

Particulars	Value in (₹)	CGST in (₹)	SGST in (₹)	IGST in (₹)	Remarks
Mr. H to Mr. S	30,000	2,700	2,700	Nil	
Less: ITC		(2,700)	(450)	(3,150)	IGST credit 1st adjust against IGST, next CGST and next SGST
Net liability of Mr. H		Nil	2,250	Nil	



Since, Mr. H a dealer has used IGST of ₹ 450/- to pay the SGST of Telangana State, the Centre has to transfer ₹ 450/- to the Telanaga State (i.e., importing State).

Net revenue to the Telanaga State = ₹ 2,700 (i.e. 2,250 + 450)

Net Revenue to the Centre = ₹ 2,700 (i.e. 3,125 – 450)

Total revenue to the Government = ₹ 5,400 (i.e. 30,000 x 18%)

This is called as one nation one tax.

Example 9:

Mr. C of Tamil Nadu supplied goods/services for ₹ 20,000 to Mr. M of Maharashtra. SGST and CGST rate on supply of goods and services is 9% each. IGST rate is 18%. Find the following:

(a) Total price charged by Mr. C.

(b) Who is liable to pay GST?

Answer:

Particulars	Value in (₹)
Supply of goods/services	20,000
Add: IGST 18%	3,600
(a) Total price charged by Mr. C from Mr. M for inter-state supply of goods or services.	23,600
(b) Mr. C is liable to pay GST.	

Note:

(1) Location of supplier and place of supply are in different States. Therefore, IGST is applicable.

(2) The IGST charged on Mr. M for supply of goods/services will be remitted by Mr. C to the account of the Central Government.

Example 10:

Mr. M of Maharashtra supplied goods/services for ₹ 35,000 to Mr. P of Pune. Mr. M purchased goods/services for ₹ 23,600 (inclusive of IGST 18%) from Mr. C of Tamil Nadu. SGST and CGST rate on supply of goods and services is 9% each. Find the following:

(a) Total price charged by Mr. M for supply of goods/services and

(b) Who is liable to pay GST.

(c) Net liability of GST.

Answer:

Particulars	Value in (₹)
Value charged for supply of goods/services	35,000
Add: CGST 9%	3,150
Add: SGST 9%	3,150
(a) Total price charged by Mr. M from Mr. P for local supply of goods/services.	41,300
(b) Mr. M is liable to pay GST.	

Particulars	CGST (₹)	SGST (₹)	
Output tax	3,150	3,150	IGST credit 1st adjust against CGST and next SGST.
Less: Input Tax Credit (ITC)	(3,150)	(450)	
IGST			
(c) Net tax liability of Mr. M	Nil	2,700	

Note:

(1) By giving input tax credit Government is not looser of revenue.

Particulars	Revenue to Central Government (₹)	Revenue to Tamil Nadu State Government (₹) (Exporting State)	Revenue to Maharashtra State Government (₹) (Importing State)
Supply of goods/services by Mr. C to Mr. M	3,600	-	-
Add: supply of goods/services by Mr. M to Mr. P	Nil	-	2,700
Add: Transfer by Centre to Maharashtra State	(450)	-	450
Total	3,150	-	3,150

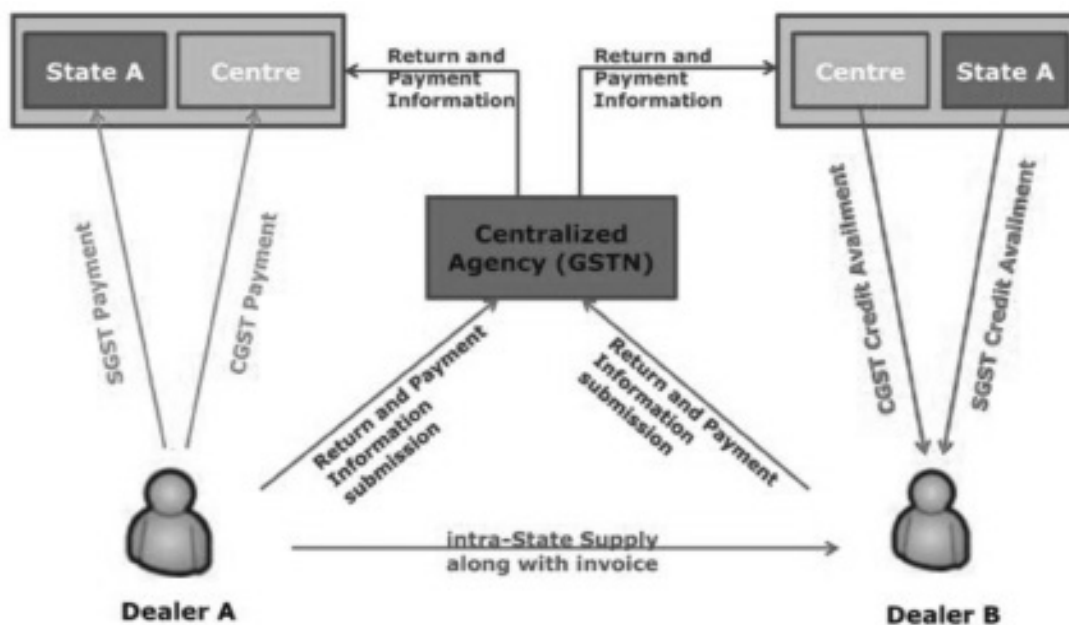
1.9 GOODS AND SERVICES TAX NETWORK (GSTN)

Goods and Services Tax Network (GSTN) is a [Section 8 of the Companies Act, 2013, (i.e. not for profit companies)], non-Government, private limited company. Technology backbone for GST in India. GST being a destination based tax, the inter- state trade of goods and services (IGST) would need a robust settlement mechanism amongst the States and the Centre. This is possible only when there is a strong IT Infrastructure and Service back bone which enables capture, processing and exchange of information amongst the stakeholders (including tax payers, States and Central Governments, Accounting Offices, Banks and RBI).

As a result Goods and Services Tax Network (GSTN) has been set up.

Goods and Services Tax Network (GSTN):

Intra-state transaction - Tax payment and credit flow

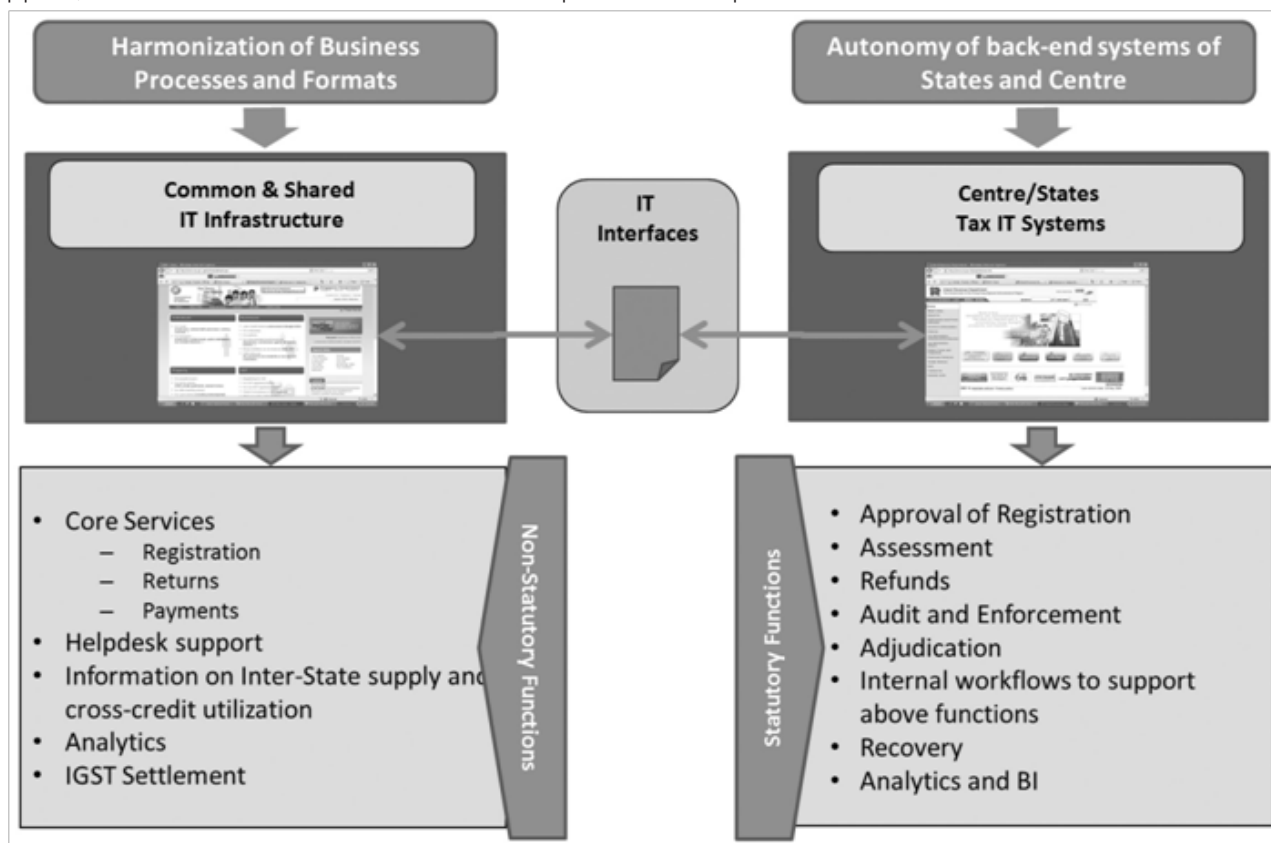


Functions of the GSTN (i.e. Role assigned to GSTN):

Creation of common and shared IT infrastructure for functions facing taxpayers has been assigned to GSTN and these are:

- filing of registration application,
- filing of return,
- creation of challan for tax payment,
- settlement of IGST payment (like a clearing house),
- generation of business intelligence and analytics etc.

All statutory functions to be performed by tax officials under GST like approval of registration, assessment, audit, appeal, enforcement etc. will remain with the respective tax departments.



1.10 GST COUNCIL

As per Article 279A of the Constitution of India, the President of India is empowered to constitute Goods and Services Tax Council. The President of India constituted the GST Council on 15th September, 2016.

The GST Council shall consist of Union Finance Minister as a Chairperson, Union Minister of State in charge of Finance as a member, the State Finance Minister or State Revenue Minister or any other Minister nominated by each State as a member of the Council. The GST Council shall select one of them as Vice Chairperson of Council.

Guiding principle of the GST Council:

The mechanism of GST Council would ensure harmonization on different aspects of GST between the Centre and the States as well as among States. It has been provided in the Constitution (101st Amendment) Act, 2016 that the



GST Council, in its discharge of various functions, shall be guided by the need for a harmonized structure of GST and for the development of a harmonized national market for goods and services.

Functions of the GST Council:

GST Council is to make recommendations to the Central Government and the State Governments on

- tax rates,
- exemptions,
- threshold limits,
- dispute resolution,
- GST legislations including rules and notifications etc.

1.11 BODY OF GST LAW

1.	Acts	GOODS AND SERVICES TAX (COMPENSATION TO STATES) ACT, 2017 UNION TERRITORY GOODS AND SERVICES TAX ACT, 2017 INTEGRATED GOODS AND SERVICES TAX ACT, 2017 CENTRAL GOODS AND SERVICES TAX ACT, 2017
2.	Rules	Goods and services Tax Settlement of funds Rules, 2017. Integrated Goods and Services Tax Rules, 2017 Goods and Services Tax Compensation Cess Rules, 2017 Central Goods and Services Tax Rules, 2017 Union territory Goods and Services Rules, 2017. State goods and Service Tax Rules, 2017 (for 29 States and 2 Union territories deemed to be States)
3.	Notifications	IGST Notifications IGST (Rate) Notifications CGST Notifications CGST (Rate) Notifications UT GST Notifications UT GST (Rate) Notifications Cess Notifications Cess (Rate) Notifications
4.	Circulars	CGST IGST UTGST SGST GST COMPENSATION CESS

1.12 IMPORTANT DEFINITIONS UNDER CGST LAW

(1) Sec 2(6), “aggregate turnover” means:

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



(2) Sec 2(17), “business” includes:

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager (i.e. bet, gamble) or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) services provided by a race club by way of totalisator (i.e. computer that registers bets and divides the total amount bet among those who won) or a licence to book maker in such club; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

Note: Book maker means: a person whose job is to take bets (especially on horse races), calculate odds, and pay out winnings; the manager of a betting shop.

As per CSGT (Amendment) Act, 2018, “business” includes –

(h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club;

Changes are being made to ensure that all activities related to a race club are included. It may be noted that (vide Notification No 3/2018 Central Tax dated 23rd January, 2018,) the Government had notified that the value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club is amended to 100% of the face value of the bet or the amount paid into the totalisator.

(3) Sec 2(18), “business vertical” means:

A distinguishable component of an enterprise that is engaged in the supply of individual goods or services or a group of related goods or services which is subject to risks and returns that are different from those of the other business verticals.

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

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

The said definition, however, has been omitted vide the CGST (Amendment) Act, 2018.

(4) Sec 2(20), “casual taxable person” means:

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

(5) Sec 2(30), “composite supply” means:

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



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

(6) Sec 2(31), “consideration” in relation to the supply of goods or services or both includes—

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

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

(7) Sec 2(32), “Continuous supply of goods” means:

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

(8) Sec 2(33), “Continuous supply of services” means:

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

(9) Sec 2(45), Electronic Commerce Operator means:

Any person, who owns, operates or manages digital or electronic facility or platform for electronic commerce.

(10) Sec 2(50), “Fixed establishment” means:

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

(11) Sec 2(52), Goods means:

Every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be served before supply or under a contract of supply.

(12) Section 2(56), “India” means:

The territory of India as referred to in Article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters;

(13) Sec 2(62), “input tax” in relation to:

A registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes —

- (a) the integrated goods and services tax charged on import of goods;
- (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
- (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;



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

(14) Section 2(78), "non-taxable supply" means:

a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;

Example 11:

(1) Alcoholic Liquor for human consumption is Non-taxable Supply.

(2) Sale of Land etc.

(15) Sec 2(84), "person" includes—

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

(16) Sec. 2(90), "principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;

(17) Sec. 2(93), "recipient" of supply of goods or services or both, means—

- (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
- (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
- (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;



(18) Section 2(98), “reverse charge” means:

The liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act;

(19) Section 2(102), “services” means:

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

Explanation [inserted vide the CGST (Amendment) Act, 2018] –

For the removal of doubts, it is hereby clarified that the expression “services” includes facilitating or arranging transactions in securities.

Example - Some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged in relation to transactions in securities.

(20) Section 2(105), “supplier” in relation to:

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

(21) Section 2(107), “taxable person” means:

A person who is registered or liable to be registered under section 22 (i.e. registration required if turnover exceed threshold limit and so on) or section 24 (i.e. Compulsory registration under GST).

(22) Section 2 (108), “taxable supply” means:

A supply of goods or services or both which is leviable to tax under this Act;

Study Note - 2

LEVY AND COLLECTION OF TAX



This Study Note includes

- 2.1 Supply
- 2.2 Scope of Supply
- 2.3 Composite and Mixed Supplies
- 2.4 Levy and Collection
- 2.5 Composition Levy
- 2.6 Exemptions
- 2.7 Person Liable to pay GST
- 2.8 Supply of Goods or Services or both to or by Special Economic Zone
- 2.9 Exempt Supply, Non Taxable Supply and Non-GST Supply
- 2.10 Rates of GST

2.1 SUPPLY

Taxable Event:

Taxable event under GST law is supply of goods or services or both. It means no supply no GST.

The term, "supply" has been inclusively defined in the Act. The meaning and scope of supply under GST can be understood in terms of following six parameters, which can be adopted to characterize a transaction as supply:

1. Supply of goods or services. Supply of anything other than goods or services does not attract GST.
2. Supply should be made for a consideration.
3. Supply should be made in the course or furtherance of business.
4. Supply should be made by a taxable person.
5. Supply should be a taxable supply.
6. Supply should be made within the taxable territory

Exceptions:

- (1) Any transaction involving supply of goods or services without consideration is not a supply, barring few exceptions, in which a transaction is deemed to be a supply even without consideration.
- (2) Further, import of services for a consideration, whether or not in the course or furtherance of business is treated as supply.

**2.2 SCOPE OF SUPPLY****Scope of Supply [Section 7 of CGST Act, 2017]**

As per Section 7(1) Supply includes	As per Section 7(2) Supply excludes
(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business; (b) import of services for a consideration whether or not in the course or furtherance of business; (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.	(a) activities or transactions specified in Schedule III; or (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, Note: Activities specified in Schedule III (i.e. Negative list): 1. Services by employee to employer in the course of or in relation to his employment. 2. Services by court or Tribunal 3. Services by Member of Parliament and others 4. Services by funeral, burial etc. 5. Sale of land/Building 6. Actionable claim other than lottery, betting and gambling.
As per Section 7(3) Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as— (a) a supply of goods and not as a supply of services; or (b) a supply of services and not as a supply of goods.	

Note: Following changes were made, in relation to Section 7, vide the CGST (Amendment) Act, 2018 to:

- omit clause (d) of sub-section (1) of Section 7.
- New sub section inserted:

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

Supply made in the course or furtherance of business:

(a) In the course of business: Every person carries out certain activities regularly for running trade or commerce.

Example: 1

CMA Ram a practising Cost Accountant carries out the activity of Accounting, Auditing, Filing returns, Certifying documents and so on so forth. These activities can be considered as performed in the course of business.

(b) Furtherance of business: Every business person use to think how to develop his business or carrying out new activities. Such activities called as furtherance of business.

Example: 2

M/s X Ltd. manufacturing of motor cars. Company use to sell more number of cars in Southern India. In view of demand in Southern India, company intends to establish manufacturing unit in Chennai. M/s X Ltd. appointed Mr. Y as a consultant for searching, evaluating and shortlisting places for prospective targets. Finally company decided to establish unit at Ambattur Industrial Estate Chennai. Hence, Mr. Y carried out various activities in furtherance of business of M/s X Ltd.



GST is essentially a tax only on commercial transactions. Hence, only those supplies that are in the course or furtherance of business qualify as supply under GST. Hence, any supplies made by an individual in his personal capacity do not come under the ambit of GST unless they fall within the definition of business as defined in the Act. Sale of goods or service even as a vocation is a supply under GST. Therefore, even if a famous politician paints paintings for charity and sells the paintings even as a one-time occurrence, the sale would constitute supply.

(1) Section 7(1)(a) of CGST Act, 2017: all forms of supply of goods or services or both such as

- (i) sale,
- (ii) transfer,
- (iii) barter,
- (iv) exchange,
- (v) licence,
- (vi) rental,
- (vii) lease or
- (viii) disposal

made or agreed to be made for a consideration by a person in the course or furtherance of business;

Note: The above activities are specified as an example as they are preceded by words 'such as'.

- **Sale:** The term sale is defined under various states VAT laws. Sale means a sale of goods made within the State for cash or deferred payment or other valuable consideration but does not include a mortgage, hypothecation, charge or pledge.

Sale involves transfer of property in goods from one person to another person for consideration.

Under CGST Law sale is treated as supply leviable to GST. However, the definition of Sale has not been provided under the GST Law.

Note: mortgage, hypothecation, charge or pledge is not supply and hence GST will not be levied.

Example : 3

Mr. X sold laptop worth ₹ 1,00,000 and issued invoice in favour of Mr. Y. Now ownership in laptop transferred to Mr. Y. Such transaction shall be covered in sale. It is a supply of goods leviable to GST.

Example : 4

Illegal Activity vs Prohibited Activity:

1. *Mr. T, a thief has stolen motorbike and sells the motorbike to Mr. Q. It is illegal to steal a motorbike. Sale of motorbike considered as supply of goods liable to be taxed.*
2. *Mr. T sold Narcotic drugs and psychotropic substances, to Mr. Q for ₹ 3 Lakhs. These goods are prohibited goods. Such activity cannot constitute supply. Mr. T is punishable under the law.*

Example : 5

Mr. X is an official liquidator provided various services like valuation of assets with the help of valuers, inviting and evaluating the tenders, selling assets, making payment to borrowers/creditors and so on. Activities of Mr. X are treated as supply of service and the commission earned by him is subject to GST.

Example : 6

Mr. A being a dealer of furniture deliver the goods to the branch office of M/s X Ltd., upon directions of M/s X Ltd., head office. The contract to supply furniture is between Mr. A and M/s X Ltd., head office. Mr. A is liable to pay GST on the consideration received from M/s X Ltd. head office.

- **Transfer:** the term transfer means, where the ownership may not be transferred but the right in the goods is transferred.



Example : 7

Goods sent for a demonstration on returnable basis. Is it supply?

Answer:

No. It would not be considered as supply, as there is no transfer of title involved.

Example : 8

Mr. A is the owner of Xerox machine. He transferred the right to operate the Xerox machine to Mr. B for a consideration of ₹ 10,000 per month for four months. Hence, ownership of the machine is not transferred but the right in the machine is transferred. It is supply of service leviable to GST.

- **Barter:** it means, the exchange of goods and productive services for other goods and productive services, without the use of money.

Example : 9

Mr. C, a practicing Cost Accountant provided services to M/s A Ltd., dealer of laptops. In return M/s A Ltd., given to Mr. C two laptops. Here, two-way supply takes place. Mr. C is making taxable supply of service and M/s A Ltd., is making taxable supply of goods. Hence, tax is payable by both.

Example : 10

Mr. X a dealer in laptops. He supplied a laptop for ₹ 40,000 to Mr. Y along with a barter of printer. The value of the printer known at the time of supply is ₹ 4,000 but the open market value of the laptop is not known. The value of the supply of laptop is ₹ 44,000. Hence, Mr. X is liable to pay GST on ₹ 44,000. At the same time Mr. Y is also liable to pay GST on ₹ 4,000 if he is registered person.

- **Exchange:** when two persons mutually transfer the ownership of one thing for the ownership of another, neither thing nor both things being money only, the transaction is called an exchange.
Exchange offers on products such as televisions, mobile phones and refrigerators are leviable under GST.

Example : 11

Mr. A is a dealer of new phones. He supplied for ₹ 20,000 to Mr. B along with exchange of an old phone and if the price of the new phone without exchange is ₹ 24,000, the open market value of the new phone is ₹ 24,000. Mr. A is liable to pay GST on ₹ 24,000. Mr. B also liable to pay GST on ₹ 4,000 if he is registered person.

Example : 12

Mr X is a dealer of new cars. He sells new cars for ₹ 8,25,000 agrees to reduce ₹ 1,25,000 on surrendering of old car. Mr. Y who intends to buy new car worth ₹ 8,25,000 agreed to exchange his old car with new car.

Under GST law, it will be treated as Mr. Y has made supply of old car to dealer Mr. X and Mr. X has made supply of new car to Mr. Y.

If Mr. Y is registered person, he will be liable to pay GST on ₹ 1,25,000. Mr. X will be liable to pay GST on ₹ 8,25,000 whether Mr. Y is a registered person or not.

- **Licence:** where one person grants to another, or to a definite number of other persons, a right to do or continue to do in or upon the immovable property of the grantor, the right is called a licence.

Example : 13

Mr. X, a developer of information technology software and holder of licence thereon. License to use software was given to different clients; ₹ 18 lakhs; hence, Mr. X is liable to pay GST whether he transfer such right permanently or temporarily as the case may be.

**Example : 14**

A Chennai based company has been awarded mineral exploration contract for 18 months in respect of specific sites in Mumbai by a Mumbai based corporation (i.e. local authority). As a result Chennai based company got licence to extract mineral exploration for a period of 18 months. Mumbai based company supplied taxable services. GST is liable to pay by Chennai based company on licence fee paid to supplier under Reverse Charge.

- **Rentals:** Periodical payment for use of another's property. Rent is to pay on monthly.

Example : 15

Mr. A owns a residential building in a prime commercial locality. Large vacant land in the backyard is given on rent of ₹1,80,000 per month to a parking contractor, Mr. B who has set up a parking facility on the said land. It is a taxable supply of service and hence, Mr. A is liable to pay GST.

Example : 16

Mr. X, the owner of a residential building in a commercial locality, Ground Floor is given on rent to Mr. Y for a monthly rent of ₹ 60,000. Mr. Y uses the same as his residence. It is a supply of service. However, specifically exempted from GST. Hence, Mr. X is not liable to pay GST.

- **Lease:** A lease is an agreement whereby the lessor conveys to the lessee in return for a payment or series of payments the right to use an asset for an agreed period of time. A lease may be financial lease or operating lease.

Example : 17

M/s M Bank Ltd., given an asset under financial lease to M/s N Ltd. Repayment of financial lease made by the customer to the bank ₹ 80 lakhs which includes a principal amount of ₹ 50 lakhs.

Financial leases shall be taxed as supply of services. M/s M Bank Ltd., is liable to pay GST.

- **Disposal:** Disposal normally considered as selling of assets when the organization is about to close down and various assets are required to be disposed of. Such transactions will also be considered as supply of liable to tax under GST Law.

Consideration:

As per Section 2(31) of the CGST Act, 2017 "consideration" in relation to the supply of goods or services or both includes—

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

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

Donation or charity does not attract GST:**Example : 18**

Alia Travels Pvt. Ltd., a travel agent books ticket for a customer Mr. Z. Travel agent raises invoice on customer Mr. Z for transportation of passenger by air of ₹ 10,000 and his commission of ₹ 500. The entire amount of ₹ 10,500 is not his consideration. The amount of ₹ 500 retained by the air travel is to be considered as his consideration.



Example : 19

M/s L Ltd., being an authorized dealer of the TT brand, rendered services to buyer of car, but payment is made to authorized dealer by the TT Company. It is called as consideration is given by third person. Therefore, it is treated as supply of service and liable to tax in the hands of M/s L Ltd.

Consideration includes non-monetary consideration.

Aggregate of payments received in money and monetary value of the act or forbearance will constitute consideration:

Example : 20

A Sports Club agrees to hire services of cricket player Mr. C for a consideration of ₹ 2 crores. In addition to this, the agreement provides that the player shall be provided with the car valued for ₹ 20 lakhs. The entire value of ₹ 2.20 crores will be considered as consideration and subject to tax.

Example : 21

Mr. X sells office furniture to Mr. Y on the condition that donation of ₹ 10,000 is payable by Mr. Y to a trust. The amount of ₹ 10,000 is paid by Mr. Y by reason of purchase of furniture. Hence, ₹ 10,000 will be treated as consideration for sale of furniture. Thereby Mr. X is liable to pay GST on ₹ 10,000 in addition to the value of furniture.

Example : 22

M/s Dev Ltd. agreed to sell its business to M/s RN Ltd., for a consideration of ₹ 50,00,000. M/s Dev Ltd. further agrees that it will not conduct same or similar business for a period of 10 years, for which M/s RN Ltd., paid ₹ 20,00,000. Hence, M/s Dev Ltd., consideration is ₹ 70,00,000.

No consideration:

Example : 23

Mr. A during long drive with his wife Bela violated traffic rules and was imposed fine of ₹ 1,000. The amount received as fine or penalty for violation of statutory provisions will not be considered as consideration.

Example : 24

the following generally not considered as consideration:

- Grant of pocket money
- Gift or reward (which has not been given in terms of reciprocity) or
- Amount paid on alimony for divorce

Example : 25

Subsidy given by the Government to benefit the farmers cannot be considered an additional consideration:

The Government provides subsidy, for the benefit of farmers but it is given to the manufacturer of fertilizers will not be considered as consideration.

Example : 26

Deposits: If refunded then, it is not a consideration. Therefore the same does not attract GST. If tax has already been paid the taxpayer would be entitled to refund.

If not refunded then, it is relating to a service, attract GST.

Clarifications of the CBEC:

Example : 27

Equipment and instruments sent to manufacturers' factory for repairs and calibration within India on a returnable basis. Is it supply?

Answer:

It is not a supply. Since, no sale has taken place. It is sufficient to issue a challan for movement of goods without supply.

**Example : 28**

X Ltd. supplied spare parts freely to replace during warranty period. Is it supply and chargeable to GST?

Answer:

It is not supply.

GST is not chargeable if free replacement is provided by a business to customers without consideration under warranty.

Example : 29

Penalties levied on late or delayed payment of loans and advances are taxable supply?

Answer:

Yes. These are taxable under GST.

Conclusion: any transaction involving supply of goods or services or both without consideration is not a supply unless it is deemed to be a supply under GST Law (i.e. Schedule I of the CGST Act, 2017, Activities to be treated as supply even if made without consideration).

(2) Section 7(1)(b) of CGST Act, 2017, import of services for a consideration whether or not in the course or furtherance of business:

- (a) it is applicable only for services and not for goods
- (b) It should be import of service (as referred under Section 2(11) of IGST Act, 2017), where
 - i. The supplier of service is located outside India;
 - ii. The recipient of service is located in India; and
 - iii. The place of supply of service is in India.
- (c) Services shall be provided with consideration
- (d) Services may be in the course or furtherance of business or not in the course or furtherance of business.

Important Points:

- (1) As per the provisions contained in Section 21 of the IGST Act, 2017, all imports of services made on or after the appointed day (i.e. 1st July 2017) will be liable to IGST regardless of whether the transactions for such import of services had been initiated before the appointed day.
- (2) If the tax on such import of services had been paid in full under the existing law [i.e. as per Finance Act, 1994(Service Tax)], no tax shall be payable on such import under the IGST Act.
- (3) In case the tax on such import of services had been paid in part under the existing law, the balance amount of tax shall be payable on such import under the IGST Act.

Example : 30

Suppose a supply of service for ₹ 1 crore was initiated prior to the introduction of GST, a payment of ₹ 20 lacs has already been made to the supplier and service tax has also been paid on the same, then IGST shall have to be paid on the balance ₹ 80 lacs.



Example : 31

Online information and data base access or retrieval services, where import of free services from Google and Facebook by Mr. Gopal located in India, without any consideration. Is it subject to GST?

Answer:

These are not considered as supply and hence not attract GST.

Note: GST will be levied only when services are provided with consideration.

Example : 32

Import (Downloading) of a song for consideration for personal use by Mr. Sen. Is it supply of service?

Answer:

Yes. It is supply of service and IGST will be levied.

Note: Services may be in the course or furtherance of business or not.

Example : 33

Mr. C of Chennai paid fees for online coaching obtained from a teacher located in USA for coaching of Accountancy course for his son.

Is it supply. If so who is liable to pay GST.

Answer:

Yes, it is supply. Even if receipt of this service is not for business or furtherance of business.

Mr. C is not liable to pay GST under reverse charge mechanism.

It is exempt from GST. Since, it is not OIDAR service.

Example : 34

Micro Apparels in Chennai, Tamil Nadu, avails fashion designing services of ₹ 50,00,000 from Prabhu Designs in Singapore.

Is it supply. If so who is liable to pay GST.

Answer:

Yes. It is supply (i.e. import of service).

Micro Apparels in Chennai being recipient of service is liable to pay IGST.

Example : 35

Import of some services by an Indian branch from their parent company, in the course or furtherance of business, without consideration. Is it taxable supply in India?

Answer:

Yes. It is a taxable supply in India and hence IGST will be levied.

Note: Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business will be subject to GST even if made without consideration (as per Schedule I of CGST Act, 2017).



(3) Section 7(1)(c) of the CGST Act, 2017 the activities specified in Schedule I, made or agreed to be made without a consideration:

SCHEDULE I

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:
Provided that gifts not exceeding ₹ 50,000/- in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
3. Supply of goods—
(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal;
or
(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
4. Import of services by a taxable [omitted vide CGST (Amendment) Act, 2018] person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

(A) Permanent transfer/disposal of business assets:

All kind of disposal or transfer of business assets made by an entity on permanent basis even without consideration will be treated as supply provided input tax credit has been availed on such assets.

Example : 36

M/s Z Ltd., upgrades the computer system. The existing computers and laptops, which do not support the upgraded version, donated to a Trust. This amounts to permanent transfer of business assets. The same will be treated as supply of goods and liable to GST in the hands of Z Ltd., provided if company availed input tax credit on such computers and laptops.

Example : 37

M/s Sankar Pvt. Ltd., being a trader in clothes permanently transfers 50% of its stock to a Society free of cost. In this case, transfer of business stock would amount to supply if the company had availed input tax credit on purchase of clothes.

Example : 38

Mr. Das purchased a car for personal use and after a year sold it to a car dealer for ₹ 2 lac. Will the transaction be a supply in terms of GST Act?

Answer:

This transaction is not a supply. Moreover, supply is made by the individual is not in the course or furtherance of business. Further, no input tax credit was admissible on such car at the time of its acquisition as it was meant for non-business use.

Example : 39

Mr. Rahim purchased a car for Business use and after 2 years transferred car for personal consumption to use at home. Will the transaction be a supply in terms of GST Act?

Note: ITC not availed by Mr. Rahim.

Answer:

No, because supply is not made by the individual in the course or furtherance of business. Further, input tax credit will not be admissible on such car at the time of its acquisition and it is not be a supply under GST as per schedule I.



Example : 40

M/s M & Co., a sole proprietor, is in the business of selling furniture. Its owner took a set of furniture to furnish his house permanently. Will the transaction be a supply in terms of GST Act?

Note: ITC on such furniture not availed.

Answer:

No, the transfer of the furniture by the owner without consideration is not a supply of goods, because credit is not allowed in case of personal consumption of business assets under sec 17(5) (g) of CGST Act.

Example : 41

M/s T Ltd., is in the business of Hotel. He purchase AC for business purpose and after 2 years, he transfer the AC to director without consideration. Will the transaction be a supply in terms of GST ACT?

NOTE: AC machines on which ITC availed.

Answer:

Yes, it shall be a deemed supply (as per schedule I).

Section 7(1)(b) vs Section 7(1)(c) of CGST Act, 2017

Section	Nature of Service	Consideration	Business Test
Section 7(1)(b) of CGST Act	Import of service	Necessarily required	Not required
Section 7(1)(c) of CGST Act	Import of services by a taxable person from a related person or from any of his other Establishments outside India (i.e. distinct person).	Not Required.	Necessarily required.

(B) Supply between related persons or distinct persons:

As per Explanation to Section 15,

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

- (i) such persons are officers or directors of one another's businesses;
- (ii) such persons are legally recognized partners in business;
- (iii) such persons are employer and employee;
- (iv) any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them;
- (v) one of them directly or indirectly controls the other;
- (vi) both of them are directly or indirectly controlled by a third person;
- (vii) together they directly or indirectly control a third person; or
- (viii) they are members of the same family;

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

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

Example : 42

Any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them:

M/s Beta & Co., holds 30,000 shares in M/s A Ltd. and 25,000 shares in B Ltd.

Share Capital of M/s A Ltd: 1,00,000 Equity Shares of ₹10 each.

Share Capital of M/s B Ltd: 80,000 Equity Shares of ₹10 each.

Since, M/s Beta Ltd., holds more than 25% of the share in the company A Ltd. and B Ltd., they will be considered as related persons.

Example : 43

Reliable group has three companies namely M/s T Ltd., M/s L Ltd., and M/s O Ltd., as group companies and M/s Reliable Ltd., as a parent company. M/s Reliable Ltd., holds 25% of the shares in each group company. Therefore, T, L & O companies will be considered as related persons.

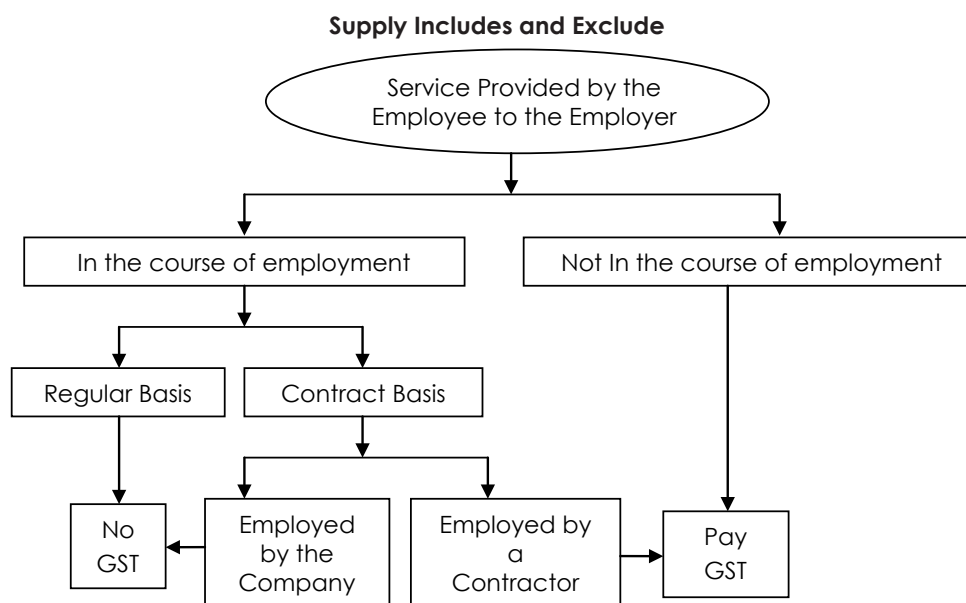
Example : 44

Ravi & Co., (a CMA firm) employer who is represents his employee before the Income Tax authorities but does not charge any professional fee in respect of the same. Is it supply? Liable to GST?

Answer:

It would constitute a taxable supply under GST and be subject to levy and collection of taxes.

Employee to the employer:

**Example : 45**

Ram has received a sum of ₹ 5,00,000 from his employer on premature termination of his contract of employment. Ram needs your advice as to whether such receipts are liable to GST.

Answer:

It is not a supply. As per Section 7(2)(a) of CGST Act, 2017 supply excludes services provided by the employee to the employer in the course of employment (covered under Schedule III of CGST Act, 2017).

Hence, amounts so paid would not be chargeable to GST.



Example : 46

Mr. Raju, an employee provides his service on contract basis to an associate company of Vikram Enterprises, the employer.

The above activity is being carried out in lieu of specific monetary consideration. Is it supply? If so who is liable to pay GST?

Answer:

Yes. It is supply of service.

Liability to pay GST is in the hands of associate company of Vikram Enterprises [as per Sec. 9(4) of the CGST Act, 2017].

Note:

(i) Since, Mr. Raju supplied services for consideration to associate company of Vikram Enterprises but not to his employer.

(ii) However, section 9(4) of the CGST Act, 2017 is suspended till 31st March 2018.

Example : 47

Salary paid to partners by partnership firm is liable to GST?

Answer:

No. It is not supply.

It is merely an appropriation of profit.

Whether all the directors including managing director is an employee of the company?

Director	Contractual relationship of master and servant	GST is liable to pay	Who is liable to pay
Managing Director	No	Yes	Company (under RCM)
Whole-time Director	Yes	No	Nil
Executive Director	Yes	No	Nil
Non-Executive Directors	No	Yes	Company (under RCM)
Independent Directors / Nominee Director	No	Yes	Company (under RCM)

Fringe benefits - GST

"The compensation to employees in the form of money is not a supply.

However, fringe benefits are supply of goods or services and are liable to tax if not exempted," as per the CBEC clarification.

The fringe benefits are transactions in furtherance of business. "Even if supplied without consideration, the same are deemed supply" and will attract GST.

Fringe Benefits-Reverse Charge (RCM) under section 9(4) of the CGST Act, 2017:

Reimbursement to staff is an expense in the course or furtherance of business and if same is against a taxable supply taken from unregistered supplier, reverse charge mechanism will apply.

Note: Section 9(4) of the CGST Act, 2017 is suspended till 30th September 2019.

**Distinct persons specified under section 25 of CGST Act, 2017:**

Every place of business of a person where separate registration is obtained for output supply will be considered as distinct person.

Section 25(4), A person who has obtained or is required to obtain more than one registration, whether in one State or Union Territory or more than one State or Union Territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

Section 25(5), Where a person who has obtained or is required to obtain registration in a State or Union Territory in respect of an establishment, has an establishment in another State or Union Territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

Example : 48

CMA Ram, a Practicing Cost Accountant, has a registered head office in Chennai. He has also obtained registration in the State of Andhra Pradesh in respect of his branch office. CMA Ram shall be treated as distinct persons in respect of registrations in Tamil Nadu and Andhra Pradesh. Transactions between head office and branch office will be considered as supply of service even though there is no consideration.

Example : 49

Mr. C of Chennai makes taxable supply from Tamil Nadu exceeds ₹ 20 lakhs. Therefore, Mr. C will be required to obtain registration in Tamil Nadu. Such person may have establishment in the State of Telangana where no taxable supplies are made but only the establishment in Telangana helps in handling of materials like procuring and storing. Hence, establishment in Tamil Nadu and establishment in Telangana will be considered as distinct person even when establishment in Telangana is not registered (Sec. 25(5) of CGST Act, 2017).

Example : 50

M/s C Ltd. has 3 branches A, B & Z in different states. A in Telangana has run out of stock and B from Andhra Pradesh transfers its excess stock.

Is it supply of goods? GST will be levied?

Answer:

Yes. It is supply of goods and liable to IGST.

Gifts not exceeding ₹ 50,000/- in value in a financial year by an employer to an employee:

Services by employee to an employer in the course of or in relation to his employment shall not be treated as supply of services (Schedule III).

However, Gift not exceeding ₹ 50,000 in value in a financial year by an employer to employee shall not constitute supply of goods or services or both.

Example : 51

M/s Guidelines Academy Pvt. Ltd., gives Diwali Gifts to each employee worth ₹ 75,000/-. Since, an employee and employer are considered to be related persons, such gift treated as supply and would be leviable to GST on the entire value.

(C) Supply to agents or by agents:

Supply of goods by the principal to an agent or by the agent to principal will be considered as a supply even if without consideration. The said transactions are leviable under GST.



Example : 52

M/s P Ltd., registered person located in Cochin and having a godown in Cochin transfers the goods to clearing and forwarding agent (C&F Agent) located in Chennai. Such activity of transfer shall be considered as supply even if there is no consideration for such transfer and hence, leviable to GST.

Example : 53

Paul & Co. engages Honda Cars Ltd. as an agent to sell cars on its behalf. Honda Cars Ltd. has supplied 50 cars to the showroom of Paul & Co., located in Chennai. Supply of cars by Honda Cars Ltd. to Paul & Co., will qualify as supply and the same is leviable to GST.

Example : 54

M/s M Ltd. being a garment manufacturer appoints Mr. Ram as an agent, who stores garments manufactured by M Ltd. and sends to dealers whenever M Ltd. asks Mr. Ram to do so. Is it a supply?

Answer:

Yes. Transfer of garments from M Ltd. to Mr. Ram is taxable supply under GST.

GST will be levied.

(D) Importation of Services:

Import of services by a taxable person from a related person or from his establishments located outside India, in the course or furtherance of business shall be treated as "supply".

Example : 55

Apte & Apte Ltd is located in India and holding 51% of shares of Wilson Ltd, a USA based company. Wilson Ltd provides Business Auxiliary Services to Apte & Apte Ltd., will be treated as supply.

Example : 56

Sparsh Ltd. of Mumbai imports business support services from its head office located in USA. The head office has rendered such services free of cost to its branch office. Services received by Sparsh Ltd. will qualify as supply even though the head office has not charged anything from it.

(4) Section 7(1)(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II:

Schedule II of the CGST Act, 2017 has certain activities clearly classified as goods or services under GST to avoid any such confusion.

However, the above-mentioned clause (d) of Section 7(1) has been omitted vide the CGST (Amendment) Act, 2018 along with the insertion of a new clause 7(1A):

Section 7(1A) where certain activities or transactions, constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

The objective to amend Section 7 of the Act is to clarify the scope of supply; It Inserts a new sub-section (1A) in section 7 and omit clause (d) of sub-section (1). Now, first an activity has to be "supply" as per Sch(1) only then it will be tested as per Schedule II. The recent AAR whereby supply of canteen services by employer to employee is a supply and hence taxable as per Sch II, clause No 6 (b), will be tested now.



S.No.	Transaction	Supply of Goods	Supply of Service
1	Transfer		
	(a) Transfer of the title in goods.	Yes	No
	(b) Transfer of right in goods or share (undivided) in goods without the transfer of title.	No	Yes
	(c) Transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed	Yes	No
2	Land and Building		
	(a) Lease, tenancy, easement, licence to occupy land	No	Yes
	(b) Lease or letting of any building including for business or commerce. (Building might be a commercial, industrial or residential complex rent out wholly or partly)	No	Yes
3	Treatment or process		
	Any treatment or process which is applied to another person's goods	No	Yes
4	Transfer of business assets		
	(a) Goods forming part of business are transferred or disposed off by the owner whether or not for a consideration.	Yes	No
	(b) The owner (person carrying on business) uses or allows to use business assets for personal use.	No	Yes
	(c) If the owner ceases to be a taxable person then business assets will be assumed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person. This is not applicable when:- (i) the business is transferred as a going concern to another person; or (ii) the business is carried on by a personal representative who is deemed to be a taxable person.	Yes	No
5	Supply of services		
	(a) Renting of immovable property (however, residential dwelling is exempted from GST)	No	Yes
	(b) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.	No	Yes
	(c) Temporary transfer or permitting the use or enjoyment of any intellectual property right;	No	Yes
	(d) Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software;	No	Yes
	(e) Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act	No	Yes



	(f) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.	No	Yes
6	Composite supply		
	(a) Works contract services;	No	Yes
	(b) Supply by way of or as part of any other service or in any other manner whatsoever, of goods being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption)	No	Yes
7	Supply of Goods		
	Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.	Yes	No

(A) Un-divided share in goods:

Example : 57

A shopping complex owned by M/s X Ltd and M/s Y Ltd. At a latter date M/s X Ltd. sold his share in shopping complex to M/s Z Ltd. and hence, ownership is not transferred to M/s Z Ltd., but only share in property is transferred to M/s Z Ltd. It is a supply of service.

Transfer of title in future:

Example : 58

Mr. A provides machine to Mr. B and he permits Mr. B to use the machine, provided Mr. B pays for the machine after two months, when the property of goods will be transferred to Mr. B. It will be considered as a transaction in goods and service. Therefore, it is a supply of goods.

Example : 59

If a residential premise is used for residential purposes as well as for some business purpose, the said activity of leasing of residential complex would be covered in the definition of supply and eligible to GST.

Such activities could be:

- coaching by teacher at his residence or
- carrying out professional activities from the residence of an Advocate or Chartered Accountant or Cost Accountant etc.
- even storing of business goods in the residential premise.

(B) Job work:

Example : 60

Any activity carried out on the product whether for bringing change in the product or not will be considered as processing of the product.

- (a) Job-work performed by a job worker like cleaning and painting.**
- (b) Job-work performed by a job worker like converting raw material into finished goods.**

**Example : 61**

Mr. A a trader of steel articles purchases steel bars of 10 meters for ₹ 1,00,000. He gave these steel bars to Mr. B (job worker) for cutting the bars. Mr. B charged ₹ 20,000 as his job work charges. Mr. B seeks clarification whether he will be liable to pay GST on the cut bars and if so, find the value?

Answer:

Mr. B being a job worker is liable to pay GST. Value of job work charges is ₹ 20,000. It is called as supply of service.

Example : 62

Crown Beers India Pvt Ltd., supplies raw material to a job worker Kareena Ltd. for manufacture of alcoholic liquor for human consumption. After completing the job-work, the finished product of 5,000 beer bottles are returned to Crown Beers India Pvt Ltd., putting the retail sale price as ₹ 200 on each bottle (inclusive of duties and taxes). Kareena Ltd., charged ₹100 per bottle as job work charges of carrying out of intermediate production process of alcoholic liquor for human consumption from Crown Beers India Pvt. Ltd.

Find the GST liability if rate is 18% (CGST 9% and SGST 9%) any in the hands of Kareena Ltd.

Answer:

Carrying out of intermediate production process of alcoholic liquor for human consumption on job work basis attract GST.

CGST (5,000 bottles x ₹100 x 9%)	₹ 45,000
SGST (5,000 bottles x ₹100 x 9%)	₹ 45,000
Total tax liability of Kareena Ltd.	₹ 90,000

Note: GST not attract on manufacture of alcoholic liquor. Since, it is the State subject, which will attract State Excise Duty.

(C) Transfer of business assets:**Example : 63**

Sale of office computers or furniture is supply of goods.

Example : 64

Free samples freely supplied to others are also supply of goods.

Example : 65

Mr. Raj purchased a car for Business use and after one year sold it to a car dealer for ₹ 2 lac. Will the transaction be a supply in terms of GST Act?

Answer:

Transfer for a consideration shall be supply of goods, even if credit is not claim (as per Schedule II).

Business assets used for personal purpose:

Schedule I of the CGST Act, 2017 does not provide that use of goods for private or personal purpose, whether without consideration will be considered as supply. Hence, no GST is payable on use of the goods for private or personal purpose. However, ITC proportionately will be denied.



Example : 66

Mr. A is engaged in the business of transportation of passengers. He provides vehicle for the marriage of his Accounts Manager free of cost. It is supply of service, but no GST is payable (provided business not claiming Input Tax Credit).

If Mr. A charged ₹ 2,500 it will be subject to GST.

Example : 67

Mr. X is engaged in the business of selling furniture. He organizes function in his house. As a result he used business furniture for the function. It is supply of service. Since, there is no consideration and hence no GST will be levied provided business not claiming ITC.

Example : 68

M/s X Ltd. provided car to one of its director for his personal purposes and charge fee ₹ 30,000 per month. It is supply of service and the same is taxable under GST.

Example : 69

A director takes a computer home for his private use. This computer is the company's business asset.

It is supply of service.

GST is accountable on the use of the computer based on its cost.

However, if the company chose not to claim input tax on the computer purchased, the private use of the computer will not attract GST.

Example : 70

A director uses the company's car for his family outing.

It is supply of service.

The company was not entitled to claim the input tax incurred on the purchase of the car as it is disallowed.

The company does not need to account for GST on the private use of the car as no input tax was claimed.

Example : 71

X Ltd. and Y Ltd. are related companies. Y Ltd. uses X Ltd. business asset namely large format printer to print high-resolution architectural plans for its client.

GST is accountable on the use of the printer based on its cost.

However, if X Ltd. chose not to claim input tax on the asset purchased, the use of this asset by another person will not attract GST.

Business Discontinued:

Example : 72

M/s Ravan & Co a partnership firm decided to dissolve the partnership firm. Goods left in stock taken over by partners. Taking over of goods by partners will be considered as a supply of goods. Since, business is not continued further.

Exceptions:

- (i) the business is transferred as a going concern to another person; or
- (ii) the business is carried on by a personal representative who is deemed to be a taxable person.



In both the above cases, the business is continued. Therefore, it will not be considered as supply of goods.

Example : 73

Mr. Raj being a owner of shop is a registered person under GST. He has decided to close the business. At the time of deregistration he has closing stock of ₹ 15,00,000. Mr. Raj final GST return will show his supplies made during the last taxable period plus Stock in hand of ₹ 15,00,000 during the deregistration. Find the amount of supply. Is it supply of goods or services?

Answer:

Amount to supply = ₹ 15,00,000

It is treated as supply of goods.

Note:

(1) Mr. Raj has to pay GST on ₹ 15 lac.

(2) However, Mr. Raj is not required to pay to GST on closing stock of ₹ 15 lac, provided ITC not availed on such stock.

(D) Renting of Immovable Property:

Example : 74

Renting of vacant land to a stud farm for ₹ 1,50,000. Is it a supply of service. Will GST be leviable?

Answer:

It is supply of service.

GST is liable to pay.

Example : 75

Leasing of vacant land to a poultry farm for ₹ 76,000. Is it supply of service?

Answer:

It is a supply of service.

However, specifically exempted from GST.

Note: It is an agricultural activity.

(E) Construction Service:

Example : 76

A builder has entered into agreement to sale a flat (carpet area 1900 sq ft) to customer. The additional information is as follows:

(a) Price of flat (including apportioned value of cost of land): ₹ 42,00,000 (includes Prime Location Charges namely charges for getting sea view ₹ 2,00,000).

(b) Charges for providing space for covered parking: ₹ 1,25,000.

The builder received part payment before construction was completed and balance amount was received after obtaining completion certificate from the Corporation. Find the GST liability (CGST 6% and SGST 6%)?

Answer:

It is supply of service. Builder is liable to pay GST.

CGST (₹ 42,00,000 + 1,25,000) x 6%	= ₹ 2,59,500
SGST (₹ 42,00,000 + 1,25,000) x 6%	= ₹ 2,59,500
Total liability	= ₹ 5,19,000



(F) Information Technology Software:

The issue was raised whether software is a goods or services. Clause 5(d) Schedule II of the CGST Act provides that development, design, programming, customization, adaptation, upgradation, enhancement, implementation of Information Technology software shall be treated as service. This explanation removes the uncertainty as to whether such software is goods or service.

As Information Technology software has been declared as service, place of supply of IT software can easily be determined. Place of supply of software shall always be the location of the recipient.

Example: 77

M/s. ABC Ltd. provides the following relating to information technology software. Compute the value of taxable service and GST liability (Rate of CGST 9% and SGST 9%)?

(a) Development and Design of information technology software: ₹ 15 lakhs;

(b) Sale of pre-packaged software, which is put on media: ₹ 52 lakhs.

Answer:

(a) and (b) both are treated as supply of Service.

Value of Taxable supply of service is ₹ 67 Lakhs [i.e. ₹ 15 Lakhs + 52 Lakhs]

CGST is ₹ 6.03 lakhs

[i.e. ₹ 67 Lakhs x 9%].

SGST is ₹ 6.03 lakhs

[i.e. ₹ 67 Lakhs x 9%].

(G) Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act:

Example : 78

M/s X Ltd. paid penalty under section 49 of the CGST Act, 2017, ₹ 2,00,000 to the Department in the month of October 2018. Is it taxable under the GST law?

Answer:

It is not a supply of service. The fine or penalty chargeable by Government or local authority imposed for violation of statute, bye-laws, rules or regulations are not leviable to GST. Such fines or penalty are not recovered for tolerating non-performance of a contract.

Refrain means restricting oneself to do or not to do one act:

Example : 79

Mr. C is a Practicing Cost Accountant given appointment to a client Mr. B representing the company for 10AM on Tuesday. Mr. B cancel the appointment at 9AM on Tuesday (i.e. one hour before appointment time). Advance paid by Mr. B for seeking the appointment is forfeited by Mr. C for cancelling the appointment.

In the given case Mr. C, refraining from entering any other person at the given appointment time. This is called as supply of service. Therefore, forfeited amount is leviable to GST.

Tolerate an act or a situation:

Services provided by Government or a local authority by way of 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; is exempted from GST.

**Example : 80**

A contract awarded by Bombay Municipal Corporation (BMC) for repair of a particular road to M/s B Ltd., with terms and conditions that the entire work should be completed within 30 days. However, there is a delay of 10 days to complete the work. BMC charged liquidated damages of ₹ 1,20,000 and the same recovered from M/s B Ltd. Applicable rate of CGST 9% and SGST 9%. Previous year turnover of M/s B Ltd. ₹ 2 crores.

Find the following:

- (a) who is liable to pay GST on what amount?**
- (b) total tax liability if any?**

Answer:

- (a) It is supply of service.
- (b) M/s B Ltd. being recipient of service is liable to pay GST on ₹ 1,20,000 (i.e Reverse Charge applicable). Since, the contractor has performed the contract, but there is a delay of 10 days.

Note:

- (i) It appears the liquidated damages recovered by local authority for delay in performance in contract will not be covered under exemption list of GST. The contract has been performed in such cases, GST will be payable on the same.
- (ii) Services provided by Government or a local authority by way of 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; is exempted from GST.

(H) Transfer of the right to use any goods for any purpose

In the case of *Bharat Sanchar Nigam Ltd. v Union of India* 2006 (2) STR 161 (SC), transfer of right to use goods is not transaction of service but transaction of sale of goods. However, the clause 5(f) of Schedule II of CGST Act, 2017 specifically provides that transfer of right to use goods for any purpose shall constitute supply of service. As a result the above judgment will not be helpful under GST.

Example : 81

Ram has given his tempos on hire to Gupta Brothers for transportation of foodstuff for ₹ 40,00,000. He has also transferred the right to use such tempos to Gupta Brothers. Discuss whether Ram is liable to pay GST on the said transaction.

Answer:

It is treated as supply of service. Ram is liable to pay GST.

(I) Composite supply :

- (a) Works contract.
- (b) Supply of food or any other article for human consumption (other than alcoholic liquor for human consumption).

Section 2(119) of CGST Act, 2017 “works contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

Example : 82

S Pvt. Ltd. was awarded a contract in July 2017 for providing flooring and wall tiling services in respect of a building located in Delhi by N Ltd. As per the terms of contract, S Pvt. Ltd. was to provide all the required material for execution of the contract. However, N Ltd also provided a portion of the material.

Whether the services provided by S Pvt. Ltd. are subject to GST? If yes, determine the GST liability of S Pvt. Ltd. from the following particulars-



Particulars	₹
(i) Gross amount charged by the S Pvt. Ltd.	6,00,000
(ii) Fair market value of the material supplied by N Ltd.	1,00,000
(iii) Amount charged by N Ltd. for the material [included in (i) above]	60,000

Note: CGST 6% and SGST 6%.

Answer:

Works contract is treated as supply of service

Gross amount charged by the S Pvt. Ltd.	6,00,000
Add: Fair market value of the material supplied by N Ltd.	1,00,000
Less: Amount charged by N Ltd. for the material	(60,000)
Total value subject to GST	6,40,000

CGST 6% × 6,40,000 =	₹ 38,400
SGST 6% × 6,40,000 =	₹ 38,400
Total GST liability =	₹ 76,800

Supply of food or any other article for human consumption (other than alcoholic liquor for human consumption).

Example : 83

Food supplied in a restaurant has the facility of air-conditioning:

Particulars	Amount (₹)
Total Food Bill	1,000
Service charges @10%	100
Total bill (before GST)	1,100
Add: CGST 9% on ₹ 1,100	99
Add: SGST 9% on ₹ 1,100	99
Total Bill payable by customer (rounded off)	1,298

Note: Supply of alcoholic liquor for human consumption will not be considered as a service. It will continue to be taxed by the State in the manner currently being taxed.

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

Examples : 84

- (a) A club has opened up a shop. The members can purchase various goods from such shops. It is a supply of goods.
- (b) A local association supplies tea and snacks to its members during its meeting for a nominal payment. It is also called as supply of goods.

(5) Non-taxable Supplies under CGST Act, 2017

As per Section 7(2), Supply excludes :

- activities or transactions specified in Schedule III; or
- such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

Note: Activities specified in Schedule III (i.e. Negative list):

- Services by employee to employer in the course of or in relation to his employment.



2. Services by court or Tribunal
3. Services by Member of Parliament and others
4. Services by funeral, burial etc.
5. Sale of land/Building
6. Actionable claim other than lottery, betting and gambling.

The following paragraphs inserted vide the CGST (Amendment) Act, 2018, namely:-

7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.
8. (a) Supply of warehoused goods to any person before clearance for home consumption;
(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

(6) Section 7(3) of the CGST Act, 2017

As per Section 7(3) Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

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

As per the CGST (Amendment) Act, 2018, the words "sub-sections (1) and (2)" shall be read as "sub-sections (1), (1A) and (2)"

2.3 COMPOSITE AND MIXED SUPPLIES

Composite and Mixed Supplies (Section 8 of CGST Act, 2017):

Composite supply is when two or more goods are sold in a combination, it becomes difficult to identify the rate of tax to be levied. For such goods or services, CGST Act, 2017 has provided with two terms:

- (i) Composite supply and
- (ii) Mixed supply.

Composite supply is similar to the concept of "bundled service" as under service tax laws in the existing regime. Both Composite supply and Mixed supply consist of two or more taxable supplies of goods or services or both but the main difference between the two is that Composite supply is naturally bundled i.e., goods or services are usually provided together in normal course of business and cannot be separated. Whereas in Mixed supply, the goods or services can be sold separately.

- (1) **Composite Supply** : Composite supply consists of two or more goods/services, which is naturally supplied with each other in the ordinary course of business and one of them is a principal supply. The items cannot be supplied separately.

Note: Principal supply means the supply of goods or services, which constitute the predominant element of a composite supply and to which another supply is ancillary/secondary.

Following two conditions are necessary for composite supply:

- (a) Supply of two or more goods or services together, AND
- (b) It should be a natural bundle and they cannot be separated.

Example : 85

Booking of Air Tickets which involves cost of the meal to be provided during travel will be Composite supply and tax will be calculated on the principle supply which in this case is transportation of passengers through flight.



Example : 86

M/s P Ltd. entered into a contract with M/s Z Ltd. for supply of goods. Where goods are packed and transported with insurance. The supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply.

Example : 87

A Five-star hotel provides four days and three-night package, with breakfast. This is a composite supply as the package of accommodation facilities and breakfast is a natural combination in the ordinary course of business for a hotel. In this case, the hotel accommodation is the principal supply, and breakfast is ancillary to the hotel accommodation.

The hotel accommodation attracts 18% tax and the restaurant service attracts 28% tax. As per the example, hotel accommodation is the principal supply, and the entire supply will be taxed at 18%.

Example : 88

Mr. Ravi being a dealer in laptops, sold a laptop bag along with the laptop to a customer, for ₹ 55,000. CGST and SGST for laptop @18% and for laptop bag @28%. What would be the rate of tax leviable? Also find the GST liability.

Answer:

If the laptop bag is supplied along with the laptop in the ordinary course of business, the principal supply is that of the laptop and the bag is an ancillary.

Therefore, it is a composite supply and the rate of tax would that as applicable to the laptop.

Hence, applicable rate of GST 18% on ₹ 55,000.

CGST is ₹ 4,950 and SGST is ₹ 4,950

- (2) **Mixed supply :** In Mixed supply two or more individual supplies combination of goods or services with each other for a single price. Each of these items can be supplied separately and is not dependent on each other. In other words, the combination of goods or services are not bundled due to natural necessities, and they can be supplied individually in the ordinary course of business.

For tax liability purpose, mixed supply consisting of two or more supplies shall be treated as a supply of that item which has the highest tax rate.

Example : 89

Diwali gift hamper which consist of different items like sweets, chocolates, cakes, dry fruits packed in one pack is Mixed supply as these items can be sold separately and it shall be treated as a supply of that particular item which attracts the highest rate of tax.

Example : 90

M/s X Ltd. a dealer offer combo packs of shirt, watch, wallet, book and they are bundled as a kit and this kit is supplied for a single price and the supply of one item does not naturally necessitate the supply of other elements. Hence the supply is a mixed supply. Tax rate for a shirt, watch, wallet and book are 12%, 18%, 5% and Nil respectively. In this case, watch attracts the highest rate of tax in the mixed supply i.e., 18%. Hence, the mixed supply will be taxed at 18%.

Example : 91

Mr. A booked a Rajdhani train ticket, which includes meal. Is it composite supply or mixed supply?

Answer:

It is a bundle of supplies. It is a composite supply where the products cannot be sold separately. The transportation of passenger is, therefore, the principal supply.

Rate of tax applicable to the principal supply will be charged to the whole composite bundle.

Therefore, rate of GST applicable to transportation of passengers by rail will be charged by IRCTC on the booking of Rajdhani ticket.

**Example : 92**

Space Bazar offers a free bucket with detergent purchased. Is it composite supply or mixed supply? Assume rate of GST for detergent @28% and bucket @18%.

Answer:

This is a mixed supply. These items can be sold separately.

Product which has the higher rate, will apply on the whole mixed bundle.

2.4 LEVY AND COLLECTION

Section 9(1) of CGST Act, 2017 provides that there shall be levied of tax called Central Goods and Services Tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the CGST Act, 2017 and at such rates, not exceeding 20%, as may be notified by the Government on the recommendation of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

It means maximum GST rate not exceeding 40% (i.e. CGST 20% and SGST 20%) on all intra-state supplies of goods or services.

Section 5(1) of IGST Act, 2017, provides that there shall be levied of a tax called Integrated Goods and Services Tax (IGST) on all inter-State supplies of goods or services or both at such rates not exceeding 40%.

IGST on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975.

Section 9(2) of CGST Act, 2017, GST will be levied on the supply of:

- Petroleum crude,
- High speed diesel,
- Motor spirit (commonly known as petrol),
- Natural gas and
- Aviation turbine fuel

Shall be levied with effect from such date as may be notified by the Government of India on the recommendation of the GST Council (similar provision under section 5(2) of IGST Act, 2017).

Section 9(3) of CGST Act, 2017 the Government may, on the recommendation of the GST Council, may notify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis (similar provision under section 5(3) of IGST Act, 2017).

Section 9(4) of CGST Act, 2017, central tax (i.e. CGST) in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient (Similar provision under section 5(4) of IGST Act, 2017).

Section 9(4) has been amended vide the CGST (Amendment) Act, 2018, as "The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both."

The same was amended in order to empower the Central Government is to notify classes of registered persons to pay the tax on reverse charge basis in respect of receipt of supplies of certain specified categories of goods or services or both from unregistered suppliers;

It is to be noted that this provision suspended till 30.09.2019.



Note: Reverse charge provisions would not be applicable if the aggregate value of such supplies of goods or services or both received by a taxable person from any or all the suppliers, who are not registered, does not exceeds ₹ 5,000 in a day (**Vide Notification No. 8/2017 Dt. 28.06.2017**).

Section 9(5) of CGST Act, 2017 Electronic Commerce Operator (ECO) is liable to pay tax. If ECO does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax. Provided further that where an ECO does not have a representative in the taxable territory, such ECO shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax (similar provision under section 5(5) of IGST Act, 2017)

Summary:

CGST Act, 2017	IGST Act, 2017
Section 9(1): CGST will be levied and collected on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption.	Section 5(1): IGST will be levied and collected on all inter-state supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption. IGST also be levied on import of goods.
Section 9(2): CGST yet to be levied on - Petroleum crude, - High speed diesel, - Motor spirit (commonly known as petrol), - Natural gas and - Aviation turbine fuel	Section 5(2): IGST yet to be levied on - Petroleum crude, - High speed diesel, - Motor spirit (commonly known as petrol), - Natural gas and - Aviation turbine fuel.
Section 9(3): Govt. will decide who is liable to pay GST under Reverse Charge.	Section 5(3): Govt. will decide who is liable to pay GST under Reverse Charge.
Section 9(4): supply by a not registered person, to a registered person, reverse charge applicable. Reverse charge provisions would not be applicable if the aggregate value of such supplies of goods or services or both received by a taxable person from any or all the suppliers, who are not registered, does not exceeds ₹ 5,000 in a day.	Section 5(4): supply by a not registered person, to a registered person, reverse charge applicable. Reverse charge provisions would not be applicable if the aggregate value of such supplies of goods or services or both received by a taxable person from any or all the suppliers, who are not registered, does not exceeds ₹ 5,000 in a day.

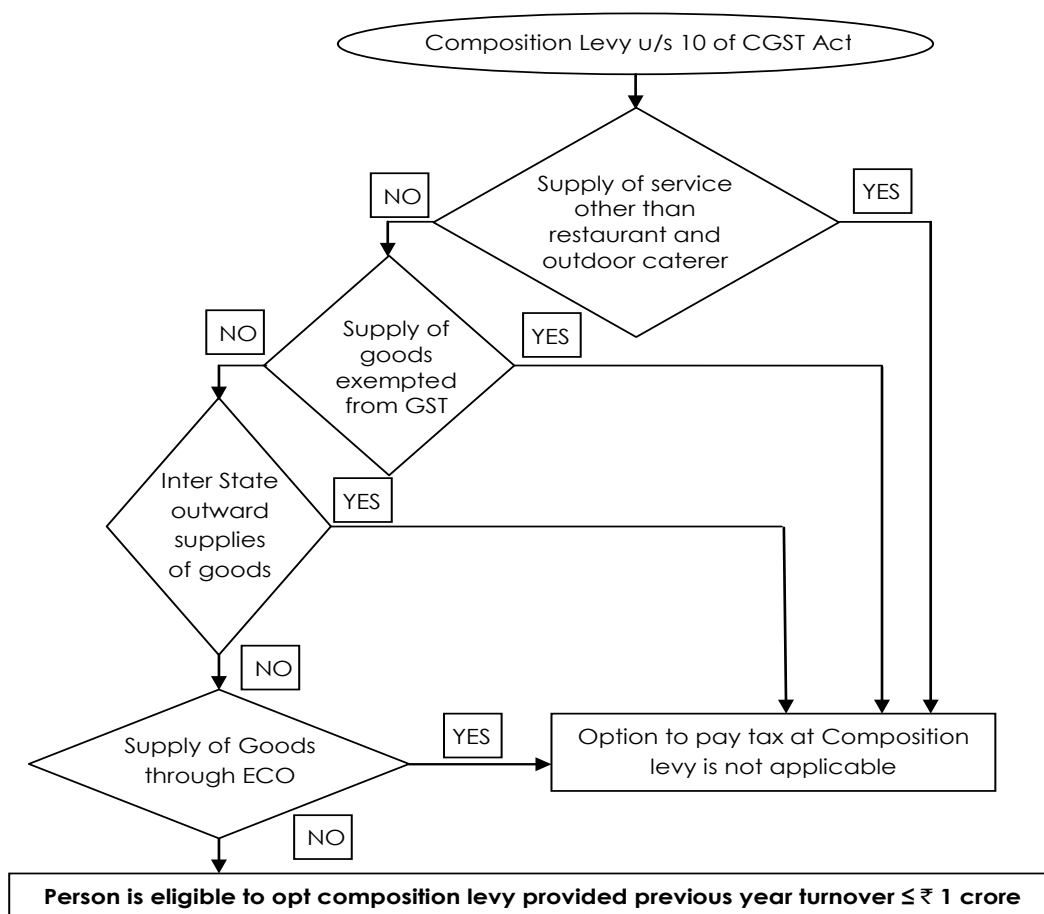
This provision is suspended till 30.09.2019.	This provision is suspended till 30.09.2019.
Section 9(5): Electronic Commerce Operator (ECO) is liable to pay tax. Or Any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax, provided ECO not located in taxable territory. Or Where an ECO does not have a representative in the taxable territory, such ECO shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.	Section 5(5): Electronic Commerce Operator (ECO) is liable to pay tax. Or Any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax, provided ECO not located in taxable territory. Or Where an ECO does not have a representative in the taxable territory, such ECO shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

2.5 COMPOSITION LEVY

Composition Scheme

The Government of India provides for simplified and easy of doing business scheme for payment of taxes and filing of returns to certain categories of taxable person. As a result such taxable person is not required to maintain elaborate records and filing detailed returns. Section 10 of the CGST Act, provides for composition levy to such person.

Person eligible for Composition Levy u/s 10 of CGST Act:



Changes to be made prospectively from 15th November 2017:

Composition scheme limit to be increased to ₹ 1.5 crore (can be extended to ₹ 2 crore later).

As per Section 10(1) of CGST Act, 2017, Registered person, whose aggregate turnover in the financial year did not exceed ₹ 1 crore (₹ 75 Lakhs for north-eastern states), may opt to pay composition levy.

Note: North eastern states includes

1. Arunachal Pradesh;
2. Assam;
3. Manipur



4. Meghalaya
5. Mizoram;
6. Nagaland;
7. Sikkim;
8. Tripura;
9. Himachal Pradesh.

The turnover threshold for Jammu & Kashmir and Uttarakhand shall be ₹ 1 crore

Aggregate turnover as per Section 2(6) of CGST Act, 2017:

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

Aggregate turnover includes	Aggregate turnover excludes
The value of exported goods/services	Inward supplies on which the recipient is required to pay tax under Reverse Charge Mechanism (RCM).
Exempted goods/services or both which attracts nil rate of tax or wholly exempt from tax and includes non-taxable supply.	- Central tax (CGST), - State tax (SGST), - Union territory tax and - Integrated tax (IGST)
Inter-state supplies between distinct persons having same PAN	Compensation Cess
Supply on own account and on behalf of principal.	

Important points:

- (i) The turnover will be computed PAN wise.
- (ii) The partner and partnership firm will have different PAN Nos. Thus the turnover of the partner and partnership firm will not be aggregated.
- (iii) The HUF and individual coparcener of the family have different PAN Nos. Hence, turnover of Karta of HUF in his individual capacity and turnover of Karta as a Karta of HUF will not be aggregated.

Supply of goods, after completion of jobwork, by a registered jobworker shall be treated as the supply of goods by the principal referred to in Sec. 143 of the CGST Act, 2017, and the value of such goods shall not be included in the aggregate turnover of the registered jobworker. It will be included in the turnover of principal.

Persons not entitled to avail Composition Scheme:

The Section 10(2) of the CGST Act, 2017 specifies the benefit of composition scheme shall not be granted if a taxable person is:

- (a) engaged in the supply of services (other than restaurant and outdoor catering service);
- (b) engaged in making any supply of goods which are not leviable to tax under this Act;
- (c) engaged in making any inter-state outward supplies of goods;
- (d) engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and
- (e) a manufacturer of such goods as may be notified by the Government on the recommendations of the Council:

**Example : 93**

M/s X Ltd. being a manufacturer of laptops has four factories in Chennai, Salem, Coimbatore and Madurai.

Place	P.Y. Turnover ₹ in lakhs (Including Taxes @ 18%)
Chennai	57.91
Salem	12.00
Coimbatore	8.00
Madurai	10.00
Chennai –II	23.60
Total	111.51

Is M/s X Ltd. eligible for composition levy in the current year?

Answer:

Aggregate turnover = $111.51 \times 100/118 = ₹ 94.50$ lakh

Note: Since, aggregate turnover in the preceding financial year does not exceed ₹ 1 crore, M/s X Ltd. is eligible for composition Scheme.

Example : 94

M/s Paul Ltd. being a trader of laptops has two units in Chennai and in Mumbai.

Place	P.Y. Turnover ₹ in lakhs (Excluding taxes)
Chennai	52.00
Mumbai	12.00

You are required to answer the following:

- Is M/s Paul Ltd. eligible for composition levy in the current year?**
- If so, can M/s Paul Ltd. opt composition scheme for Chennai location and normal scheme for Mumbai?**
- Need to give separate intimations for opting composition scheme in each State.**

Answer:

- Yes. M/s Paul Ltd. is eligible to avail the composition scheme in both the states namely Tamil Nadu and Maharashtra.

Since, M/s Paul Ltd. has same PAN, and his aggregate turnover does not exceeds rupees one crore, it is eligible for composition levy, even though the company has multiple registrations under GST.

- No. M/s Paul Ltd. cannot opt composition scheme for one location and normal scheme for another location. Where more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (1) of Section 10 of CGST Act, 2017 unless all such registered persons opt to pay tax under that sub-section.
- Intimation to opt composition scheme in respect of any place of business in any State or Union Territory shall be deemed to be intimation in respect of all other places of business registered on the same Permanent Account Number (PAN).

Example : 95

M/s X & Co., sells electrical cables, motors and wires. Company also undertake to repair switches, motor sets. Turnover during preceding financial year from sale of goods is ₹ 59 lakhs, whereas repairing unit is ₹ 1 lakh.

Is M/s X & Co. eligible for composition scheme? Advice.

Answer:

No. Since, M/s X & Co., deals partly with supply of services. Therefore, the benefit of composition scheme will be denied to M/s X & Co.



Example : 96

Mr. Q is a paper merchant own 5,000 sq ft., shop at Chennai. Mr. Q offered extra space available in their shop to supplier to put up their advertisement. His turnover in the previous year from sale of goods ₹ 20 lakhs and advertising services ₹ 2 lakhs. Is Mr. Q eligible for composition scheme in the current year?

Answer:

No. Mr. Q being a paper merchant charging services and hence, the benefit of composition scheme is not allowed.

Example : 97

Hotel King Pvt., Ltd. provider of restaurant services in New Delhi. They also serve beer, whisky and so on. Turnover in the preceding previous year is ₹ 67 lakhs. Is Hotel King Pvt. Ltd. eligible for composition scheme in the current year?

Answer:

Hotel King Pvt. Ltd., is not eligible for composition scheme. Since they are supplying the product, which is not levied to GST (namely beer, whisky).

Example : 98

Mr. A of Chennai is a retailer dealing with cell phones. He supplies goods to the person located in Chennai and Pondicherry. Aggregate turnover in the preceding financial year is ₹ 45 lakhs. Mr. A wants to opt for composition scheme in the current financial year. Advise

Answer:

No. When the person makes inter-state supply of goods, benefit of composition scheme is prohibited. Therefore, Mr. A will not be entitled to the benefit of composition scheme.

Example : 99

Peter England is a trader who sells his ready-made clothes online on Amazon India (an Electronic Commerce Operator). He received an order for ₹ 12, 00,000 in the previous year. Peter England also supplied goods from there out lets. Aggregate turnover of the company in the previous year was ₹ 21,00,000.

Is Peter England eligible for composition scheme?

Answer:

No. Peter England engaged in making supply of goods through an electronic commerce operator who is required to collect tax at source under section 52 of CGST Act, 2017. Hence, Peter England is not eligible for composition scheme.

Example : 100

Hot Breads Pvt. Ltd is the supplier of bakery products registered in the current financial year (2017-18) w.e.f. 1st Oct 2017. In the month of Oct 2017 total taxable supplies ₹ 88 lakhs.

Answer the following:

(a) Is Company eligible for Composition Scheme?

(b) If so company wants to pay tax @ 1% being a trader. However, the Deputy Commissioner of Central Tax contended that the assessee is liable to pay tax @ 5% under the Food and Restaurant Services category? Advise.

Answer:

(a) *Hot Breads Pvt. Ltd. is eligible for composition levy in the current year.*

(b) *The supply of food and restaurant services category is the only service included under the composition scheme. For a business to be categorised as food and restaurant services, there needs to be an element of service involved.*

In the given case, supply of bakery products, there is only a supply of goods i.e. food items but there is no element of supply of service. Hence supply of bakery products is eligible to pay GST @1%, under the Traders category and not Food and Restaurant Services category.

Therefore, department's contention is not correct.

Example 101:

Hotel King Pvt. Ltd. is a registered person under GST. P.Y. turnover was ₹ 100 lakhs. Applicable GST 18%. Inputs cost ₹ 7,80,000 (exclusive of GST 18%). Profit margin is 40% on cost. Find the invoice price and advise the best option to pay tax if any. There is no opening balance and closing balance for the tax period.

Answer:

Composition Levy	
Particulars	Value in ₹
Cost of inputs	7,80,000
Add: GST 18% on inputs	1,40,400
Total Cost	9,20,400
Add: Profit margin 40%	3,68,160
Invoice Price	12,88,560
CGST 2.5%	32,214
SGST 2.5%	32,214
Total GST Liability	64,428

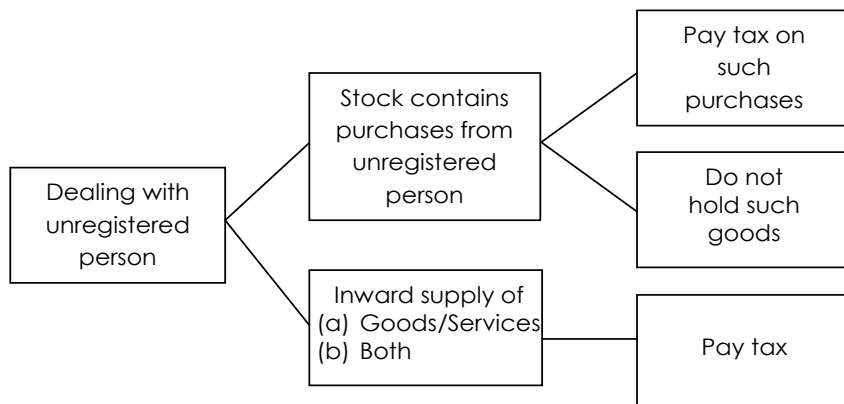
Normal Provision		
Particulars	Value in ₹	
Cost of inputs	7,80,000	
Add: GST 18% on inputs	Not Cost	
Total Cost	7,80,000	
Add: Profit margin 40%	3,12,000	
Add: GST 18% CGST & SGST	1,96,560	
Invoice Price	12,88,560	
	CGST 9%	SGST 9%
Output Tax	98,280	98,280
Less: ITC	-70,200	-70,200
Net Liability	28,080	28,080
Total Tax is ₹ 56,160		

Conditions and Restrictions for Composition Levy (Rule 5 of Chapter II of the CGST Rules, 2017):

- The person opting for the scheme must neither be a casual taxable person nor a non-resident taxable person.
- The goods held in stock by him on the appointed day have not been -
 - purchased in the course of inter-state trade or commerce or
 - imported from a place outside India or
 - received from his branch situated outside the State or
 - from his agent or principal outside the State, where option is exercised under rule 3(1) of the CGST Rules, 2017 (i.e. who opted composition scheme at the time of migrating into GST).
- The goods held in stock by him have not been purchased from an unregistered supplier and where purchased, he pays the tax under reverse charge (i.e. Section 9(4) of CGST).
- He shall pay tax as per normal rates, in case of inward supply of goods and services or both received under Section 9(3) or (4) of CGST Act, 2017. These sub-sections provides for payment of tax by recipient of goods or services.



Where the taxpayers deals with unregistered person, tax must be paid or no stock must be held.



- (e) He was not engaged in the manufacture of goods as notified u/s 10(2)(e) of the CGST Act, 2017 during the preceding financial year.

The registered person shall not be eligible to opt for composition levy under clause (e) of sub-section (1) of section 10 of the said Act if such person is a manufacturer of the following goods:

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

- (f) Mandatory display on invoices of the words "composition taxable person, not eligible to collect tax on supplies".
- (g) Mandatory display of the words "Composition Taxable Person" on every notice and signboard displayed at a prominent place.

Intimation for Composition levy and Effective Date:

Procedure for opting for composition levy is provided in Rule 3 and 4 of CGST Rules, 2017. The assessee can be divided into three categories as follows:

Intimation for Composition Levy

For persons already registered under pre-GST regime shall file an intimation in FORM GST CMP-01, duly signed, before or within 30 days of appointed date. If intimation is filed after the appointed day, the registered person: (a) Will not collect taxes (b) Issue bill of supply or supplies FORM GST CMP - 03 must also be filed within 60 days of exercise of option: (a) Details of stock (b) Inward supply of goods received from unregistered persons held by him on the date preceding the day of exercise of option.	Registered under GST and person switches to Composition Scheme: must follow the following: (a) Intimation in FORM GST CMP - 02 for exercise option (b) Statement in FORM GST ITC - 3 for details of ITC relating to inputs lying in stock, inputs contained in semi-finished or finished goods within 90 days of commencement of the relevant financial year	[For persons who applied for fresh registration under GST to opt scheme]: For fresh registration under the scheme, intimation in FORM GST REG - 01 must be filed.



As per rule 3(5) of CGST Rules 2017 intimation sent by any place of business in any State shall be deemed to be intimation in respect of other place of business under same PAN.

Rule 5(2) of the CGST Rules, 2017: Intimation in every year is not required.

Effective date for opting composition Scheme:

Assessee filing intimation	Effective date of composition levy
Form GST CMP-01	Appointed Date
Registered person	Beginning of financial year
Form GST REG-01	Effective date shall be from the date fixed under Rule 10(2) or Rule 10(3) of Chapter III of CGST Rules, 2017. Rule 10(2) provides that if person has applied for registration within 30 days from the date when he is liable to obtain registration, the effective date is when he is liable to be registered. Example : 102 If a person is liable to be registered on 1st Oct 2017 and he has applied for registration on 17th Oct 2017, the date of registration will be 1st Oct 2017. As a result effective date of registration for composition levy is 1st Oct 2017. Rule 10(3) provides that the applicant has submitted an application for registration after the expiry of 30 days from the date of his becoming liable to registration; the effective date of registration shall be the date of the grant of registration. Example : 103 If a person is liable to be registered on 1st Oct 2017 and he has applied for registration on 17th Nov 2017. Registration granted on 20th Nov 2017. The effective date of registration will be the date of grant of registration (i.e. 20th Nov 2017). As a result effective date of registration will be effective date for opting for composition scheme (i.e. 20th Nov 2017).

Summary:

Effective date for Composition Levy

For persons already registered under pre-GST regime	Registered under GST and person switches to Composition Scheme:	For persons who applied for fresh register under GST to opt scheme:
Effective Date:	Effective Date: Filing of Intimation	Effective Date:
Appointed Date		Option to pay tax under Composition Scheme shall be effective from:
		Where the application for registration has been submitted within thirty days from the day it becomes liable for registration, such date.
		In the above case, the effective date of registration shall be the date of grant of registration.
		Otherwise, actual date of grant of registration.

Example : 104

If a person is liable to be registered on 11th Oct 2017 and he has applied for registration on 17th Oct 2017, what is the effective date of registration for composition levy.

Answer:

Effective date of registration for composition levy is 11th Oct 2017.



Example : 105

A person is liable to be registered on 1st Oct 2017 and he has applied for registration on 17th Nov 2017. Registration granted on 20th Nov 2017.

What is the effective date of registration if he wants to opt composition levy.

Answer:

The effective date of registration will be the date of grant of registration.

As a result effective date of registration will be effective date for opting for composition scheme (i.e. 20th Nov 2017) provided no discrepancies found.

Composition Rate of Tax:

The applicable tax rates are as follows:

S.No.	Category of registered persons	Rate of tax (As per Rule 7 of Chapter II of CGST Rules, 2017)	Rate of tax (As per SGST Rules)	Effective rate of tax
1	Manufacturers, other than manufacturers of such goods as may be notified by the Government.	1%	1%	2%
2	Restaurant services and outdoor catering services	2.5%	2.5%	5%
3	Any other supplier eligible for composition levy under Section 10 and the provisions of this chapter	0.50%	0.50%	1%

Summary of 23rd GST Council Meet

Changes to be made prospectively from 15th November 2017

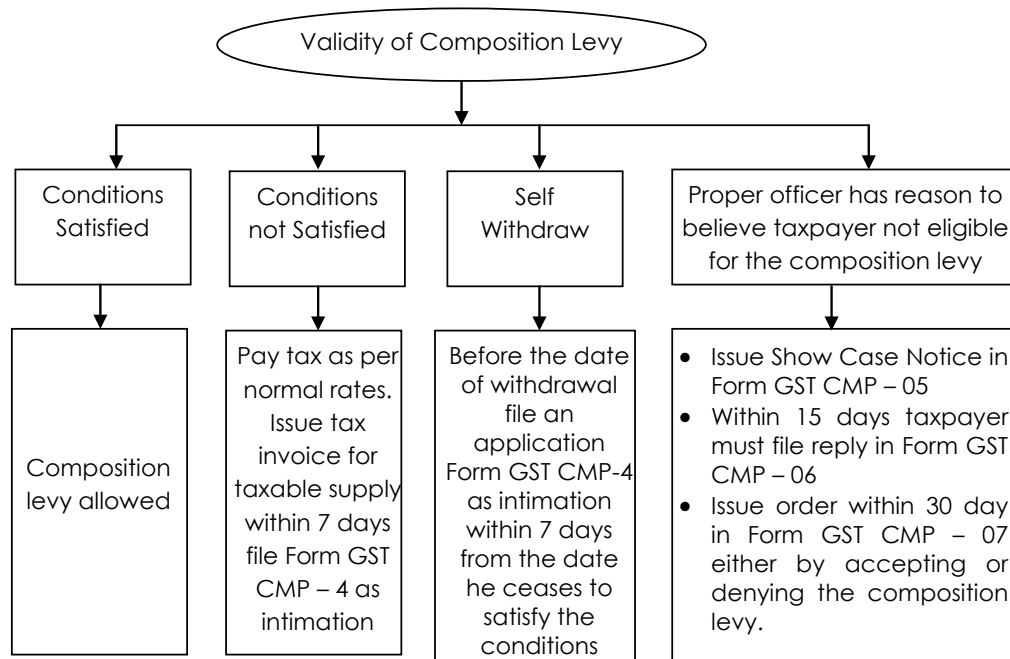
Changes in Composition Scheme

- (a) Composition scheme limit to be increased to ₹ 1.5 crore (can be extended to ₹ 2 crore later).
- (b) 1% GST rate for manufacturers & traders.
- (c) Composition tax of 1% on turnover of taxable goods (turnover of exempted goods to be excluded)
- (d) Those supplying goods and services (services not exceeding ₹ 5 lakhs in total) eligible for compositions scheme
- (e) Composition Returns, GSTR-4 due date extended to **24th December 2107**
- (f) Composition dealers cannot make inter-state sales. Input tax benefit not allowed.

However, no input tax credit (ITC) will be made available.

Validity of Composition Levy

As per Rule 6 of Chapter II of CGST Rules, 2017 provides that option exercised by the person to pay tax on composition basis remain valid as long as he satisfies the conditions.

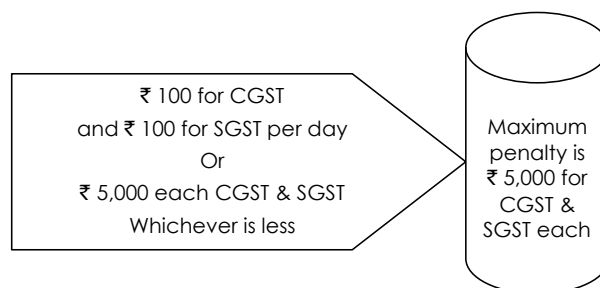


Filing of Return under composition levy:

- Filing of Form GSTR-4 on quarterly basis electronically on common portal.
- Due date of filing GSTR-4: 18th of the month following the quarter.

The last date for filing the return in FORM GSTR-4 by a taxpayer under composition scheme for the quarter July-September, 2017 shall be extended to 15.11.2017.

Penalty for delay in filing GSTR - 4:



Note: if the GSTR - 4 is not filed for a given quarter, then the taxpayer cannot file the next quarter's return either.

If there is no issue regarding the tax payment and person is missed out the GSTR filing due dates, in this case, the person is again liable to pay penalty under GST Council, which is ₹100 for CGST and ₹100 for SGST per day. The maximum amount in the case of missing the filing is INR 5000.

GSTR – 4 can be revised?

GSTR-4 cannot be revised after filing on the GSTN Portal. Any mistake in the return can be revised in the next month's return only.

It means that, if a mistake is made in the GSTR-4 filed for the July-September quarter, the rectification for the same can be made only when filing the next quarter's GSTR-4.



Various Forms for Composition levy assessee:

Composition Scheme Rules under GST - Compliance			
S. No.	Form Required	Purpose	Due Date
1	Form GST CMP-01	To opt for scheme by provisional registration holder	Prior to appointed date or within 30 days of the said date
2	Form GST CMP-02	Intimation of willingness to opt for scheme by registered person	Prior to the commencement of Financial Year
3	Form GST CMP-03	Details of stock and inward supplies from unregistered person	within 60 days of exercise of option
4	Form GST CMP-04	Intimation of withdrawal from scheme.	within 7 days of occurring of event
5	Form GST CMP-05	SCN on contravention of rules or Act, issued by Proper Officer	On contravention
6	Form GST CMP-06	Reply to show cause notice	Within 15 days
7	Form GST CMP-07	Issue of order	Within 30 days

Composition Scheme (latest amendment):

The GST Council, in its 22nd meeting held at New Delhi on 6th October 2017, has recommended the following facilitative changes to ease the burden of compliance on small and medium businesses:

The composition scheme shall be made available to taxpayers having annual aggregate turnover of up to ₹ 1 crore as compared to the current turnover threshold of ₹ 75 lacs.

This threshold of turnover for special category States, except Jammu & Kashmir and Uttarakhand, shall be increased to ₹ 75 lacs from ₹ 50 lacs. The turnover threshold for Jammu & Kashmir and Uttarakhand shall be ₹ 1 crore.

The facility of availing composition under the increased threshold shall be available to both migrated and new taxpayers up to 31.03.2018.

The option once exercised shall become operational from the first day of the month immediately succeeding the month in which the option to avail the composition scheme is exercised.

New entrants to this scheme shall have to file the return in FORM GSTR-4 only for that portion of the quarter from when the scheme becomes operational and shall file returns as a normal taxpayer for the preceding tax period.

Changes notified in the CGST (Amendment) Act, 2018 –

To enhance the limit of composition levy from one crore rupees to one crore and fifty lakh rupees; Further Even if Composition dealers supply services of value not exceeding 10% of the turnover in the preceding financial year in a State/Union territory or ₹ 5 lakhs, whichever is higher, they are eligible for composition scheme.

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

(a) same as provided in sub-section (1), he is not engaged in the supply of services;



Practical Problems

Example : 106

Mr. Sitaram is running a consulting firm and also a readymade garment show room, registered in same PAN. Turnover of the showroom is ₹ 60 lakh and receipt of the consultancy firm is ₹ 12 Lakh in the preceding financial year.

You are required to answer the following:

- Is Mr. Sitaram eligible for Composition Scheme?
- Whether it is possible for Mr. Sitaram to opt for composition only for Showroom?
- Rework, if Mr. Sitaram is running a restaurant as well as readymade garment show room, whether he is eligible for composition?
- If the turnover of garment showroom is ₹75 Lakh in the preceding financial year and there is no consulting firm whether he is eligible for Composition?

Answer:

- Mr. Sitaram is providing services in consulting firm hence he is not eligible for composition scheme.
- If a business is ineligible to opt for composition then all other business registered under the same PAN shall automatically ineligible for the composition scheme. So Mr. Sitaram is not eligible for composition scheme only for showroom.
- Restaurant services and readymade garments show room are eligible for the composition scheme. Hence Mr. Sitaram is eligible for Composition Scheme, since, his aggregate turnover is ₹ 72 lakhs (i.e. less than ₹ One crore).
- Yes, Mr. Sitaram is eligible for composition scheme as turnover of his firm does not exceed ₹ One crore in the preceding financial year.

Example : 107

Mr. Rahim is dealer who is selling taxable goods, exempted goods and non-taxable goods (i.e. Liquor). His turnover in the preceding financial year is ₹ 35 lakh, ₹ 10 lakh, ₹ 15 lakh goods which are leviable to GST, exempted and non-taxable respectively. Whether Mr. Rahim is eligible for Composition Scheme?

Answer:

If a person is selling the goods, which are not leviable to tax under GST, then he is not eligible to opt for composition scheme.

In this case even though the aggregate turnover not exceeds ₹ One crore, Mr. Rahim is not eligible for composition Scheme.

Example : 108

Mr. H registered in Hyderabad, who is selling goods from Telangana to Tamil Nadu. Turnover of Mr. H is ₹ 73 Lakh in the preceding financial year. Whether Mr. H is eligible for Composition?

Whether your answer will change if Mr. H is making purchase from Tamil Nadu and selling goods in Telangana?

Answer:

Mr. H is not eligible for composition as he is making interstate outward supply.

If Mr. H is making purchase from Tamil Nadu then he is eligible for composition scheme as there is restriction on outward interstate supply not on inward interstate supply.

Example : 109

Turnover of Mr. Roy in the preceding financial year is ₹ 49 Lakh. Mr. Roy has opted for Composition Scheme. During the year on 18th February 2018, turnover of Mr. Roy exceeds ₹ 1 crore. What compliances are required to carry by Mr. Roy?

Answer:

Mr. Roy is required to do the following compliances:

File a FORM GST CMP-04 within 7 days i.e. before 25th February 2018.

Details of stock and capital goods, as on 18th February, 2018, are required to file in FORM GST ITC-01 within 30 days i.e. before 20th March 2018 to take the credit of input on the same.

Example : 110

M/s X Pvt. Ltd., is a manufacturer having two units namely Unit –A in Andhra Pradesh and another Unit – B in Tamil Nadu. Total turnover of two units in last Financial Year was ₹ 95 lakh (₹ 10 lakh of Unit – A + ₹ 85 lakh of Unit – B).

Total turnover of two units in the second quarter of this financial year was ₹ 15 lakh (₹ 5 lakh of Unit – A + ₹ 10 lakh of Unit – B). Applicable rate of CGST 9% and SGST 9%. Find the Net liability of X Pvt. Ltd.

Note: M/s X Pvt. Ltd., is not availing input tax credit.

Answer:

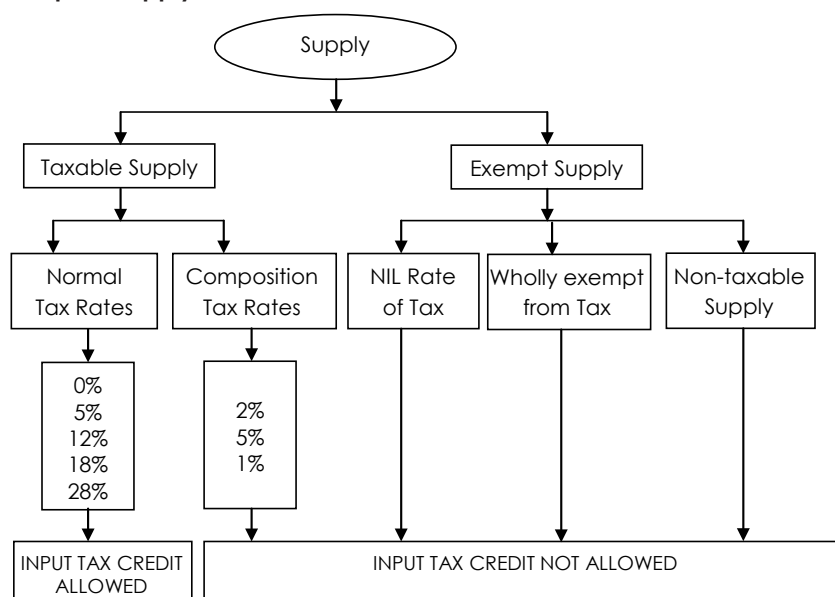
Since, the company is not availing the benefit of input tax credit the said company can pay GST under composition levy under sec. 10(1) of the CGST Act, 2017.

Applicable rate of CGST 1% and SGST 1%.

Unit	Location	Turnover in the previous F.Y.	Turnover in 2nd Quarter of the F.Y.	Total tax (@2%)	
				1% CGST	1% SGST
A	Andhar Pradesh	10 lakh	5 lakh	5,000	5,000
B	Tamil Nadu	85 lakh	10 lakh	10,000	10,000

2.6 EXEMPTIONS

Taxable Supply vs Exempted Supply:



Power to grant exemption from tax:

CGST Act, 2017	IGST Act, 2017	Provision
Section 11(1)	Section 6(1)	Power to grant exemption with the Central Government by Notification; • General exemption • Absolute exemption • Conditional exemption Upon recommendation of the GST Council
Section 11(2)	Section 6(2)	Exemption by special order
Section 11(3)	Section 6(3)	Explanation in such notification issued u/s 11(1) or 6(1) of CGST or IGST or order issued u/s 11(2) or 6(2) of CGST or IGST as the case may be.

As per Section 11 of the CGST Act, 2017 and Section 6 of the IGST provides power to Central Government of India to exempt on recommendation of the GST Council either absolutely or subject to such condition, as may be specified goods or services of specified description from the whole or any part of the tax leviable thereon.

Exempt Supply:

As per Section 2(47) of CGST Act, 2017 "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

Exempt supply includes the supply of following type of goods and services:

- Supply attracting nil rate of tax;
- Supplies wholly exempt from tax;
- Non-taxable supply;

General Exemptions:

As per sec. 11(1) of the CGST Act, 2017 and Sec. 6(1) of the IGST Act, 2017 the Government of India on the recommendations of the GST Council by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.

Example : 111

- General exemption granted where supply is in relation to supply of Indian National Flag [vide Notification No.2/2017-Central Tax (Rate) Dt. 28-06-2017]. It is called as absolutely exempt. GST rate is Nil.**
- Services provided by a goods transport agency, by way of transport in a goods carriage for - agricultural produce were exempted from GST [vide Notification No. 12/2017- Central Tax (Rate) Dt 28-06-2017]. It is called as general exemption subject to such condition where supply of service is in the nature of transport of agricultural produce.**

Absolute Exemption vs Conditional Exemption:

Absolute Exemption	Conditional Exemption
The taxable person must avail all the benefits of notification, which are absolute (i.e. without any condition).	In case of conditional exemption, this is upto the registered person to avail or not to avail the benefit.
Example : 112 Applicability of Sec. 9(3) of CGST Act, 2017 where Reverse Charge Mechanism is mandatory.	Example : 113 Applicability of Sec 10 of CGST Act is at the option of the eligible assessee.

Exemption by Special Order:

As per sec. 11(2) of the CGST Act, 2017 and Sec. 6(2) of the IGST Act, 2017 the Government of India on the recommendations of the GST Council by Special Order, in each case, under circumstances of an exceptional nature to be stated in such order, exempt from the payment of tax any goods or services or both on which tax is leviable.

Example : 114

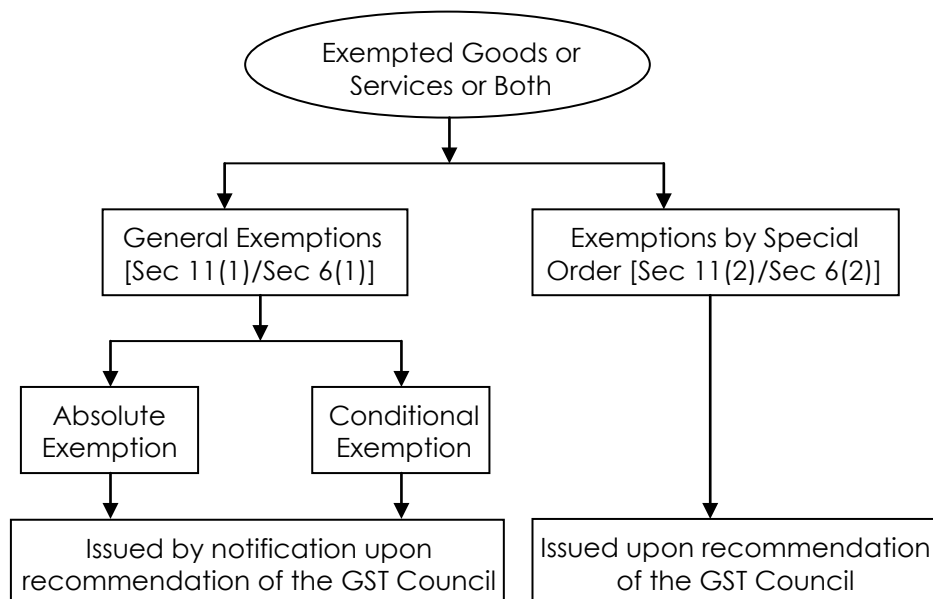
Exemption granted by special order to all assesses registered in one State, from payment of GST by reason, earthquake or assesseees are affected in tsunami. Such special order can be issued only in exceptional nature to be stated in such order.

Explanation in such notification or order:

As per sec 11(3) of the CGST Act, 2017 or sec 6(3) of the IGST Act, 2017, Government is empowered to clarify the scope of applicability of any notification or special order by inserting an explanation in such notification or order. Such clarification shall only be issued by notification within ONE year of issuing of notification or special order 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.

Example: 115

Assume a notification issued on 28th June 2017 may specify that it will be effective from 1st July 2017. In such case an explanation is inserted (i.e. subsequently) within one year reckoned from 1st July 2017 but not from 28th June 2017. If so such an explanation is effective from 1st July 2017.

Summary:



The following goods and services are exempted from GST:

S. No.	Exempted goods (Notification No.2/2017-Central Tax (Rate) Dt. 28-06-2017)	Exempted services Notification No. 12/2017- Central Tax (Rate) Dt 28-06-2017)
1	Live animals other than live horses	Services by an entity registered under section 12AA of the Income-tax Act, 1961 by way of charitable activities.
2	Meat and edible meat offal	Services by way of transfer of a going concern, as a whole or an independent part thereof.
3	Fish, crustaceans, molluscs & other aquatic invertebrates	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.
4	Dairy produce; bird's eggs; natural honey; edible products of animal origin, not elsewhere specified	Services by Central Government, State Government, Union territory, local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.
5	1. Human hair, unworked, whether or not washed or scoured; waste of human hair 2. Semen including frozen semen	Services by a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution. Notification No. 32/2017 Central Tax (Rate) dt 13.10.2017, this notification extends the exemption from GST to Central Government, State Government, Union territory, local authority along with Governmental Authority.
6	Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage	Services by the Central Government, State Government, Union territory or local authority excluding the following services— (a) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory; (b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (c) transport of goods or passengers; or (d) any service, other than services covered under entries (a) to (c) above, provided to business entities.
7	Edible vegetables, roots and tubers • Potatoes, fresh or chilled. • Tomatoes, fresh or chilled. • Onions, shallots, garlic, leeks and other alliacious vegetables, fresh or chilled. • Cabbages, cauliflowers, kohlrabi, kale and similar edible brassicas, fresh or chilled etc.,	Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of up to ₹ 20 lakh (₹ 10 lakh in case of a special category state) in the preceding financial year.



		Explanation:- For the purposes of this entry, it is hereby clarified that the provisions of this entry shall not be applicable to- (a) services,- (i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory; (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) of transport of goods or passengers; and (b) services by way of renting of immovable property.
8	Edible fruit and nuts; peel of citrus fruit or melons, Coconuts, fresh or dried, whether or not shelled or peeled Bananas, including plantains, fresh or dried, Dates, figs, pineapples, avocados, guavas, mangoes and mangos teens, fresh etc.,	Services provided by the Central Government, State Government, Union territory or local authority to another Central Government, State Government, Union territory or local authority: Provided that nothing contained in this entry shall apply to services- (i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory; (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) of transport of goods or passengers
9	Coffee beans, not roasted. Unprocessed green leaves of tea	Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services does not exceed ₹ 5,000: Provided that nothing contained in this entry shall apply to- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers: Provided further that in case where continuous supply of service, as defined in sub-section (33) of section 2 of the Central Goods and Services Tax Act, 2017, is provided by the Central Government, State Government, Union territory or a local authority, the exemption shall apply only where the consideration charged for such service does not exceed ₹ 5,000 in a financial year.
10	Cereals All goods [other than those put up in unit container and bearing a registered brand name]. Fresh ginger, other than in processed form etc.,	Services provided by way of pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana.



11	Products of milling industry; malt; starches; insulin; wheat gluten	Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex.
12	Oil seeds and oleaginous fruits, miscellaneous grains, seeds and fruit; industrial or medicinal plants; straw and fodder	Services by way of renting of residential dwelling for use as residence.
13	Lac; gums, resins and other vegetable saps and extracts Lac and Shellac,	Services by a person by way of- (a) conduct of any religious ceremony; (b) renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income-tax Act, 1961 or a trust or an institution registered under sub clause (v) of clause (23C) of section 10 of the Income-tax Act or a body or an authority covered under clause (23BBA) of section 10 of the said Income-tax Act: Provided that nothing contained in entry (b) of this exemption shall apply to,- (i) renting of rooms where charges are ₹ 1,000 or more per day; (ii) renting of premises, community halls, kalyanmandapam or open area, and the like where charges are ₹ 10,000 or more per day; (iii) renting of shops or other spaces for business or commerce where charges are ₹ 10,000 or more per month.
14	Vegetable plaiting materials; vegetable products, not elsewhere specified or included Betel leaves	Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below ₹ 1,000 per day or equivalent.
15	Sugar and sugar confectionery Cane jaggery	Transport of passengers, with or without accompanied belongings, by – (a) air, embarking from or terminating in an airport located in the state of (i) Arunachal Pradesh, (ii) Assam, (iii) Manipur, (iv) Meghalaya, (v) Mizoram, (vi) Nagaland, (vii) Sikkim, or (viii) Tripura or (ix) at Bagdogra located in West Bengal; (b) non-airconditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or (c) stage carriage other than airconditioned stage carriage.



16	Preparations of cereals, flour, starch or milk; pastrycooks' products 1. Puffed rice, commonly known as Muri, flattened or beaten rice, commonly known as Chira, parched rice, commonly known as khoi, parched paddy or rice coated with sugar or gur, commonly known as Murki 2. Pappad, by whatever name it is known, except when served for consumption 3. Bread (branded or otherwise), except when served for consumption and pizza bread.	Services provided to the Central Government, by way of transport of passengers with or without accompanied belongings, by air, embarking from or terminating at a regional connectivity scheme airport, against consideration in the form of viability gap funding: Provided that nothing contained in this entry shall apply on or after the expiry of a period of one year from the date of commencement of operations of the regional connectivity scheme airport as notified by the Ministry of Civil Aviation
17	Miscellaneous edible preparations 1. Prasadam supplied by religious places like temples, mosques, churches, gurudwaras, dargahs, etc.	Service of transportation of passengers, with or without accompanied belongings, by— (a) railways in a class other than— (i) first class; or (ii) an air-conditioned coach; (b) metro, monorail or tramway; (c) inland waterways; (d) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and (e) metered cabs or auto rickshaws (including e-rickshaws).
18	Beverages, spirit and vinegar. Water [other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container	Services by way of transportation of goods- (a) by road except the services of— (i) a goods transportation agency; (ii) a courier agency; (b) by inland waterways.
19	Residues and waste from the food industries; prepared animal fodder	Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India
20	Salt; sulphur; earths and stone; plastering materials, lime and cement	Services by way of transportation by rail or a vessel from one place in India to another of the following goods – (a) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; (b) defence or military equipments; (c) newspaper or magazines registered with the Registrar of Newspapers; (d) railway equipments or materials; (e) agricultural produce; (f) milk, salt and food grain including flours, pulses and rice; and (g) organic manure.



21	Pharmaceutical products Human Blood and its components	Services provided by a goods transport agency, by way of transport in a goods carriage of - (a) agricultural produce; (b) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed ₹ 1,500; (c) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed ₹ 750; (d) milk, salt and food grain including flour, pulses and rice; (e) organic manure; (f) newspaper or magazines registered with the Registrar of Newspapers; (g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or (h) defence or military equipments. Entry No. 21A: "Services provided by a goods transport agency to an unregistered person, including an unregistered casual taxable person, other than the specified recipients" also exempt from GST [vide Notification No. 33/2017 Central Tax (Rate) Dt 13.10.2017].
22	1. Organic manure, other than put up in unit containers and bearing a brand name.	Services by way of giving on hire:- (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or (b) to a goods transport agency, a means of transportation of goods.
23	Essential oils and resinoids perfumery, cosmetic or toilet preparations 1. Kumkum, Bindi, Sindur, Alta	Service by way of access to a road or a bridge on payment of toll charges. Entry 23A: Service by way of access to a road or a bridge on payment of annuity is also exempt from GST (Notification No. 32/2017- Central Tax (Rate) Dt 13.10.2107)
24	Miscellaneous chemical products, Municipal waste, sewage sludge, clinical waste	Services by way of loading, unloading, packing, storage or warehousing of rice.
25	Plastics and articles thereof Plastic bangles	Transmission or distribution of electricity by an electricity transmission or distribution utility.
26	Rubber and articles thereof Condoms and contraceptives	Services by the Reserve Bank of India.
27	Wood and articles of wood, wood charcoal Firewood or fuel wood	Services by way of— (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services); (b) sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers.



28	Paper and paperboard; articles of paper pulp, of paper or of paperboard	Services of life insurance business provided by way of annuity under the National Pension System regulated by the Pension Fund Regulatory and Development Authority of India under the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013).
29	Printed books, newspapers, pictures and other products of the printing industry, manuscripts, typescripts and plans	Services of life insurance business provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government.
30	Raw Silk	Services by the Employees' State Insurance Corporation to persons governed under the Employees' State Insurance Act, 1948 (34 of 1948).
31	Wool, fine or coarse animal hair; horse hair yarn and woven fabric	Services provided by the Employees Provident Fund Organisation to the persons governed under the Employees Provident Funds and the Miscellaneous Provisions Act, 1952 (19 of 1952).
32	Cotton 1. Gandhi Topi, 2. Khadi yarn	Services provided by the Insurance Regulatory and Development Authority of India to insurers under the Insurance Regulatory and Development Authority of India Act, 1999 (41 of 1999).
33	Other vegetable textile fibres; paper yarn, woven fabrics of paper yarns 1. Coconut, coir fibre 2. Jute fibres, raw or processed but not spun	Services provided by the Securities and Exchange Board of India set up under the Securities and Exchange Board of India Act, 1992 (15 of 1992) by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.
34	Other made up textile articles, sets, worn clothing and worn textile articles; rags Indian National Flag	Services by an acquiring bank, to any person in relation to settlement of an amount upto ₹ 2,000 in a single transaction transacted through credit card, debit card, charge card or other payment card service. Explanation.— For the purposes of this entry, "acquiring bank" means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card.
35	Ceramic products	Services of general insurance business provided under following schemes – (a) Hut Insurance Scheme; (b) Cattle Insurance under Swarnajayanti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme); (c) Scheme for Insurance of Tribals; (d) Janata Personal Accident Policy and Gramin Accident Policy; (e) Group Personal Accident Policy for Self-Employed Women; (f) Agricultural Pumpset and Failed Well Insurance; (g) premia collected on export credit insurance; (h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture; (i) Jan Arogya Bima Policy; (j) National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana);

		(k) Pilot Scheme on Seed Crop Insurance; (l) Central Sector Scheme on Cattle Insurance; (m) Universal Health Insurance Scheme; (n) Rashtriya Swasthya Bima Yojana; (o) Coconut Palm Insurance Scheme; (p) Pradhan Mantri Suraksha Bima Yojana; (q) Niramaya Health Insurance Scheme implemented by the Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999).
36	Glass and glassware 1. Bangles (except those made from precious metals)	Services of life insurance business provided under following schemes- (a) Janashree Bima Yojana; (b) Aam Aadmi Bima Yojana; (c) Life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of fifty thousand rupees; (d) Varishtha Pension Bima Yojana; (e) Pradhan Mantri Jeevan Jyoti Bima Yojana; (f) Pradhan Mantri Jan Dhan Yojana; (g) Pradhan Mantri Vaya Vandana Yojana
37	Tools, implements, cutlery, spoons and forks of base metal; parts thereof of base metal 1. Agricultural implements manually operated or animal driven	Services by way of collection of contribution under the Atal Pension Yojana.
38	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof 1. Handloom [weaving machinery]	Services by way of collection of contribution under any pension scheme of the State Governments.
39	Aircraft; spacecraft and parts thereof	Services by the following persons in respective capacities – (a) business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch; (b) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or (c) business facilitator or a business correspondent to an insurance company in a rural area.
40	Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof	Services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory



41	Musical instruments; parts and accessories of such articles 1. Indigenous handmade musical instruments	One time upfront amount (called as premium, salami, cost, price, development charges or by any other name) leviable in respect of the service, by way of granting long term (thirty years, or more) lease of industrial plots, provided by the State Government Industrial Development Corporations or Undertakings to industrial units
42	Miscellaneous manufactured articles 1. Slate pencils and chalk sticks. 2. Slates	Services provided by the Central Government, State Government, Union territory or local authority by way of allowing a business entity to operate as a telecom service provider or use radio frequency spectrum during the period prior to the 1st April, 2016, on payment of licence fee or spectrum user charges, as the case may be
43	Project imports, laboratory chemicals, passengers' baggage, personal importation, ship stores Passenger baggage	Services of leasing of assets (rolling stock assets including wagons, coaches, locos) by the Indian Railways Finance Corporation to Indian Railways.
Exempted services Notification No. 12/2017- Central Tax (Rate) Dt 28-06-2017)		
44	Services provided by an incubatee up to a total turnover of ₹ 50 lakh in a financial year subject to the following conditions, namely:- (a) the total turnover had not exceeded fifty lakh rupees during the preceding financial year; and (b) a period of three years has not elapsed from the date of entering into an agreement as an incubatee.	
45	Services provided by- (a) an arbitral tribunal to – (i) any person other than a business entity; or (ii) a business entity with an aggregate turnover up to ₹ 20 lakh (₹ 10 lakh in the case of special category states) in the preceding financial year; (b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to- (i) an advocate or partnership firm of advocates providing legal services; (ii) any person other than a business entity; or (iii) a business entity with an aggregate turnover up to ₹ 20 lakh (₹ 10 lakh in the case of special category states) in the preceding financial year; (c) a senior advocate by way of legal services to- (i) any person other than a business entity; or (ii) a business entity with an aggregate turnover up to ₹ 20 lakh (₹ 10 lakh in the case of special category states) in the preceding financial year	
46	Services by a veterinary clinic in relation to health care of animals or birds.	
47	Services provided by the Central Government, State Government, Union territory or local authority by way of- (a) registration required under any law for the time being in force; (b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force	
48	Taxable services, provided or to be provided, by a Technology Business Incubator or a Science and Technology Entrepreneurship Park recognised by the National Science and Technology Entrepreneurship Development Board of the Department of Science and Technology, Government of India or bio incubators recognised by the Bio technology Industry Research Assistance Council, under the Department of Bio technology, Government of India.	
49	Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India.	



50	Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material.
51	Services provided by the Goods and Services Tax Network to the Central Government or State Governments or Union territories for implementation of Goods and Services Tax.
52	Services by an organiser to any person in respect of a business exhibition held outside India
53	Services by way of sponsorship of sporting events organised – (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State, zone or Country; (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat; (c) by the Central Civil Services Cultural and Sports Board; (d) as part of national games, by the Indian Olympic Association; or (e) under the Panchayat Yuva Kreedha Aur Khel Abhiyaan Scheme.
54	Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of— (a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing; (b) supply of farm labour; (c) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market; (d) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use; (e) loading, unloading, packing, storage or warehousing of agricultural produce; (f) agricultural extension services; (g) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.
55	Carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce
56	Services by way of slaughtering of animals
57	Services by way of pre-conditioning, precooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables.
58	Services provided by the National Centre for Cold Chain Development under the Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination.
59	Services by a foreign diplomatic mission located in India
60	Services by a specified organisation in respect of a religious pilgrimage facilitated by the Ministry of External Affairs, the Government of India, under bilateral arrangement.
61	Services provided by the Central Government, State Government, Union territory or local authority by way of issuance of passport, visa, driving licence, birth certificate or death certificate.
62	Services provided by the Central Government, State Government, Union territory or local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union territory or local authority under such contract.



63	Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use natural resources to an individual farmer for cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products
64	Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Central Government, State Government, Union territory or local authority before the 1st April, 2016: Provided that the exemption shall apply only to tax payable on one time charge payable, in full upfront or in installments, for assignment of right to use such natural resource.
65	Services provided by the Central Government, State Government, Union territory by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges.
66	Services provided – (a) by an educational institution to its students, faculty and staff; (b) to an educational institution, by way of,- (i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory; (iii) security or cleaning or housekeeping services performed in such educational institution; (iv) services relating to admission to, or conduct of examination by, such institution; upto higher secondary: Provided that nothing contained in entry (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent.
67	Services provided by the Indian Institutes of Management, as per the guidelines of the Central Government, to their students, by way of the following educational programmes, except Executive Development Programme: - (a) two year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the Indian Institute of Management; (b) fellow programme in Management; (c) five year integrated programme in Management.
68	Services provided to a recognised sports body by- (a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organised by a recognized sports body; (b) another recognised sports body.
69	Any services provided by, _ (a) the National Skill Development Corporation set up by the Government of India; (b) a Sector Skill Council approved by the National Skill Development Corporation; (c) an assessment agency approved by the Sector Skill Council or the National Skill Development Corporation; (d) a training partner approved by the National Skill Development Corporation or the Sector Skill Council, in relation to- (i) the National Skill Development Programme implemented by the National Skill Development Corporation; or (ii) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or (iii) any other Scheme implemented by the National Skill Development Corporation.



70	Services of assessing bodies empanelled centrally by the Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under the Skill Development Initiative Scheme.
71	Services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana implemented by the Ministry of Rural Development, Government of India by way of offering skill or vocational training courses certified by the National Council for Vocational Training.
72	Services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union territory administration.
73	Services provided by the cord blood banks by way of preservation of stem cells or any other service in relation to such preservation.
74	Services by way of- (a) health care services by a clinical establishment, an authorised medical practitioner or para-medics; (b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.
75	Services provided by operators of the common bio-medical waste treatment facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto.
76	Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets
77	Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution – (a) as a trade union; (b) for the provision of carrying out any activity which is exempt from the levy of Goods and services Tax; or (c) up to an amount of ₹ 5,000 per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.
78	Services by an artist by way of a performance in folk or classical art forms of- (a) music, or (b) dance, or (c) theatre, if the consideration charged for such performance is not more than ₹ 1,50,000: Provided that the exemption shall not apply to service provided by such artist as a brand ambassador.
79	Services by way of admission to a museum, national park, wild life sanctuary, tiger reserve or zoo.
80	Services by way of training or coaching in recreational activities relating to- (a) arts or culture, or (b) sports by charitable entities registered under section 12AA of the Income-tax Act
81	Services by way of right to admission to- (a) circus, dance, or theatrical performance including drama or ballet; (b) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event; (c) recognised sporting event, where the consideration for admission is not more than ₹ 250 per person as referred to in (a), (b) and (c) above.

**Example : 116**

Mr. Param (register person under GST) being a dealer furnished the following business transactions took place during the Oct 2017. Find the GST liability.

- (a) Sale of plastic bangles for ₹ 20,000.
- (b) Supply of mobile phones for ₹ 3,20,120
- (c) Sale of printed books and newspapers for ₹ 1,25,500
- (d) Sale of Dates for ₹ 13,500
- (e) Sale of Salt for ₹ 9,180
- (f) Sale of Organic manure worth ₹ 2,00,000
- (g) Sale of Chemical Fertilizers ₹ 5,75,000 (out of which 30% subsidy received from Government of India).

Note: Taxable supply attracts GST @5% (CGST 2.5% and SGST 2.5%).

Answer:

Statement showing tax liability of Mr. Param

S.No.	Particulars	Taxability	CGST 2.5%	SGST 2.5%
(a)	Plastic bangles	Exempted	Nil	Nil
(b)	Mobile phone	3,20,120	8,003	8,003
(c)	Books	Exempted	Nil	Nil
(d)	Dates	Exempted	Nil	Nil
(e)	Salt	Exempted	Nil	Nil
(f)	Organic manure	Exempted	Nil	Nil
(g)	Che. Fertilizers 70%	4,02,500	10,063	10,063
	Total		18,066	18,066

Apart from above, list of services exempt from IGST by Notification No. 9/2017-Integrated Tax (Rate) Dated 28th June 2017 also include following three services.

1	Services received from a provider of service located in a non- taxable territory by – (a) the Central Government, State Government, Union territory, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession; (b) an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or (c) a person located in a non-taxable territory: Provided that the exemption shall not apply to – (i) online information and database access or retrieval services received by persons specified in entry (a) or entry (b); or (ii) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry. it means item no. (i) and (ii) are taxable.
2	Services received by the Reserve Bank of India, from outside India in relation to management of foreign exchange reserves.
3	Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India.

**Other exemptions**

S. No.	Description of Service
1	Intra-state supplies received by a registered person from any unregistered supplier exempt from CGST under Sec 9(4). However, the said exemption shall not be applicable where the aggregate value of such supplies of goods or services or both received by a registered person from any or all the suppliers, who is or are not registered, exceeds ₹ 5,000 in a day (Notification No. 8/2017 Central Tax (Rate) dated 28.06.2017). This Section 9(4) of the CGST Act, 2017 has been suspended till 31st March 2018.
2	Intra-state supplies received by a TDS deductor under sec 51 of CGST, from any unregistered supplier exempt from CGST from the whole of the central tax leviable thereon under sec 9(4), subject to the condition that the deductor is not liable to be registered otherwise than under section 24(vi) of the CGST Act, 2017 (Notification No. 9/2017 Central Tax (Rates) Dated 28.06.2017). It means he should be registered compulsorily under sec 24(vi) of the CGST, Act, 2017 (i.e. Person who are required to deduct tax under section 51 of the CGST Act, 2017 whether or not separately registered under this Act). After assessing the readiness of the trade, industry and Government departments, it has been decided that registration and operationalization of TDS/TCS provisions shall be postponed till 31.03.2018.
3	Services imported by unit/developer in SEZ exempt from IGST. All services imported by a unit/developer in the Special Economic Zone (SEZ) for authorized operations are exempted from the whole of the integrated tax leviable thereon under sec 3(7) of Customs Tariff Act, 1975 read with section 5 of the IGST Act, 2017 [As per Notification No. 18/2017 -Integrated Tax (Rate) date 5th July 2017].

Exempted services under GST:**1. Services by an Entity Registered under Section 12AA of the Income Tax Act, 1961**

Following are the specified charitable activities:-

"Charitable activities" as defined in clause (r) of para 2 of the definitions in the Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017 means activities relating to –

(r) "Charitable activities" means activities relating to-

(i) public health by way of -

(A) care or counselling of (I) terminally ill persons or persons with severe physical or mental disability, (II) persons afflicted with HIV or AIDS, or (III) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or

(B) public awareness of preventive health, family planning or prevention of HIV infection;

(ii) advancement of religion or spirituality or Yoga (w.e.f. 21-10-2015);

(iii) advancement of educational programmes or skill development relating to,-

(A) abandoned, orphaned or homeless children;

(B) physically or mentally abused and traumatized persons;

(C) prisoners; or

(D) persons over the age of 65 years residing in a rural area;

(iv) preservation of environment including watershed, forests and wildlife;

Services received from a provider of service located in a non taxable territory by –

an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities;

- exempted from GST.



Example : 117

Services of a NGO registered under sec. 12AA of the Income Tax Act, 1961 working for the rehabilitation of disabled. The aggregate value of taxable supply is ₹ 20 Lakh. Find the taxability for the given service?

Answer:

It is taxable supply. GST will be levied.

Since, exemption has been given to public health by way of -mental disability, but not rehabilitation of disabled.

Example : 118

Ananda Trust, an entity registered under section 12AA of the Income-tax Act, 1961, has furnished you the following details with respect to the activities undertaken by it. You are required to compute its tax liability from the information given below:

Particulars	₹
Amount received for the Yoga camps organized for elderly people	4,83,000
Payment made for the services received from a service provider located in US, for the purposes of providing 'charitable activities'	5,50,000
Amount received for counseling of mentally disabled persons	10,50,000
Amount received for renting of commercial property owned by the trust	1,50,000
Amount received for activities relating to preservation of forests and wildlife	12,35,000

Note: Applicable CGST 9% and SGST 9% have been charged separately wherever applicable. Ananda Trust is not eligible for composition levy.

Answer:

Particulars	₹
Amount received for the Yoga camps organized for elderly people	Exempted supply
Payment made for the services received from a service provider located in US, for the purposes of providing 'charitable activities'	Exempted supply
Amount received for counseling of mentally disabled persons	Exempted supply
Amount received for renting of commercial property owned by the trust	1,50,000
Amount received for activities relating to preservation of forests and wildlife	Exempted supply
CGST 9% x 1,50,000	13,500
SGST 9% x 1,50,000	13,500
Total GST liability	27,000

Case Study : 1

Mayo College General Council v. CCEX. (Appeals) 2012 (28) STR 225 (Raj):

Mayo College, was a society running internationally renowned schools. It allowed other schools to use the name 'Mayoor School', its logo and moto, and as a consideration thereof received collaboration fees from such schools which comprised of a non-refundable amount and annual fee.

Department Contention:

The petitioner was engaged in providing franchise service to schools that were running their institutes using its school name 'Mayoor School'. Therefore, a show cause notice proposing recovery of GST along with interest and penalty was issued against them.



Decision: The High Court held that when the petitioner permitted other schools to use their name, logo as also motto, it clearly tantamount to providing 'franchise service' to the said schools and if the petitioner realized the franchise or collaboration fees from the franchise schools, the petitioner was duly bound to pay GST to the department.

Therefore, decision is given in favour of department and against petitioner.

Note: This case law belongs to Finance Act, 1994, is also valid in the GST Law.

2. Services by way of Transfer of a Going Concern

Services by way of transfer of a going concern, as a whole or an independent part thereof, are exempt from Goods and Services Tax. Therefore, no GST on such sale of business. Sale of business as going concern to another not a supply as per schedule II of the CGST Act, 2017.

Example : 119

M/s Z & Co., is a partnership firm registered under GST Law. The partners decided to convert the partnership into a limited liability partnership (LLP). The LLP takes over M/s Z & Co., assets and liabilities and continues to operate the same business. Is it taxable supply?

Answer:

It is not taxable supply. Since, transfer of business as a going concern to another person, then it will not be supply (as per schedule II of CGST Act, 2017).

Note: If taxable person de-registered, he will be liable to pay GST.

3. Services provided in relation to function entrusted to Panchayat under Sec 243G or in relation to any function entrusted to a Municipality under article 243W of the Constitution

Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

ARTICLE 243G OF SCHEDULE XI	TWELFTH SCHEDULE (Article 243W)
(1) agriculture, including agriculture extensions.	1. Urban planning including town planning.
(2) land improvement, implementation of land reforms, land consolidation & soil conservation.	2. Regulation of land-use and construction of buildings.
(3) minor irrigation, water management & water shed development.	3. Planning for economic and social development.
(4) Animal husbandry, dairying & poultry.	4. Roads and bridges.
(5) fisheries	5. Water supply for domestic, industrial and commercial purposes.
(6) social forestry & farm forestry.	6. Public health, sanitation conservancy and solid wastemanagement.
(7) minor forestry produce.	7. Fire services.
(8) small scale industries, including food processing industries.	8. Urban forestry, protection of the environment and promotion of ecological aspects.
(9) khadi, village & cottage industries.	9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
(10) rural housing	10. Slum improvement and upgradation.
(11) drinking water	11. Urban poverty alleviation.
(12) fuel & fodder.	12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
(13) roads, culverts, bridges, ferries, waterways & other means of communication.	
(14) rural electrification, including distribution of electricity.	
(15) non-conventional energy.	
(16) poverty alleviation programmes.	
(17) education including primary & secondary schools, technical training & vocational education.	



(18) adult & non-formal education. (19) Libraries. (20) cultural activities. (21) markets & fairs. (22) health & sanitation, including hospitals, primary health centres & dispensaries. (23) family welfare (24) women & child development. (25) social welfare including welfare of handicapped & mental retarded. (26) welfare of the weaker sections & in particulars of the SC & ST's (27) public distribution system. (28) maintenance of community asserts.	13. Promotion of cultural, educational and aesthetic aspects. 14. Burials and burial grounds; cremations, cremation grounds; and electric crematoriums. 15. Cattle pounds; prevention of cruelty to animals. 16. Vital statistics including registration of births and deaths. 17. Public amenities including street lighting, parking lots, bus stops and public conveniences. 18. Regulation of slaughter-houses and tanneries.

Example : 120

A contract awarded by Bombay Municipal Corportion (BMC) for repair of a particular road to M/s B Ltd. of Mumbai with a total consideration of ₹ 12 lakhs with terms and conditions as stated that:

(a) It is pure service (excluding works contract service or other composite supplies involving supply of any goods) and

(b) the entire work should be completed within 30 days.

The said work has been completed as per terms and conditions. Applicable rate of GST 18%

Find the following:

(a) Is it taxable supply?

(b) Rework if the contract is in the nature of works contract where material is involved in the value of contract. Is it taxable supply? If so who is liable to pay GST.

Note: previous turnover of M/s B Ltd. was ₹ 22 crores

Answer:

(a) Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the local authority exempt from GST.

Therefore, in the given case M/s B Ltd. supplied exempted service.

(b) M/s B Ltd. supplied works contract service which includes material and hence it is taxable supply. M/s B Ltd is liable to pay GST.

CGST 9% = ₹ 1,08,000

SGST 9% = ₹ 1,08,000

- 4. Services by Central Government, State Government, Union Territory, local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.**

Example : 121

Validate the following statement:

Charges recovered by the Government for regulation of land use like conversion of agriculture to non-agriculture will be exempt from payment of GST.

Answer:

The given statement is valid:

Covered under entry 4 of exemption Notification No. 12/2017 Dt 28.06.2017 Central Tax (Rate).



Example : 122

Validate the following statement:

Charges recovered by the Government of India from local authority for construction of building like granting approval of the plant is exempt from GST.

Answer:

The given statement is valid:

Covered under entry 4 of exemption Notification No. 12/2017 Dt 28.06.2017 Central Tax (Rate).

Example : 123

Validate the following statement:

Grant received by the State Government from Central Government for implementing National Bio-gas and Manure Management Programme operating under Ministry of New and Renewable Energy is taxable supply of service.

Answer:

The given statement is invalid:

State Government is bound to implement the centrally sponsored scheme on receipt of grant. Consequently, State Governments are implementing agency and not service provider.

Therefore, there is no supply.

GST does not arise in the given case.

5. Services by a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution.

Notification No. 32/2017 Central Tax (Rate) dt 13.10.2017, this notification extends the exemption from GST to Central Government, State Government, Union territory, local authority along with Governmental Authority.

6. Services by the Central Government, State Government, Union territory or local authority excluding the following services—

(a) services by the Department of Posts by way of

- (i) speed post,
- (ii) express parcel post,
- (iii) life insurance, and
- (iv) agency services provided

to a person other than the Central Government, State Government, Union territory;

(b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

(c) transport of goods or passengers; or

(d) any service, other than services covered under entries (a) to (c) above, provided to business entities. are exempted from GST.

It means, all types of supply of services are taxable unless specifically exempted from GST.



List of services which are specifically exempted:

1. **Entry No. 4:** Services by Central Government, State Government, Union territory, local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.
2. **Entry No. 7:** Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover up to ₹ 20 lakh (₹ 10 lakh in case of a special category state) in the preceding financial year.

Explanation:- For the purposes of this entry, it is hereby clarified that the provisions of this entry shall not be applicable to-

(a) services,-

- (i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union Territory;
- (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (iii) of transport of goods or passengers; and

(b) services by way of renting of immovable property.

3. **Entry No. 8:** Services provided by the Central Government, State Government, Union Territory or local authority to another Central Government, State Government, Union Territory or local authority;

Provided that nothing contained in this entry shall apply to services-

- (i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union Territory;
- (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (iii) of transport of goods or passengers;

4. **Entry No. 9:** Services provided by Central Government, State Government, Union Territory or a local authority where the consideration for such services does not exceed ₹ 5,000:

Provided that nothing contained in this entry shall apply to services-

- (i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union Territory;
- (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (iii) of transport of goods or passengers;

Provided further that in case where continuous supply of service, as defined in sub-section (33) of section 2 of the Central Goods and Services Tax Act, 2017, is provided by the Central Government, State Government, Union territory or a local authority, the exemption shall apply only where the consideration charged for such service does not exceed ₹ 5,000 in a financial year.

5. **Entry No. 42:** Services provided by the Central Government, State Government, Union territory or local authority by way of allowing a business entity to operate as a telecom service provider or use radio frequency spectrum during the period prior to the 1st April, 2016, on payment of licence fee or spectrum user charges, as the case may be.
6. **Entry No. 47:** Services provided by the Central Government, State Government, Union territory or local authority by way of-



- (a) registration required under any law for the time being in force;
 - (b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force
7. **Entry No. 61:** Services provided by the Central Government, State Government, Union territory or local authority by way of issuance of passport, visa, driving licence, birth certificate or death certificate.
 8. **Entry No. 62:** Services provided by the Central Government, State Government, Union territory or local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union territory or local authority under such contract.
 9. **Entry No. 63:** Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use natural resources to an individual farmer for cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products.
 10. **Entry No. 64:** Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Central Government, State Government, Union territory or local authority before the 1st April, 2016:

Provided that the exemption shall apply only to tax payable on one time charge payable, in full upfront or in installments, for assignment of right to use such natural resource.
 11. **Entry No. 65:** Services provided by the Central Government, State Government, Union territory by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges.

Reverse Charge Mechanism (RCM) applicable:

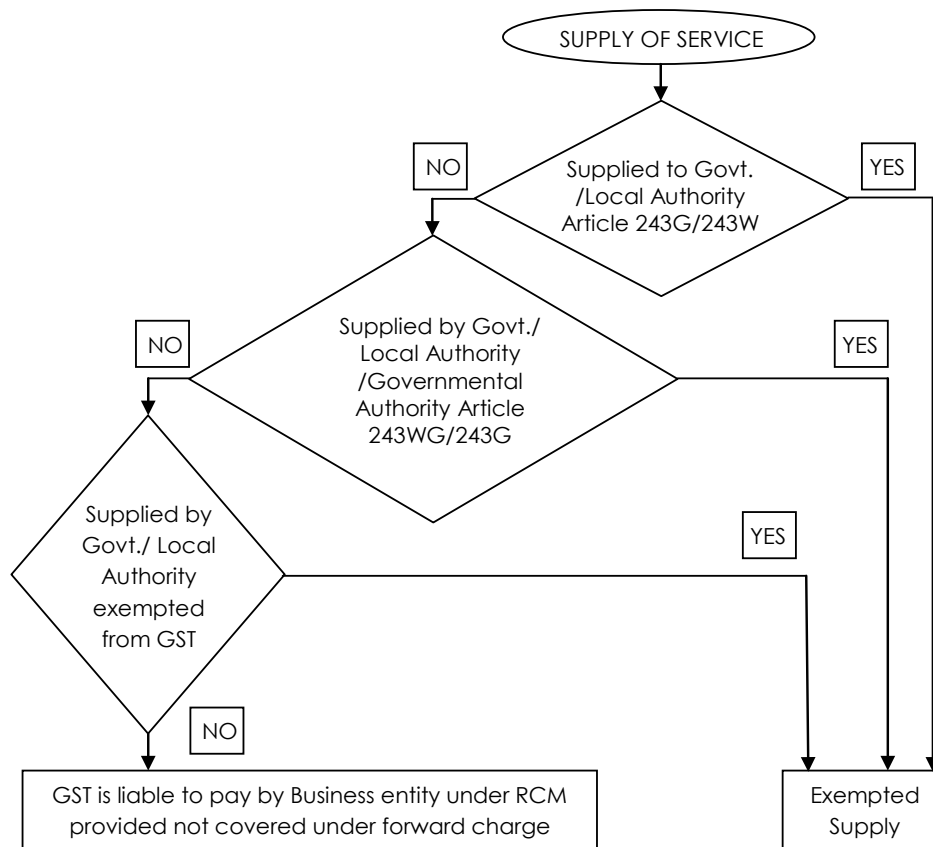
S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
5	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding: - (1) Renting of immovable property, and (2) Services specified below: - (i) Services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers.	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.	Recipient

Definitions:

- (1) "business entity" means any person carrying out business;



Summary:



Example : 124

w.e.f. 1st July 2017, GST will be applicable on following services provided by Government or Local Authority:

S. No.	Nature of service	Taxability	Who is liable to pay	Remarks
(i)	Speed Post Service provided by Department of Post to Government	Exempted supply	NA	Coved under entry no. 8 of exemption list.
(ii)	Express Parcel Post Services by Department of Post provided to a business entity	Taxable supply	Dept. of Post	Not covered under RCM (not specially exempted)
(iii)	Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport.	Taxable supply	Supplier of service	Not covered under RCM (also not exempted)
(iv)	Transport of goods or passengers	Taxable supply	Supplier of service	-do-
(v)	Renting of immovable property for commercial nature to Business Entity whose turnover in the P.Y. is ₹ 18 lakh.	Taxable supply	Supplier of Service (i.e. Govt. or Local Authority)	Not covered under RCM and also not covered under any exemption.
(vi)	Other services provided to business entity whose P.Y. turnover is ₹ 8 lakh.	Exempted supply	NA	Covered under entry no. 7 and hence exempted from GST.
(vii)	Other services provided to business entity whose P.Y. turnover is ₹ 22 lakh.	Taxable supply	Business entity being recipient is liable to pay GST	Covered under RCM. It is not covered under any exemptions.

**Example : 125**

Guidelines Academy Pvt. Ltd. provided following services in the previous year:

1. Manpower supply services to Higher Secondary School for ₹ 12,00,000.
2. House keeping services to Kidzee (i.e. Pre-school education) for ₹ 9,00,000.

In the current year Guidelines Academy Pvt. Ltd. received advertisement services for ₹75,000 from Indian Railways. Find the following:

- (a) Who is liable to pay GST?
- (b) Total tax liability if any?
- (c) Rework, if the previous total turnover ₹ 11,10,000 then find the GST liability in the current year?

Note: Applicable rate of GST 18%

Answer:

P.Y. turnover (₹ 12 lakh + ₹ 9 lakh) = 21,00,000

(a) Since, aggregate turnover of the previous year exceeds ₹ 20 lakh, in the current year recipient of service is liable to pay GST under RCM.

(b) GST 18% on ₹ 75,000 = 13,500

Re-work

(c) GST liability is nil, since P.Y. turnover not exceeds ₹ 20 lakhs (vide Entry No. 7 Notification No. 12/2017- Central Tax (Rate) Dt 28-06-2017).

Example : 126

State Police provided protection services to the Judges of High Court in the month of July 2017. The police protection is provided on payment of ₹ 2,00,000. Is GST payable?

Answer:

It is exempted service. Since, covered under entry no. 8 (vide Notification No. 12/2017 dated 28.6.2017 Central Tax (Rate), it is exempted from GST.

Example : 127

The Chief Secretary to Finance Minister travelled from Delhi to Chennai by rail in an air conditioned coach on official trip. Cost of ticket is ₹ 1,200. Is it exempt from GST? Applicable rate of GST 5%.

Answer:

It is taxable supply of service. It is covered under entry 6(c) of Notification No. 12/2017 date 28.06.2017 Central Tax (Rate), GST will be levied under forward charge.

Example : 128

Passport is issued by the Office of the External Affairs Ministry under Passport Act, 1967 to individual. The fee of ₹ 6,500 paid by business entity in which such individual person is working. Will this activity attract GST?

Answer:

The exemption from payment of GST would be available both cases, where fee is paid by individual or by the business entity. The said activity is exempted from GST under entry no. 61 of the Notification No.12/2017 date 28.06.2017 Central Tax (Rate).

**Example : 129**

Taj Pvt. Ltd., received the following services from the Government of India during the taxable period:

1. Application fee paid towards processing of application for issuance of advance authorization ₹ 12,000.
2. Security services provided by Government security agency for a period of four months for a total consideration of ₹ 6,000:
 - a. Jan 2018 – Part payment ₹ 500
 - b. Feb 2018 – Part payment ₹ 2,000
 - c. Mar 2018 – Part payment ₹ 2,000
 - d. April 2018 – Final payment ₹ 1,500.
3. Customs authorities have charged Merchant Over Time (MOT) fee for ₹ 1,000 at the time of special warehousing of goods.

Find the total GST payable by Taj Pvt. Ltd. if any?

Note: Previous Turnover of Taj Pvt. Ltd. ₹ 21 lakhs.

Note: Applicable rate of GST 18%

Answer:

Statement showing GST liability of Taj Pvt. Ltd.

S.No.	Particulars	Value in ₹	Remarks
1	Application fee paid towards processing of application for issuance of advance authorization	12,000	Taxable supply of service. Since, amount exceeds ₹ 5,000.
2	Security services provided by Government security agency. F.Y 2017-18 ₹ 4,500 F.Y. 2018-19 ₹ 1,500 The exemption shall apply only where the consideration charged for such service does not exceed ₹ 5,000 in a financial year.	Nil	Exempted supply of service under entry no. 9.
3	Merchant Overtime charges	Nil	Exempted supply of service under Entry No. 65.
	Total subject to tax under reverse charge	12,000	
	Total GST liability	2,160	12,000 x 18%

Example : 130

M/s X Ltd. paid penalty under section 49 of the CGST Act, 2017 ₹ 20,00,000 to the Government Department in the month of Oct 2017. Is it taxable supply under the GST law?

Answer:

It is not a supply of service. The fine or penalty chargeable by Government or local authority imposed for violation of statute, bye-laws, rules or regulations are not leviable to GST. Such fines or penalty are not recovered for tolerating non-performance of a contract.

**Example : 131**

A contract awarded by Bombay Municipal Corporation (BMC) for repair of a particular road to M/s B Ltd of Mumbai with terms and conditions that the entire work should be completed within 30 days. However, there is a delay of 10 days to complete the work. BMC charged liquidated damages of ₹ 1,20,000 and the same recovered from M/s B Ltd.

Applicable rate of GST 18%

Find the following:

(a) who is liable to pay GST and on what amount?

(b) Total GST liability if any.

Note: Previous year turnover of M/s B Ltd. was ₹ 88 lakh.

Answer:

(a) It is supply of service.

M/s B Ltd. being recipient of service is liable to pay GST on ₹ 1,20,000 (i.e., Reverse Charge applicable). Since, the contractor has performed the contract, but there is a delay of 10 days.

(b) GST liability = ₹ 21,600

Note:

- (i) It appears the liquidated damages recovered by local authority for delay in performance in contract will not be covered under exemption list of GST. The contract has been performed in such cases, GST will be payable on the same.
- (ii) Services provided by Government or a local authority by way of 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; is exempted from GST.

Example : 132

For registration of a company whose nominal share capital does not exceeds ₹ 1,00,000, paid registration fee of ₹ 5,000.

Whether your answer is different if registration fee ₹ 6,000.

Is it taxable supply? Attract GST?

Answer:

Exempted from GST vide Entry No. 47, Notification No. 12/2017- Central Tax (Rate) Dt 28-06-2017.

Our answer is not differ even if the registration fee is ₹ 6,000 under the entry no. 47.

Example : 133

Domicile Certificate for certifying the number of years during which the person has stayed in State, has been obtained from District Collector's Office, by paying fee of ₹ 5,500. Is it taxable supply?

Answer:

This activity falls under entry no. 47 Notification No. 12/2017- Central Tax (Rate) Dt 28-06-2017.

Therefore, the given activity is exempted from GST.



Example : 134

X Ltd. covered under the Factories Act, 1948. Inspector of Factories certified the factory is safe for the workers to carry their work and charged Government fee of ₹ 10,000.

X Ltd. owned one more factory at another place, which is not covered under Factories Act, 1948. However, X Ltd. obtained safety certificate for the factory from the Inspector of Factories by paying ₹ 15,000 voluntarily.

Is it taxable supply? Attract GST? If so who is liable to pay GST.

Applicable rate of GST 18%.

Answer:

X Ltd. being recipient of service from the Inspector of Factories is not liable to pay GST. Since, certification relating safety of workers required under the Factories Act, 1948 covered under entry 47.

Another to factory which is not covered under the Factories Act, 1948 for which fee paid by X Ltd. voluntarily is liable to pay GST under reverse charge mechanism.

CGST 9% on Rs 15,000 = ₹ 1,350

SGST 9% on Rs 15,000 = ₹ 1,350

Example : 135

The Inspector of the Metrology Department verified the calibration of weighing scale as well as the weight and collected charges of ₹ 7,500 from the shop owner under the The Legal Metrology Act, 2009. Is it taxable supply?

Answer:

This activity is exempt from GST under entry no. 47 Notification No. 12/2017- Central Tax (Rate) Dt 28-06-2017.

Example : 136

The Department of Agriculture, Co-operation and Farmers Welfare, provided Soil Conservation Service, Animal Husbandry, Dairying and Fisheries to a farmer by charging fee of ₹ 20,000 in relation to assignment of natural resources. Is it taxable supply?

Answer:

This activity is specifically exempted from GST under entry no. 63 Notification No. 12/2017- Central Tax (Rate) Dt 28-06-2017.

Example : 137

A Ltd., becomes the successful bidder. The spectrum is assigned to A Ltd., for a total consideration of ₹ 1000 crores in the month of June 2015.

Government permitted to pay as one time charge payable, in full upfront or in installments as the case may be.

A Ltd., chooses to make in installments over a period of 5 years. Is installment due fallen on or after 1st July 2017 leviable to GST?

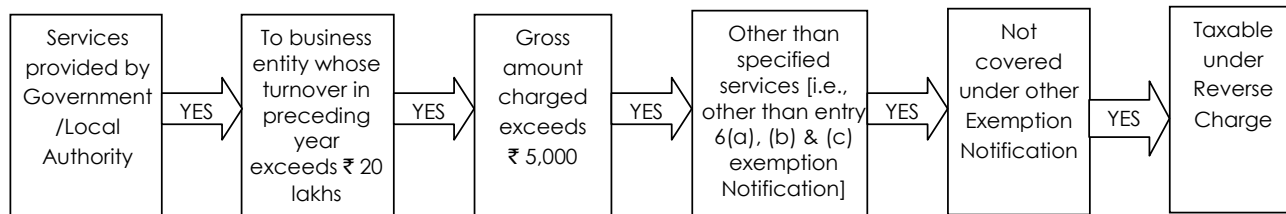
Whether your answer is different if periodic payment required to be made by the assignee.

Answer:

The exemption under entry no. 42 [Notification No. 12/2017- Central Tax (Rate) Dt 28-06-2017] shall apply only to one time charge, payable in full upfront or in installments, for assignment of right to use any natural resource. Hence, A Ltd., is not liable to pay GST.

The exemption shall not applicable to any periodic payment required to be made by the assignee.

GST is payable on periodic payments due after 1.7.2017 in respect of spectrum assigned before 1.4.2016. GST is liable to pay by A Ltd. (RCM applicable)

Changes w.r.t. 1.7.2017 services provided by Government or Local Authority:

If answer for any one of these is 'NO', then the same would not be liable to GST under reverse charge mechanism.

Entry No. 10. Pure labour services for Housing Scheme

Services provided by way of pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana.

"original works" means all new constructions;

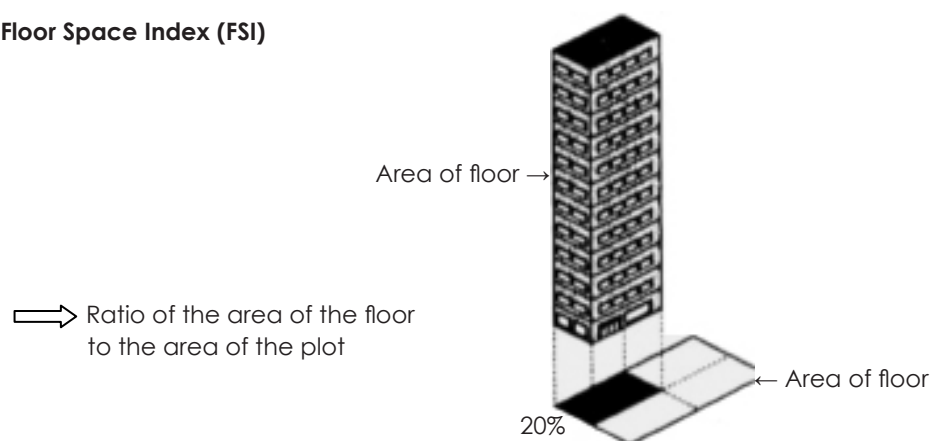
- (i) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
- (ii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

Pure labour contract means supplier of service should not utilize any material in supplying the service. It should be a labour contract only.

The Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana scheme where in Housing for All mission will be implemented through four verticals which are as follows:

1. 'In-situ' Slum Redevelopment
2. Affordable Housing through credit linked subsidy
3. Affordable Housing in Partnership
4. Subsidy for beneficiary-led individual house construction.

Floor Space Index (FSI) means: FSI means the ratio between the area of a covered floor (Built up Area) to the area of that plot (land) on which a building stands.

Floor Space Index (FSI)



Floor Space Index (FSI) is the ratio of the area of the floor to the area of the plot on which a building stands. in some cities. FSI is known as floor area ratio (FAR).

Assume municipal authority is granted FSI 1.5, where available land 2000 square feet's. Then the build up area is 3,000 square feet's. It means you can build 3,000 sq. ft., covered area on land. It can be either 2 floors of 1,500 square feet's or 3 floors of 1,000 square feet's without affecting other municipal rules.

Example : 138

The Government gives re-development of slum to L&T. As per the Housing for All Scheme, L&T under taken original work in return entitled for 0.5 FSI (out of 1.5 FSI on the land of 10,000 sq. ft.) which can be utilized for construction of free sale component. L&T in turn appointed DLF as contractor for supplying the services of construction for allotment to slum dwellers. The contractor charges ₹ 900 per sq. ft. of built-up area.

Find the following:

(a) Exempted value of supply.

(b) Taxable value of supply.

(c) Taxable person.

(d) GST liability.

Applicable rate of GST 12% (with Input Tax Credit).

Note: Taxable person is willing to avail benefit of ITC.

Answer:

(a) Build up area (10,000 × 1 FSI) = 10,000 sf. ft.

Value of build up area (₹ 900 × 10,000 sq. ft.) = ₹ 90,00,000

Value of exempted supply = ₹ 90,00,000

(b) Build up area (10,000 × 0.5 FSI) = 5,000 sq. ft.

Value of build up area (₹ 900 × 5,000 sq. ft.) = ₹ 45,00,000

Value of taxable supply of service = ₹ 45,00,000

(c) DLF is the person liable to pay GST under forward charge.

(d) GST liability:

CGST 6% on ₹ 45 lakh = ₹ 2,70,000 and

SGST 6% on ₹ 45 lakh = ₹ 2,70,000

Entry No. 11 Construction, erection and related services pertaining to single residential unit:

Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex is exempted from GST.

Example : 139

Hemanta Builders is constructing a two-floor residential house. Is it taxable supply?

Answer:

Yes, the given activity is a taxable supply and GST will be levied.

**Example : 140**

Shyam contractors undertaken to construct new single shop for M/s X & Co. Is it taxable supply?

Answer:

Yes, the given activity is a taxable supply and GST will be levied.

Entry No. 12 Services by way of renting of residential dwelling for use as residence is also exempt from GST.

The following are taxable supplies:

- Residential house taken on rent for commercial purposes
- House is given on rent and the same is used as a hotel or a lodge
- Rooms in a hotel or a lodge are let out where tariff per day per room ₹ 1000 or more.

Entry No. 13 Charitable / religious activities

Services by a person by way of-

- (a) conduct of any religious ceremony;
- (b) renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income-tax Act, 1961
or
a trust or an institution registered under sub clause (v) of clause (23C) of section 10 of the Income-tax Act
or
a body or an authority covered under clause (23BBA) of section 10 of the said Income-tax Act:

Provided that nothing contained in entry (b) of this exemption shall apply to,-

- (i) renting of rooms where charges are ₹ 1,000 or more per day;
- (ii) renting of premises, community halls, kalyanmandapam or open area, and the like where charges are ₹10,000 or more per day;
- (iii) renting of shops or other spaces for business or commerce where charges are ₹ 10,000 or more per month.

Important Note:

No GST on the supply of services by way of renting of precincts of a religious place meant for the general public by a person.

So the GST rate on Services way of renting of precincts of a religious place meant for the general public is to be taken as nil.

This implies that if immovable properties owned by charitable trusts like marriage hall, convention hall, rest house for pilgrims, shops situated within the premises of a religious place are rented out, income from letting out of such property is wholly exempt from GST.

But if such properties are not situated in the precincts of a religious place meaning thereby not within walls or boundary walls of the religious place, income from such letting out will lose this exemption and income from it will be liable to GST.

The term "religious place" as per the clause (zy) of the said notification means "a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality".

Precincts means:

Service by a person by way of -

- (a) renting of precincts of a religious place meant for general public.

Renting of such area will not be liable for payment of GST.



The purpose for which the precincts is rented is not relevant.

Entry No. 80 Services by way of training or coaching in recreational activities relating to-

- (a) arts or culture, or
(b) sports by charitable entities registered under section 12AA of the Income-tax Act
are exempt from GST.

Example : 141

Kapleswara Charitable Trust registered under Section 12AA of the Income Tax Act, 1961, supplied the following services during the taxable period. Find the taxable supply or exempted supply from the following:

- (a) *Income from Navratri functions, other religious functions, and religious poojas conducted for ₹ 2,12,345/-*
(b) *During Ganesh utsav or other religious functions, charitable trusts rent out their space to agencies for advertisement hoardings, income from such advertisement ₹ 4,98,765/-*
(c) *Donation for religious ceremony is received with specific instructions to advertise the name of a donor for ₹ 1,00,001/-.*

Answer:

Particulars	Nature of supplies	Remarks
Income from Navratri functions etc.	Exempted supply	Meant of religious ceremony
Income for renting out space	Taxable supply	Advertisement services
Donation received with reciprocity	Taxable supply	Donation is compensating against consideration

Example : 142

Sri Durga Charitable Trust registered under section 12AA of the Income Tax Act and also registered person under GST Law.

Provided the following services in the month of October.

- (1) *Services by way of training or coaching in recreational activities relating to sports for ₹ 4,00,000/-.*
(2) *Fee from organizing yoga camps or other fitness camps for ₹ 5,00,500/-*
(3) *Organizes fitness camps in reiki, aerobics, etc., and receive donation from participants ₹ 2,25,000/-.*
(4) *Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material for ₹ 20,000*

Assume applicable rate of GST for taxable supplies @18%.

Answer:

Particulars	Value in ₹	Remarks
training or coaching in recreational activities relating to sports	Nil	Exempted supply.
Fee from organizing yoga camps or other fitness camps	5,00,500	Since, not covered under advancement of religion, spirituality or yoga, it is taxable supply.
Donation for Organizes fitness camps in reiki, aerobics	2,25,000	Covered under health and fitness services, which is not exempted.
Public libraries	Nil	Exempted supply.
Total	7,25,500	
GST 18%	1,30,590	(7,25,500 x 18%)



Case Study : 2

Department Claim: Tirumal Tirupati Devasthanams, Triupati registered under section 12AA of the Income Tax Act, 1961 was running guest houses for pilgrims. Renting of precincts of a religious place meant for general public, by charging more than ₹ 1,000 per day. Therefore, the assessee were liable to pay GST.

Assessee Contention: Since, they were running guest houses without any profit motive hence they were not liable to pay GST.

Decide the case wheather assessee contention is right or Department claim is justifiable?

Answer:

Renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income-tax Act, 1961 is exempt from GST.

However, w.e.f 1-7-2017, this exemption shall not be applicable to

1. Renting of rooms where charges are ₹ 1000/- or more per day,
2. Renting of premises, community halls, kalyanmandapam or open area, etc where charges are ₹ 10,000/- or more per day, and
3. Renting of shops or other spaces for business or commerce where charges are ₹ 10,000/-or more per month.

Thus, the law gives a limited exemption to renting of only religious precincts or a religious place meant for general public by the entity registered under Section 12AA of the Income Tax Act or Sec 10(23C)(v) or Sec 10(23BBA) of the Income Tax Act, 1961.

In the given case, it is not exempt from GST. Therefore, department claim is justifiable.

Entry No. 14 Renting of Hotel, Inn, Guest house, Club or Camp site etc;

Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below ₹ 1,000 per day or equivalent is a exempted supply under GST.

The following are taxable supply of services:

GST Rates on Hotels, resorts, Inn and Lodges:

S.No.	Particulars	GST Rate	ITC
1	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having room tariff ₹1,000 and above but less than ₹2500 per room per day	12%	Fully allowed
2	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes where room tariff of ₹ 2,500/ and above but less than ₹ 7,500/- per room per day	18%	Fully allowed
3	Bundled service by way of supply of food or any other article of human consumption or any drink, in a premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organizing a function) together with renting of such premises	18%	Fully allowed
4	Accommodation in hotels including 5 star and above rated hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, where room rent is ₹ 7,500/- and above per night per room	28%	Fully allowed

**Example : 143**

Alisha Hotel Ltd. provider of rooms. Rent charged per day per room is as follows:

	₹
Room Rent	= 550
Furniture rent	= 400
Air-conditioner rent	= 150
Refrigerator rent	= 50
Less: Discount	= (250)
Net amount charged	= 900

During the month of Oct 2017, 20 rooms are let out throughout the month, and balance 35 rooms are let out only for 15 days.

Input Tax Credit available ₹ 7,500.

The following GST rates are applicable for the hotel industry:

12%, 18% and 28%.

Find the GST liability if any for the month of Oct 2017.

Answer:

working note:

(1) Since, Declared Tariff is ₹ 1,150, Alisha Hotel Ltd., is liable to pay GST @12%.	
Room Rent	550
Furniture rent	400
Air-conditioner rent	150
Refrigerator rent	50
Declared Tariff	1,150
(2) Taxable Services	
(20 rooms x 31 days x ₹ 900)	₹ 5,58,000
(35 rooms x 15 days x ₹ 900)	₹ 4,72,500
Total taxable services	₹ 10,30,500

Statement showing GST liability of Alisha Hotel Ltd.

Particulars	Value in (₹)	
Taxable supply of services	10,30,500	
GST liability:		
	6% CGST	6% SGST
Output tax	61,830	61,830
Less: ITC	-3,750	-3,750
Total tax	58,080	58,080

Entry No. 15 Transportation of passengers by any mode of conveyance

Transport of passengers, with or without accompanied belongings, by –

(a) air, embarking from or terminating in an airport located in the state of

- (i) Arunachal Pradesh,
- (ii) Assam,
- (iii) Manipur,

- (iv) Meghalaya,
 - (v) Mizoram,
 - (vi) Nagaland,
 - (vii) Sikkim, or
 - (viii) Tripura or
 - (ix) at Bagdogra located in West Bengal;
- (b) non-airconditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or
- (c) stage carriage other than airconditioned stage carriage.
- are exempted from GST.

(a) Transport of Passengers by AIR

Passengers embarking from or terminating in an airport located in the state of

- Arunachal Pradesh
- Assam
- Manipur
- Meghalaya
- Mizoram
- Nagaland
- Sikkim
- Tripura

North-Eastern States

In round trip tickets involving multiple journeys that involves embarkation or disembarkation at North-Eastern States / Bagdogra alone will be covered under exemption

or at Bagdogra located in West Bengal are exempted from GST

The GST rate applicable for transport of passengers by air in economy class is 5% with input tax credit allowed on input services.

The GST rate for transport of passengers, with or without accompanied belongings, by air, embarking from or terminating in a Regional Connectivity Scheme Airport is also fixed at 5% with input tax credit allowed on input services.

The GST rate for transport of passengers by air in other than economy class is 12% with full input tax credit.

Summary:

Transportation of Passengers by Air	GST Rate	Input Tax Credit		
		Inputs	Capital goods	Input service
Economic class	5%	Not allowed	Not allowed	allowed
Business class	12%	allowed	allowed	allowed
Embarking from or terminating in a Regional Connectivity Scheme Airport	5%	Not allowed	Not allowed	allowed

**Example : 144**

Air Bus Ltd, furnishes you the following information for computation of its GST liability for the month of Oct 2017.

(a) Passenger travelling from Mizoram to Chennai – 2000 passengers, gross value per ticket	₹ 2,500
(b) Passenger travelling from Chennai - USA 500 passengers, USA - Chennai – 200 passengers, gross value per ticket	₹ 45,000
(c) Passengers travelling from Mumbai – Tripura - Mumbai with single ticket – 1000 passengers gross value per ticket	₹ 5,000

Air Bus Ltd. charging 40% passenger tax which is not included in the gross value per ticket.

Find the GST liability?

All passengers are travelled in economic class except point (b).

Answer:

Statement Showing GST Liability of Air Bus Ltd. for Oct 2017.

(a) From Mizoram to Chennai	exempted supply
(b) Passenger travelling from Chennai-USA (500 passengers x 45,000)	2,25,00,000
Passenger tax 40%	90,00,000
(c) From Mumbai – Tripura - Mumbai	exempted supply
Value of Taxable Supply of Services	3,15,00,000
CGST 6%	18,90,000
SGST 6%	18,90,000
Total Tax	37,80,000

Note: Compulsory Inclusions: Any taxes, fees, charges levied under any law other than GST law, are required to be added to the price (if not already added) to arrive at the taxable value.

Regional Connectivity Scheme – exempted from GST

Services provided to the Central Government, by way of transport of passengers with or without accompanied belongings, by air, embarking from or terminating at a regional connectivity scheme airport, against consideration in the form of viability gap funding: Provided that nothing contained in this entry shall apply on or after the expiry of a period of one year from the date of commencement of operations of the regional connectivity scheme airport as notified by the Ministry of Civil Aviation.

Entry No. 17 Service of transportation of passengers with or without accompanied belongings by—

- Inland waterways (i.e. National waterways)
- Public transport, other than predominantly for tourism purpose, in a vessel between places located in India (by coastal waterways);

are exempted from GST.

Place of Supply – Transportation of passengers:

The Place of Supply of Services where location of supplier and recipient is in India, [Sec. 12 of the IGST Act, 2017]:



S. No.	Nature of service	Place of supply of service [Sec. 12(9) of the IGST Act 2017]:
1	Passenger transportation service. Including: Rail, Mono Rail, Metro Rail, Road, Air, Vessel, boat, Cycle rickshaw, Bullock cart, Camel etc.	Provided to a registered person: - Location of recipient of Service. Provided to a un-registered person: - Place where the passenger embarks on the continuous journey.

Place of supply of service where location of Supplier of Service or Location of Recipient of Service is outside India [Sec. 13 of IGST]

S. No.	Nature of service	Place of supply of service [Sec. 13(10) of the IGST Act 2017]:
1	Passenger transportation service. Including: Rail, Mono Rail, Metro Rail, Road, Air, Vessel, boat, Cycle rickshaw, Bullock cart, Camel etc.	where the passenger embarks on the conveyance for a continuous journey.

Example : 145

Compute value of taxable supply of services of Air Speed Airlines located in Chennai for transportation of passengers by air from the following data relating to sums received exclusive of GST –

- (1) **Passengers embarking at Arunachal Pradesh: ₹5 lakhs;**
- (2) **Amount for journey terminated at Assam: ₹4 lakhs;**
- (3) **Amount charged from passenger for flights starting from USA to Chennai: ₹ 250 lakhs;**
- (4) **Amount charged from passengers flying from Chennai to Sydney (Business class): ₹ 540 lakhs (including passenger taxes levied by government and shown separately on ticket: ₹ 100 lakhs). All passengers booked ticket from Delhi Office of Air Speed Airlines.**
- (5) **Passengers embarking from Chennai to Coimbatore (Economic class): ₹ 4 lakhs. Passengers booked tickets from Chennai office of Air Speed Airlines.**

Applicable rate of GST 5% and 12%. Find the IGST, CGST & SGST if any.

Answer:

Statement Showing GST Liability of Air Speed Airlines:

(a) embarking at Arunachal Pradesh	exempted supply
(b) where journey terminated at Assam	exempted supply
(c) from USA to Chennai	exempted supply
(d) from Chennai to Sydney (Business class)	4,40,00,000
Passenger tax	1,00,00,000
(e) from Chennai to Coimbatore	4,00,000 (Economic class)
Value of Taxable Supply of Services	5,44,00,000
IGST 12% on ₹ 5,40,00,000	64,80,000
CGST 2.5% on ₹ 4,00,000	10,000
SGST 2.5% on ₹ 4,00,000	10,000
Total Tax	65,00,000

Note: Compulsory Inclusions: Any taxes, fees, charges levied under any law other than GST law, are required to be added to the price (if not already added) to arrive at the taxable value.



Air Travel Agents - GST

Air Travel agents are the mediator between the ultimate customer and the airlines e.g. Makemytrip.com, PayTM are all examples of Air travel agents because they acts as a mediator between the customer and the airline companies like Air India, Spice Jet etc.

Exemption: Air Travel Agents are not entitled for any exemption.

Payment of tax at the option of the Air Travel Agent:

- (A) air travel agents are required to pay 18% GST on commission earned from airlines and also service charges, handling charges etc. (by whatever name called) collected from the customers / passengers.

There is no bar on air travel agents in availing ITC on input services to support the output services of travel agents.

OR

- (B) As per rule 32 (3) of the CGST rules, 2017 permits an air travel agent to discharge GST at fixed percentage of basic fare on which commission is normally paid by the airlines to the agent. In such a case, the effective value and the effective rate of GST is tabulated below:-

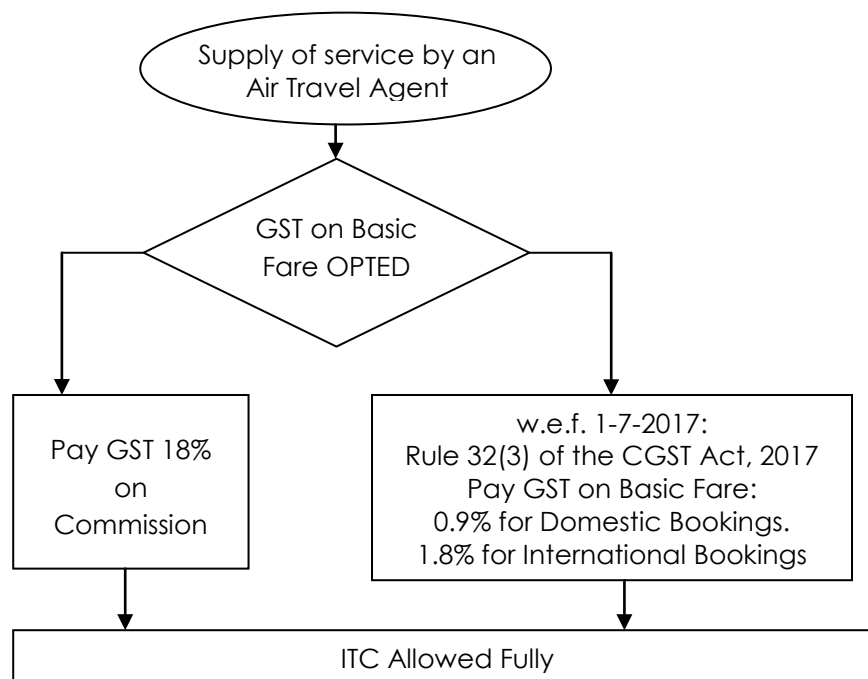
Air travel agent	Domestic booking	International booking
Value of taxable supplies	5% on Basic Fare	10% on Basic Fare

Air Travel Agent has to pay GST 18% on the above value of taxable supplies.

An air travel agent can pay tax under any of the 2 options on transaction to transaction basis. The rules do not bind the travel agent to opt for any of the options uniformly throughout the given financial year.

Input Tax Credit : Full ITC is available to the air travel agents.

Summary



**Example : 146**

Compute the GST liability of Mr. Zed, an air travel agent, for the quarter ended Dec. 31, 2017 using the following details:

Particulars	Amount (₹)
Basic air fare collected for domestic booking of tickets	50,00,000
Basic air fare collected for international booking of tickets	80,00,000
Commission received from the airlines on the sale of domestic and international tickets	4,50,000
Year ending bonus received from airlines	50,000

In the above case, would the GST liability of Mr. Zed be reduced if he opts for the special provision for payment of GST as per Rule 32(3) of the CGST Rules, 2017. The applicable rate of GST 18%.

Answer:

Statement Showing GST liability of Mr. Zed for the quarter ending 31st Dec 2017:

	₹
Commission received from the airlines on the sale of domestic and international tickets	4,50,000
Year ending bonus or incentive	50,000
Taxable supply of services	5,00,000
GST @18% on ₹ 5 lakh	90,000

Statement Showing GST liability of Mr. Zed for the quarter ending 31st Dec 2017

	₹
Basic air fare (domestic booking) [50,00,000 x 5%]	2,50,000
Basic air fare (international booking) [80,00,000 x 10%]	8,00,000
Total taxable supply of service	10,50,000
GST 18% on ₹ 10,50,000	1,89,000

Note: The GST liability of Mr. Zed would not be reduced in the aforesaid option.

Therefore, special provision under Rule 32(3) of CGST Rules, 2017 is not economical.

(b) non airconditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or

A contract carriage (other than radio taxi) for the transportation of passengers (non-AC) (excluding tourism) are exempted from GST.

"contract carriage" has the same meaning as assigned to it in clause (7) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

Tour and Travel services:

"Tour operator" means any person engaged in the business of planning, scheduling, organizing, arranging tours (which may include arrangements for accommodation, sight-seeing or other similar services) by any mode of transport and includes any person engaged in the business of operating tours".

GST @ 5% has been applied on services of tour operator without benefit of Input Tax Credit (ITC) on goods and services. 5% GST will be payable on the gross amount charged by the tour operator from the customer. This GST is uniform for all services – package tours, hotel accommodation only etc.

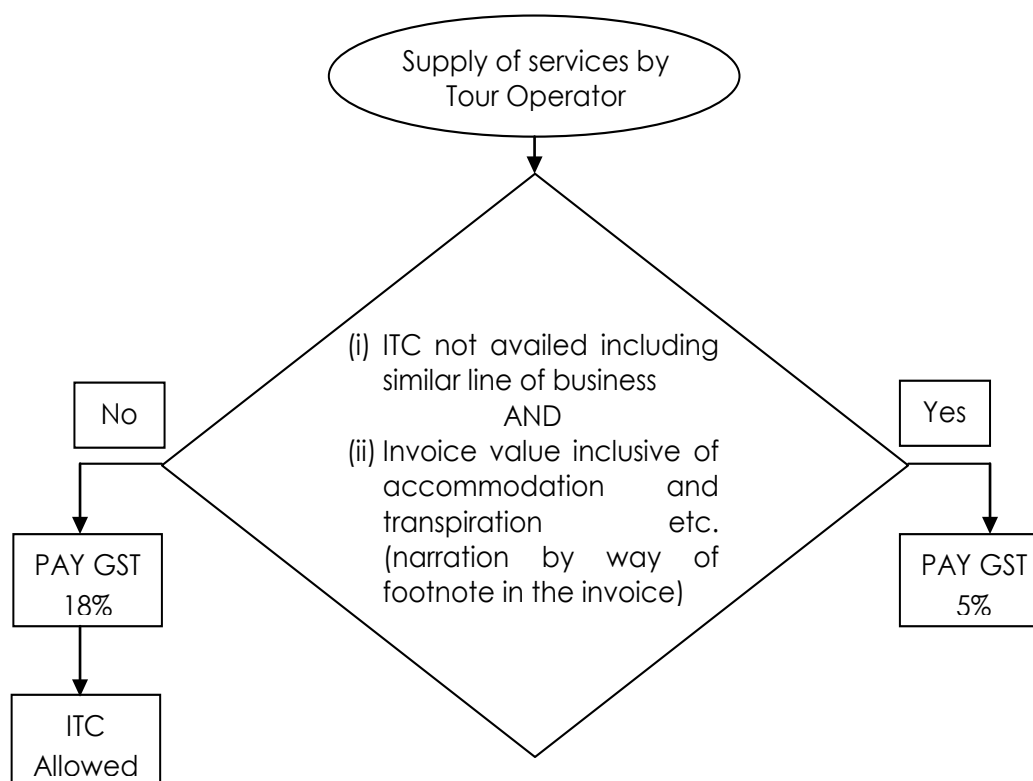


The concessional GST rate of 5% is subject to meeting the following conditions:-

- (i) Input Tax Credit on goods and services used in supplying output services of tour operator has not been taken.
- (ii) The invoice / bill issued for supply of output service indicates that it is inclusive of charges of accommodation and transportation required for such a tour. This narration can be given by way of footnote in the invoice.

In case any of the above conditions are not met, the benefit of concessional rate of 5% would not apply and in that event the Department may demand full 18% GST from the tour operator.

Rate of GST and ITC:



Important Note:

- (i) House Boats (moving): Services provided by house boats (moving) in Kerala and cruise ships are also covered as Tour Operators Services. In both these cases, accommodation, food, transportation, sightseeing and other value added services are provided as combo package.
- (2) Tours conducted through luxury trains like Maharaja Express, Deccan Odyssey, Heritage of India etc. are also covered as Tour Operators Services.
- (3) The services provided by static house boats (in Kashmir) by way of providing accommodation and food to the tourists are not covered within the ambit of tour operators as such. These services are akin to services of hotels, inns, guest houses, campsites and other commercial places for residential or lodging purposes. The rate of GST in these cases will be linked with the declared tariff per day.

**Example : 147**

Riya Tours Co. has arranged four package tours during Oct 017. The particulars of the services and charges are as under:

- (1) Tour 1: Charges received ₹ 35 lakhs. The package includes transportation, accommodation, food, and tourist guide, entry fees for monuments.
- (2) Tour 2: Charges received ₹ 65 lakhs. The package includes transportation and accommodation for stay.
- (3) Tour 3: Charges received ₹ 40 lakhs. The charges are solely for arranging accommodation for stay. However, the bills issued to the clients do not mention it clearly that the charges are solely for arranging the accommodation for stay.
- (4) Tour 4: Charges received ₹ 50 lakhs (inclusive of charges of stay). The bill issued to the client's mentions it clearly that the charges are solely for arranging the accommodation for stay.

Compute the value of taxable supply of services and GST.

Note: Applicable rates of GST 5% and 18%. All transactions taken place at inter state level.

Answer:

Statement Showing GST of Riya Tours Co. for Oct 2017

Particulars	Value ₹ in lakhs	Value ₹ in lakhs
Tour 1: Packaged Tour	35	
Tour 2: Transportation and Accommodation	65	
Tour 3: Accommodation for stay		40
Tour 4: Accommodation for stay	50	
Taxable supply of services	150	40
GSR Rate	5%	18%
IGST	7.50	7.20
Less: ITC	Not allowed	Allowed
Net GST liability	7.50	7.20

(c) Stage carriage other than airconditioned stage carriage.

"Stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;

Example : 148

M/s. R Ltd. is engaged in providing service of transportation of passengers, he furnished the following information in the month of Oct 2017. Find the GST liability.

- (1) Service of transportation of passengers by National Waterways: ₹ 50 lakhs;
- (2) Service of transportation of passengers by Stage carriage (non-A/c): ₹ 5 lakhs;
- (3) Service of transportation of passengers by contract carriage for tourism: ₹ 120 lakhs (bills inclusive of accommodation and transportation etc. indicated as narration at the bottom of invoice);
- (4) Transportation of passenger from Mumbai to Chennai port in a vessel and such service is not for tourism purpose: ₹ 12 lakhs;

Note:

R Ltd. is willing to avail exemption benefits if any. Taxable supplies of Mr. R in the previous year were ₹ 22 lakh.



Answer:

Statement showing GST liability M/s. R. Ltd.

Nature of service (Transport of passengers)	₹ in Lakhs
By National Waterways	Exempted supply
By Stage carriage [non-A/c]	Exempted supply
By Contract carriage for tourism (Bill inclusive of accommodation and transportation etc. indicated as narration at the bottom of invoice)	120
In a vessel from Mumbai in Chennai and such service in not for tourism	Exempted supply
Taxable supply of services	120
GST liability @ 5% on 120 lakhs (Note: Input tax credit not allowed)	6

Entry No. 17 Service of transportation of passengers with or without accompanied belongings by —

- (a) railways in a class other than—
 - (i) first class; or
 - (ii) an air-conditioned coach;
- (b) metro, monorail or tramway;
- (c) inland waterways;
- (d) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and
- (e) metered cabs or auto rickshaws (including e-rickshaws).

Note:

- (1) The rate of GST on Transport of passengers by rail (other than sleeper class) fixed by GST council at the introduction of GST in July, 2017 is 5% with ITC of input services.
- (2) E-richshaws exempt from GST.

Services Relating to Transportation of Passengers covered under NIL Rate of GST

- (1) Ordinary Coach
- (2) Metro
- (3) Monorail
- (4) Tramway
- (5) Metered Cabs
- (6) E-rickshaws

Example : 149

Indian railways has provided following services –

- (1) Transport of passengers by general class : ₹ 15,00,000;**
- (2) Transport of passengers by sleeper class : ₹ 10,00,000;**
- (3) Transport of passengers by 1st Class air conditioned coach: ₹ 5,00,00,000;**
- (4) Transport of passengers by 2 tier air conditioned coach: ₹ 20,00,00,000;**
- (5) Transport of passengers by 3-tier air conditioned coach: ₹ 30,00,00,000;**

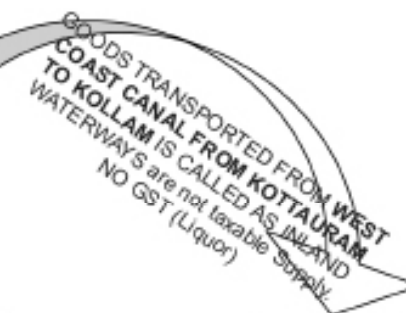
Compute value of taxable supplies and GST liability. Applicable GST rate is 5%.

Answer:**Statement showing GST liability**

Nature of service (Transport of passengers)	Value in ₹
General class	Exempted supply
Sleeper class	Exempted supply
1st Class air conditioned coach	5,00,00,000
2 tier air conditioned coach	20,00,00,000
3-tier air conditioned coach	30,00,00,000
Taxable supply of service	55,00,00,000
GST @5% on ₹ 55 crore	2,75,00,000

Entry No. 18 Services by way of transportation of goods

- (a) by road except the services of—
- (i) a goods transportation agency;
 - (ii) a courier agency;
- (b) by inland waterways.
- are exempted from GST.

Goods transported by Road not covered under GST.



Services by way of Transport of Goods (i.e., Liquor) in a vessel from Chennai Port to Port Blair Port attract GST

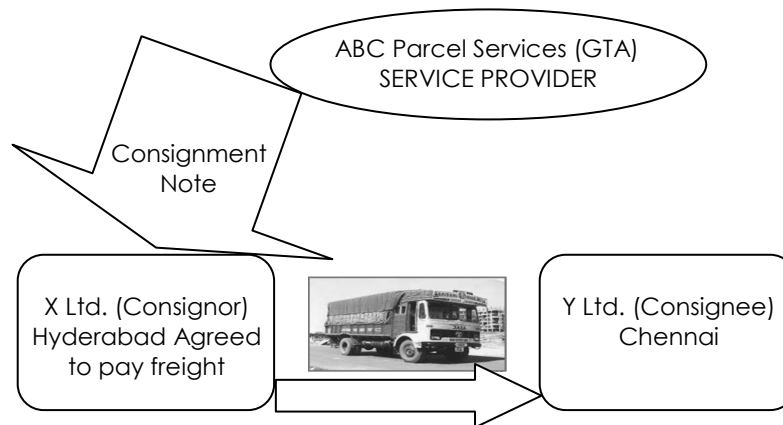


Goods Transport Agency – GST will be levied:

Under GST laws, the definition of Goods Transport Agency is provided in clause (ze) of notification no.12/2017-Central Tax (Rate) dated 28.06.2017. (ze) "goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called;

Example : 150

ABC Parcel Services is a goods transport agency issued consignment note to X Ltd. for transporting of goods from Hyderabad to Y Ltd of Chennai. Hence, ABC Parcel Services is a provider of GTA service.



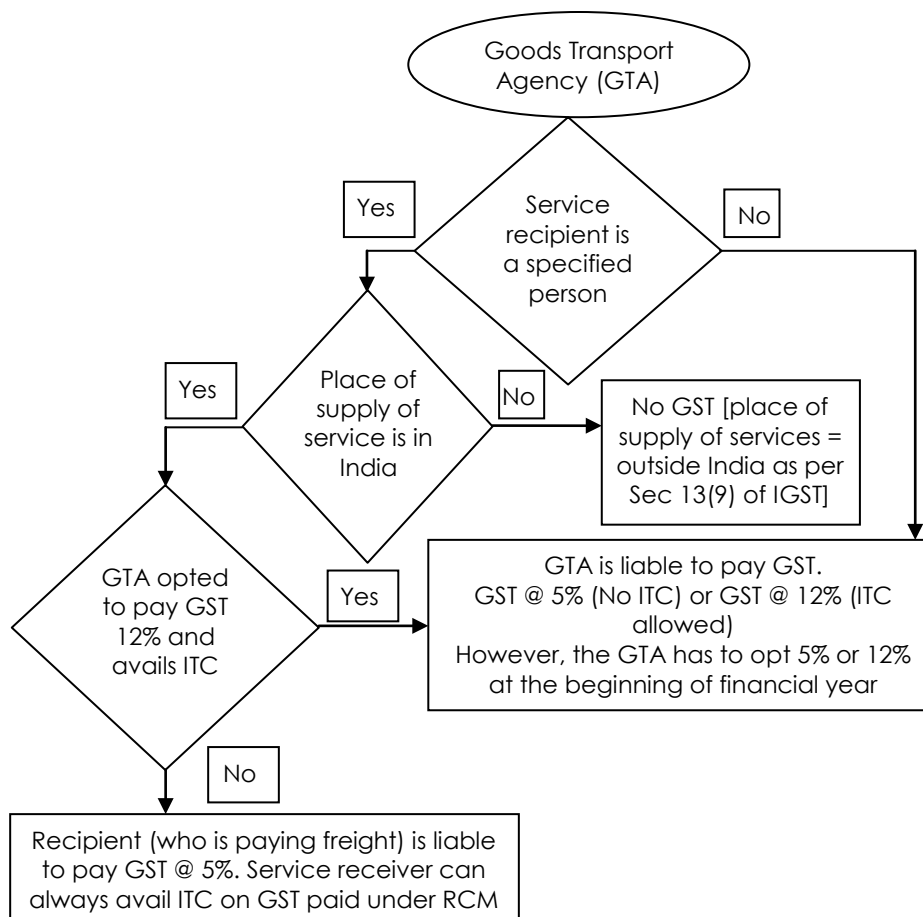
Individual truck/tempo operators who do not issue any consignment note are not covered within the meaning of the term GTA. As a result, the services provided by such individual transporters who do not issue a consignment note will be covered by the entry at Sl. No. 18 of notification no. 12/2017 - Central Tax (Rate), which is exempt from GST.

Thus, it is to be seen that mere transportation of goods by road, unless it is a service rendered by a goods transportation agency, is exempt from GST.

GTA - Reverse charge:

S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
1	GTA Services	Goods Transport Agency (GTA)	Any factory, society, co-operative society, registered person, body corporate, partnership firm, casual taxable person; located in the taxable territory.	Recipient

Thus, it is to be seen that mere transportation of goods by road, unless it is a service rendered by a goods transportation agency, is exempt from GST.

Person liable to pay GST:**Entry No. 21 GTA services specifically exempt:**

In terms of notification no.12/2017-Central Tax (Rate) dated 28.06.2017 (Sr. No. 21), the following services provided by a GTA (Heading 9965 or 9967) is exempt from payment of tax:

Services provided by a goods transport agency, by way of transport in a goods carriage of:

- agricultural produce;
- goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed ₹ 1,500;
- goods, where consideration charged for transportation of all such goods for a single consignee does not exceed ₹ 750;
- milk, salt and food grain including flour, pulses and rice;
- organic manure;
- newspaper or magazines registered with the Registrar of Newspapers;
- relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or
- defence or military equipments.

Similarly, the following services received by the GTA (Heading 9966 or 9973) is also exempt in terms of notification no.12/2017- Central Tax (Rate) dated 28.06.2017 (sr.no.22)



Entry No. 21A: "Services provided by a goods transport agency to an unregistered person, including an unregistered casual taxable person, other than the specified recipients" also exempt from GST [vide Notification No. 33/2017 Central Tax (Rate) Dt 13.10.2017].

Entry No. 22: Services by way of giving on hire:

to a goods transport agency, a means of transportation of goods.

Thus, if the GTA hires a means of transportation of goods, no GST is payable on such transactions.

In case of GTA provided services to SPECIFIED PERSONS:

The following businesses (recipient of services) is required to pay GST under reverse charge:-

1. Factory registered under the Factories Act, 1948;
2. A society registered under the Societies Registration Act, 1860 or under any other law
3. A co-operative society established under any law;
4. A GST registered person
5. A body corporate established by or under any law; or
6. A partnership firm whether registered or not (including AOP)
7. Casual taxable person

The liability to pay GST devolves on the recipients for supply of services by a goods transport agency (GTA) who has not paid central tax at the rate of 6%. Thus in cases where services of GTA are availed by the above categories of persons in the taxable territory the GTA supplier has the option to pay tax (and avail ITC) @12% (6% CGST + 6% SGST); and if the GTA does not avail this option, the liability to pay GST will fall on the recipients.

In all other cases where the recipients do not fall in the categories mentioned above, the liability will be on the supplier of GTA services.

Important note;

- (1) It has been clarified that ancillary services such as loading/ unloading, packing/unpacking, transshipment, temporary storage etc., would form part of the goods transport agency's (GTA) service if such services are provided by a GTA in the course of transportation of goods and the charges for such services are included in the invoice issued by the GTA, and not by any other person.

Place of supply of services in case of transportation of goods:

Place of supply of services by way of transportation of goods including by mail or courier [Sec. 12(8) of IGST Act, 2017]:

S. No.	Nature of service	Place of supply of service
1	Services by way of Transportation of goods including by mail or courier	Provided to a registered person: • Location of recipient of Service. Provided to a un-registered person: • Location at which such goods are handed over for their transportation.

Place of provision of a service of transportation of goods, other than by way of mail or courier [Sec. 13(9) of IGST]

Place of supply of Service = Destination of such Goods

**Example : 151**

Discuss whether GST is leviable in respect of transportation services provided by Jayawati Goods Transport Agency in each of the following independent cases:

Customer	Nature of service provided	Amount charged (₹)
A	Transportation of milk	22,00,000
B	Transportation of books on a consignment transported in a single goods carriage	1,30,000
C	Transportation of chairs for a single consignee in the goods carriage	600

Note: Jayawati Goods Transport Agency registered person under GST Law. Opted to pay CGST 6% and SGST @6%.

Answer:

Statement showing GST liability of Jayawati Goods Transport Agency:

Customer	Nature of Service	Taxable supply (₹)	Remarks
A	Transportation of milk	Nil	Exempted supply.
B	Transportation of books on a consignment transported in a single goods carriage.	1,30,000	Taxable supply
C	Transportation of chairs for a single consignee in the goods carriage.	Nil	Freight ₹ 600 is exempted from GST
	Total taxable supply	1,30,000	
	CGST 6% on ₹ 1,30,000	7,800	
	SGST 6% on ₹ 1,30,000	7,800	

Example : 152

ABC & Co., a goods transportation agency located in Delhi, transports a consignment of new colour TVs from the factory of XYZ Ltd. in Cochin, to the premises of a dealer in Jammu (taxable territory). As per mutually agreed terms between ABC & Co., and XYZ Ltd., the dealer in Jammu is the person liable to pay freight. The amount of freight exclusive of taxes is ₹ 4,50,000. State the person liable to pay GST and amount of tax payable. ABC & Co. not availing input tax credit. Applicable tax rates for GTA is 5% and 12%.

Note:

Consignment note issued by ABC & Co. for transporting goods.

Answer:

Person liable to pay GST is dealer in Jammu (i.e. taxable territory).

GST liability is as follows:

Total freight = ₹ 4,50,000

IGST 5% on ₹ 4,50,000 = ₹ 22,500



Example : 153

M/s Navatha a transporter registered under GST, located in Vijayawada. M/s C Ltd. of Chennai registered under GST, received services from M/s Navatha for transport of goods from its warehouse in Vijayawada to Guntur. M/s Navatha delivered goods at Guntur. (Both Vijayawada and Guntur are in Andhra Pradesh)

Find the place of supply of service and GST?

Whether your answer is different, if M/s C Ltd. of Chennai is not a registered person under GST?

Answer:

If the recipient is registered person:

POS = Chennai (i.e. location of recipient).

M/s C Ltd., is liable to pay IGST.

If the recipient is not a registered person:

POS = Vijayawada (i.e. Location at which such goods are handed over for their transportation).

M/s C Ltd., of Vijayawada is liable to pay CGST & SGST.

Example : 154

A & Co., a goods transportation agency located in Chennai, transports a consignment of new Laptops from the factory of X Ltd. in Cochin, to the premises of X Ltd. Branch office located in Bengaluru. As per mutually agreed terms between A & Co., and X Ltd., the Branch office in Bengaluru is the person liable to pay freight. The amount of freight exclusive of taxes is ₹ 5,40,000. State the person liable to pay GST and amount of tax payable.

A & Co. availing input tax credit. Applicable tax rates for GTA is 5% and 12%.

Note:

Consignment note issued by A & Co. for transporting goods.

Answer:

Person liable to pay GST is A & Co., (namely GTA).

IGST liability 12% on ₹ 5,40,000 = ₹ 64,800

Entry No. 19: Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India

S.No.	Transportation of goods by Air	Taxable supply	GST Rate	Remarks
1	Within India	Yes	18%	Exemption not granted
2	From India to outside India	No	Nil	Destination of goods outside India
3	From outside India into India	No	Nil	Covered under Entry no. 19 of exemption list

Entry No. 20: Transport of goods by rail and vessel

Services by way of transportation by rail or a vessel from one place in India to another of the following goods –

- (a) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
- (b) defence or military equipments;
- (c) newspaper or magazines registered with the Registrar of Newspapers;
- (d) railway equipments or materials;



- (e) agricultural produce;
 (f) milk, salt and food grain including flours, pulses and rice; and
 (g) organic manure.
 are exempted from GST

GST Rate and ITC for transportation of Goods by Rail or Vessel:

- The rate is 5% (CGST 2.5% + SGST 2.5%) or IGST @ 5%.
- ITC of Input services available, but not for input Goods.

Example : 155

Compute taxable value for transport of goods by rail within India (all sums exclusive of all taxes) –

- (1) Transport of postal mails and postal bags : ₹ 55 lakhs;
- (2) Transportation of household effects: ₹ 50 lakhs
- (3) Transport of petroleum products: ₹ 25 lakhs;
- (4) Transport of relief materials to flood affected areas: ₹ 25 lakhs;
- (5) Transport of newspapers and magazines registered with registrar of newspapers: ₹ 15 lakhs
- (6) Transport of milk: ₹ 15 lakhs;
- (7) Transport of alcoholic beverages: ₹ 7 lakhs;
- (8) Transport of defence and military equipments: ₹ 40 lakhs;
- (9) Transport of chemical fertilizers: ₹ 90 lakhs;
- (10) Transport of other taxable goods: ₹ 200 lakh (including ₹ 20 lakhs demurrages).

Answer:

Statement showing GST liability:

Nature of service	₹ in lakhs
Transport of postal mails and postal bags	55
Transportation of household effects	50
Transport of petroleum products	25
Transport of relief materials to flood affected areas	Exempted supply
Transport of newspapers and magazines registered with registrar of newspapers	Exempted supply
Transport of milk	Exempted supply
Transport of alcoholic beverages	7
Transport of defence and military equipments	Exempted supply
Transport of chemical fertilizers:	90
Transport of other taxable goods (including demurrages of ₹ 20 lakhs)	200
Taxable value of supply	427

Example : 156

Validate the following:

Air Speed Airlines transported Fruits (i.e. agricultural produce) from Chennai airport to Meghalaya. Is it exempted supply of service under GST?

Answer:

The given statement is invalid.

Transportation of goods within India by Air, exemption not granted. Hence, GST will be levied.



Entry no. 22: Services by way of giving on hire:

- (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or
- (b) to a goods transport agency, a means of transportation of goods.

Entry No. 54: Agriculture

- (d) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use; specially exempted.

Entry no. 23: Service by way of access to a road or a bridge on payment of toll charges exempted from GST:

The activity of toll collection outsourced to any third party agency who undertakes the work for consideration, is not exempted from payment of GST.

Entry 23A: Service by way of access to a road or a bridge on payment of annuity is also exempt from GST (Notification No. 32/2017- Central Tax (Rate) Dt 13.10.2107)

Example: 157

Intertoll India Consultants was undertaken a contract to collect toll on commission basis from Noida Toll Bridge Company (i.e. agency authorised to levy toll). Noida Toll Bridge Company's collection in the month of Oct 2017 is ₹ 2 crore. Commission paid to Intertoll India Consultants @ 5% on the gross receipts.

Find the exempted value of supply and taxable supply.

Exempted value of supply = ₹ 2 crore

Taxable value of supply = ₹ 10 lakh

(₹ 2 crore x 5%)

Note:

The activity of toll collection outsourced to any third party agency who undertakes the work for consideration is a taxable supply and GST will be levied.

Entry no. 24: Service by way of loading, unloading, packing, storage or warehousing of rice exempted from GST:

Example : 158

Find the taxability for the following independent cases:

- (a) *Packing of pulses in retail packs for ₹ 42,000.*
- (b) *Packing of tomato ketchup for ₹ 54,000*
- (c) *Commission on sale of rice for ₹ 10,125.*
- (d) *Storage of rice flour in the warehouse for ₹12,000.*

Answer :

- (a) *taxable supply of services*
- (b) *taxable supply of services*
- (c) *taxable supply of services*
- (d) *taxable supply of services*


Entry No. 25: Transmission or distribution of electricity by an electricity transmission or distribution utility exempt from GST:

Services provided by

- The Central Electricity Authority
 - A State Electricity Board
 - A State Transmission Utility
 - A Transmission licensee or distribution licensee under the Electricity Act,
- are exempted from GST.

Note:

Charges collected by a developer or a housing society for distribution of electricity within a residential complex Installation of gensets attract the GST.

Example : 159

The Resident Welfare Association (RWA) of Star Heaven Building Housing Society in Delhi provides the following information pertaining to amounts received by it in the month of Oct, 2017.

Particular	(₹)
Electricity charges levied by State Electricity Board on the members of RWA (The same was collected from members and remitted to the Board on behalf of members).	3,50,000
Electricity charges levied by State Electricity Board on the RWA in respect of electricity consumed for common use of lifts and lights in common area. (Bill was raised in the name of RWA. RWA collected the said charges by apportioning them equally among 100 families and then, remitted the same to the Board.)	4,00,000

Find the GST liability if any. The applicable rate of GST 18%.

Note:

The Gross receipts of RWA was ₹ 24,50,000.

Answer:

Statement showing GST liability for the month of Oct 2017

Particular	(₹)
Electricity charges levied by State Electricity Board on the members of RWA (i.e. Pure agent reimbursement expenses).	Nil
RWA collected Electricity charges by apportioning them equally among 100 families and then, remitted the same to the Board.	4,00,000
Value of taxable supply of service	4,00,000
CGST 9%	36,000
SGST 9%	36,000

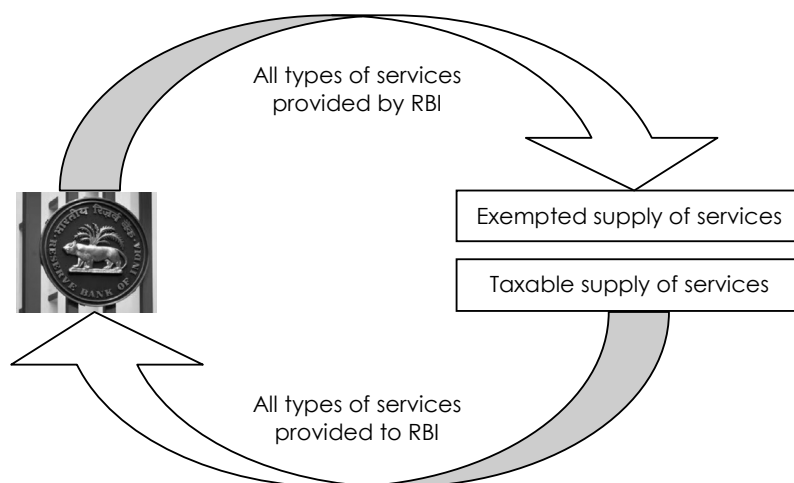
Note: it is assumed that electricity charges are not covered under monthly maintenance. However, monthly maintenance exempted from GST provided per month not exceeds ₹ 5,000 under entry no. 77.

Entry no. 26: Services by the Reserve Bank of India exempt from GST:

As per IGST Act, 2017: Services received by the Reserve Bank of India from outside India in relation to management of foreign exchange reserves also exempt from GST:

For examples:

- External asset management,
- custodial services,
- securities lending services etc.


Entry No. 27 Banking and NBFC's Services are exempted from GST:

Services by way of—

- extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services);
- sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers.

Example : 160

Robinson Bank Ltd. furnishes the following information relating to services provided and the gross amount received during the month of December 2017. Compute the value of taxable supply of services and GST payable:

Particulars	₹ in Lakhs
(i) Amount of commission received for debt collection service	10
(ii) Discount earned on bills discounted	4.5
(iii) Dealing in sale and purchase of forward contract	5.7
(iv) Charges received on credit card and debit card facilities extended	3.8
(v) Penal interest recovered from the customers for the delay in repayment of loan	2.6
(vi) Commission received for service rendered to Government for tax collection	6.0
(vii) Interest earned on reverse repo transaction	25.0

(Show the workings with explanation wherever required). (Rate of GST is 18%)

Answer:

Particulars	₹ in Lakhs
(i) Amount of commission received for debt collection service	10
(ii) Discount earned on bills discounted	nil
(iii) Dealing in sale and purchase of forward contract	nil
(iv) Charges received on credit card and debit card facilities extended	3.8
(v) Penal interest recovered from the customers for the delay in repayment of loan	2.60
(vi) Commission received for service rendered to Government for tax collection	6.0
(vii) Interest earned on reverse repo transaction	nil
Taxable supply of services	22.40
Total tax GST 18%	4.032

**Example : 161**

MP Bank Ltd., furnishes the following information relating to services provided and the gross amount received:

Particulars	₹ in Lakhs
Merchant Banking Services	8
Asset Management (including portfolio management)	3
Service charges for services to the Government of India	1.5
Interest on overdraft and cash credits	2
Banker to the issue	5
Locker rent	2

Repayment of financial lease made by the customer to the bank ₹80 lakhs which includes a principal amount of ₹50 lakhs.

Compute the value of taxable supply of services under "Banking and other financial services" as per the Central Goods and Services Tax Act, 2017 and also find the CGST and SGST where rate of GST is 9% each.

Note:

Input Tax Credit availed by the bank on the asset which is given on financial lease

Answer:

Statement showing GST liability of MP Bank Ltd

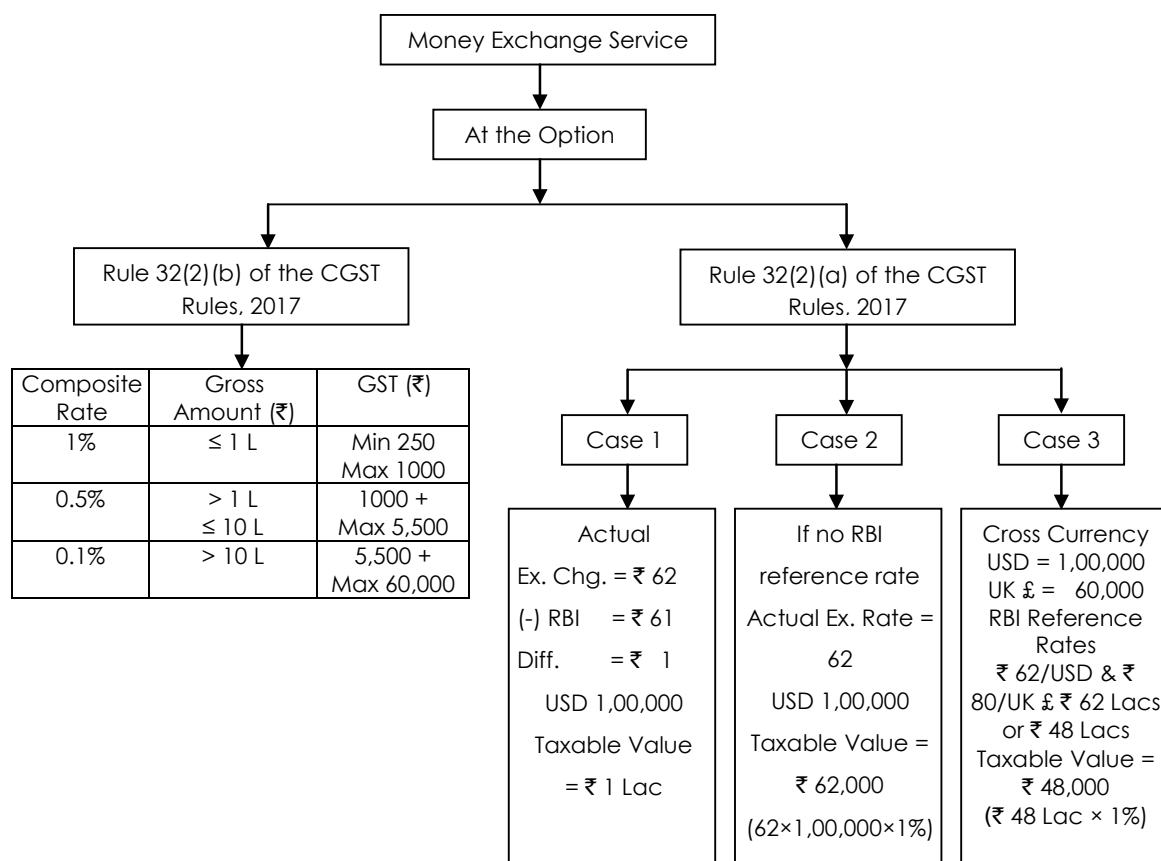
Particulars	₹ in Lakhs
Merchant banking services	8.00
Asset Management	3.00
Service charges for services to the Government of India	1.50
Interest on overdraft and cash credits	Nil
Banker to the issue	5.00
Locker rent	2.00
Financial lease (supply of service)	80.00
Taxable supply of services	99.50
CGST 9%	8.955
SGST 9%	8.955

Place of Supply of Banking and NBFC service including Stock broking services [Sec 12(12) of IGST]:

S. No.	Nature of service	Place of supply of service
1	Banking and NBFC service including Stock broking services	- Location of recipient of Service on the records of the supplier of service. Otherwise: - Location of supplier of service.

Services provided by a banking company, or financial company, or a NBFC to account holders (specified services) [Sec. 13(8) of the IGST Act, 2017]

Money exchange services – GST will be levied in case of supply of services to general public at large.


Example : 162

On 25th July 2017, Mr. X located in Chennai converted USD 100 into INR, actual exchange rate INR 62 per USD through Akbar Travel a money exchanger. RBI's reference rate for buying and selling was ₹ 61/61.5 respectively on such date. Akbar Travel registered under GST and located at Chennai.

(a) Find the Value of supply as per Rule 32(2)(a) of the CGST Rules, 2017 and GST where address of the recipient is available with Supplier?

(b) How much GST is liable to pay, in case where the RBI reference rate for a currency is not available.

Note:

Applicable rate of GST 18%.

Answer:

(a) The value of supply = $(62 - 61) \times 100 = \text{INR } 100$

Thus the value of taxable supply of Akbar Travel will be INR 100 and GST will be levied on this amount.

GST = ₹ 18/-

9% CGST = ₹ 9

9% SGST = ₹ 9

(b) The value of supply = ₹ 62 (i.e. 1% of INR 6,200)

GST = ₹ 11.16

9% CGST = ₹ 5.58

9% SGST = ₹ 5.58

Example : 163

Prince Financial Corporation located in Mumbai being a money exchanger provided the following service in the month of July 2017 to M/s Agarwal Bengaluru.

(a) US\$ 1,000 is changed into UK £ 571.4286 (i.e. 1UK POUND = US\$ 1.75).

(b) RBI reference rate for that currency at that time for 1US\$ is ₹ 61 and for 1UK POUND = ₹ 85

Find the GST liability as per Rule 32(2)(a) of the CGST Rules, 2017.

Applicable rate of GST 18%.

Answer:

Taxable supply = ₹ 486/- (₹ 48,571 x 1%)

IGST = ₹ 87.48 (i.e. @18% on ₹ 486)

USD 1000 x ₹ 61 = ₹ 61,000

UKP 571.4286 x ₹ 85 = ₹ 48,571

Whichever is less is ₹ 48,571

Example : 164

M/s. M Ltd., Mumbai is an authorised money changer. It has entered the following transactions (intra-state supplies) of money changing in the month of July 2017:

(i) 450 transactions of conversion of Dollar into Indian Rupees of ₹ 22,000 per transaction;

(ii) 125 transactions of conversion of Euro into Indian rupees of ₹ 500 lakhs per transaction;

Input Tax Credit on input services ₹ 3,00,000 (CGST ₹ 1,50,000 & SGST ₹ 1,50,000) and input goods ₹ 4,00,000 (CGST ₹ 2,00,000 & SGST ₹ 2,00,000) is available. ITC on capital goods is ₹ 2,50,000 (capital goods purchased in the current year as intra-state purchases). Find GST payable as per Rule 32(2)(b) of the CGST Rules, 2017.

Answer:

(i) Conversion of Dollar into Indian Rupees (₹ 22,000 x 1% = ₹ 220, whereas minimum is ₹ 250 per transaction).
450 transactions x ₹ 250 = ₹ 1,12,500.

(ii) Conversion of Euro into Indian rupees
(Upto ₹10 Lakhs = ₹ 5,500) + (₹ 490 lakhs x 0.1%) = ₹ 54,500
(Maximum is ₹ 60,000).
125 transactions x ₹ 54,500 = ₹ 68,12,500

Particulars	CGST	SGST	Total	Remarks
Output Tax	6,23,250	6,23,250	12,46,500	(1,12,500 + 68,12,500) x 18%
Less: ITC on				
Input service	(1,50,000)	(1,50,000)	(3,00,000)	
Inputs	(2,00,000)	(2,00,000)	(4,00,000)	
Capital Goods	(1,25,000)	(1,25,000)	(2,50,000)	
Net output tax c/f	1,48,250	1,48,250	2,96,500	



Entry No. 28

Services of life insurance business provided by way of annuity under the National Pension System regulated by the Pension Fund Regulatory and Development Authority of India under the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013).

Example : 165

Kotak Mahindra Pension Fund provided the following services in a financial institution:

(a) Annual Premium of ₹ 6,000 collected from each individual in relation to National Pension Scheme. No. of subscribers 200.

(b) Monthly premium collected ₹ 8,750 towards general insurance to cover risk. No. of subscribers 500.

Applicable rate of GST 18%.

Find the GST liability.

Answer:

(a) annual premium of ₹ 6,000 collected in relation to National Pension Scheme is exempted from GST.

(b) Monthly premium of ₹ 8,750 for 500 subscribers will attract GST @18%. Therefore, GST liability is ₹ 7,87,500 per month.

Entry No. 29

Services of life insurance business provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government exempt from GST.

Group Insurance means it covers a defined group of people, for example members of a professional association, or a society or employees of an organization. Group Insurance may offer life cover, health cover, and/or other types of personal insurance.

Group insurance has several advantages chief among which is a life cover made available to members irrespective of age, gender, socio economic background or profession, so long as they belong to the group that is applying for insurance.

Premium for these types of insurance is exempt from GST.

Entry No. 30:

Services by the Employees' State Insurance Corporation to persons governed under the Employees' State Insurance Act, 1948 (34 of 1948) exempt from GST.

Entry No. 31

Services provided by the Employees Provident Fund Organisation to the persons governed under the Employees Provident Funds and the Miscellaneous Provisions Act, 1952 (19 of 1952) exempt from GST.

Entry No. 32

Services provided by the Insurance Regulatory and Development Authority of India to insurers under the Insurance Regulatory and Development Authority of India Act, 1999 (41 of 1999) are exempted from GST.

Entry No. 33

Services provided by the Securities and Exchange Board of India set up under the Securities and Exchange Board of India Act, 1992 (15 of 1992) by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market are exempted from GST.

**Entry No.34**

Debit card, credit card or the payment card services where amount upto ₹ 2,000 exempted from GST:

Services by an acquiring bank, to any person in relation to settlement of an amount upto ₹ 2,000 in a single transaction transacted through credit card, debit card, charge card or other payment card service.

Explanation.— For the purposes of this entry, “acquiring bank” means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card.

S. No.	Mode of payment	Transaction Amount in ₹	Service Charges	GST 18%	Remarks
1	Debit card	1,000	5	Exempted	As per Entry No. 34 of NT No. 12/2017 Dt 28.06.2017 Central Tax (Rate)
2	Credit card	2,000	20	Exempted	-do-
3	Debit card/ Credit card	2,124	21.24	3.82	Value of goods ₹ 1,800 plus GST ₹ 324 together exceeds ₹ 2,000, hence GST will be levied.
4	Internet Banking	1,000	5	0.90	Service charges attract GST. Since, payment mode of payment other than card.
5	Bank charges		200	36	Fixed monthly /quarterly charges fully taxable.

Entry No. 35

Services of general insurance business are exempted from GST:

Services of general insurance business provided under following schemes –

- (a) Hut Insurance Scheme;
- (b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme);
- (c) Scheme for Insurance of Tribals;
- (d) Janata Personal Accident Policy and Gramin Accident Policy;
- (e) Group Personal Accident Policy for Self-Employed Women;
- (f) Agricultural Pumpset and Failed Well Insurance;
- (g) Premia collected on export credit insurance;
- (h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture;
- (i) Jan Arogya Bima Policy;
- (j) National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana);
- (k) Pilot Scheme on Seed Crop Insurance;
- (l) Central Sector Scheme on Cattle Insurance;
- (m) Universal Health Insurance Scheme;
- (n) Rashtriya Swasthya Bima Yojana;
- (o) Coconut Palm Insurance Scheme;
- (p) Pradhan Mantri Suraksha BimaYojna;
- (a) Niramaya Health Insurance Scheme implemented by the Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999).



Entry No. 36

Services of life insurance business provided under following schemes are exempted from GST:

- (a) Janashree Bima Yojana
- (b) Aam Aadmi Bima Yojana;
- (c) Life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of fifty thousand rupees;
- (d) Varishtha Pension Bima Yojana;
- (e) Pradhan Mantri Jeevan Jyoti Bima Yojana;
- (f) Pradhan Mantri Jan Dhan Yojana;
- (g) Pradhan Mantri Vaya Vandana Yojana

Entry No. 37

Services by way of collection of contribution under the Atal Pension Yojana is also exempt from GST

Entry No. 38

Services by way of collection of contribution under any pension scheme of the State Governments.

Entry No. 39

Services by the following persons in respective capacities are exempted from GST –

- (a) business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch;
- (b) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or
- (c) business facilitator or a business correspondent to an insurance company in a rural area.

Business facilitators or correspondent services are as follows:

- (a) Enrollment of customers, including collection of biometric and other details, provide card (ID Card, Debit Card, Credit Card), PIN.
- (b) Provide transaction facility:
 - (i) Deposit of money in an account with any bank
 - (ii) Withdrawal of money from an account with any bank
 - (iii) Remittances from an account with a bank to an account with the same or any other bank.
 - (iv) Balance Enquiry and issue Receipts/ Statement of Accounts.
- (c) Disbursal of credit facilities to borrowers involving small amounts strictly as per the instructions of the Bank.
- (d) Other activities:
 - i. Identification of borrowers and classification of activities as per their requirements.
 - ii. Collection and prima facie scrutiny of loan applications including verification of primary data.
 - iii. Creating awareness about savings and other products offered by the Bank and education and advice on managing money & debt counseling.



- iv. Preliminary scrutiny of data and submission of applications to the Bank for its review.
- v. Promotion, nurturing, monitoring and handholding of Self Help Groups and/or Joint Liability Groups and/or Credit Groups and others.
- vi. Facilitating the repayment of dues owed to the bank by its customers.
- vii. Marketing of third party financial products.

Recovery Agent Services to banking or NFBs - GST will be levied under RCM:

S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
8	Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company.	A recovery agent	A banking company or a financial institution or a non-banking financial company, located in the taxable territory	Recipient

Example : 166

Mr. X being a registered person under GST Law provided the following services in the month of Oct 2017:

- (a) Services provided to Gramena Bank located in rural area in the nature of Enrollment of customers and charge ₹ 20,000.**
- (b) Disbursal of credit facilities to borrowers involving small amounts strictly as per the instructions of the Bank locate in a village and collected ₹ 12,250.**
- (c) Facilitating the repayment of dues owed to the AB bank (Mylapore Branch, Chennai) by its customers and collected fee ₹ 55,000 from the bank.**
- (d) Recovery agent services to the LB Bank of India, Mount Road Branch, Chennai, for ₹ 2,20,500.**

Find the GST liable to pay by Mr. X. applicable rate of GST @18%.

Particulars	Value in ₹
Enrollment of customers in rural area bank	Exempted supply
Disbursal of credit facilities as per bank located in rural area	Exempted supply
Facilitating the repayment of loan to bank in urban area	55,000
Recovery agent services to the LB Bank of India	Reverse charge applicable
Total taxable supply	55,000
CGST 9%	4,950
SGST 9%	4,950

Entry No. 40

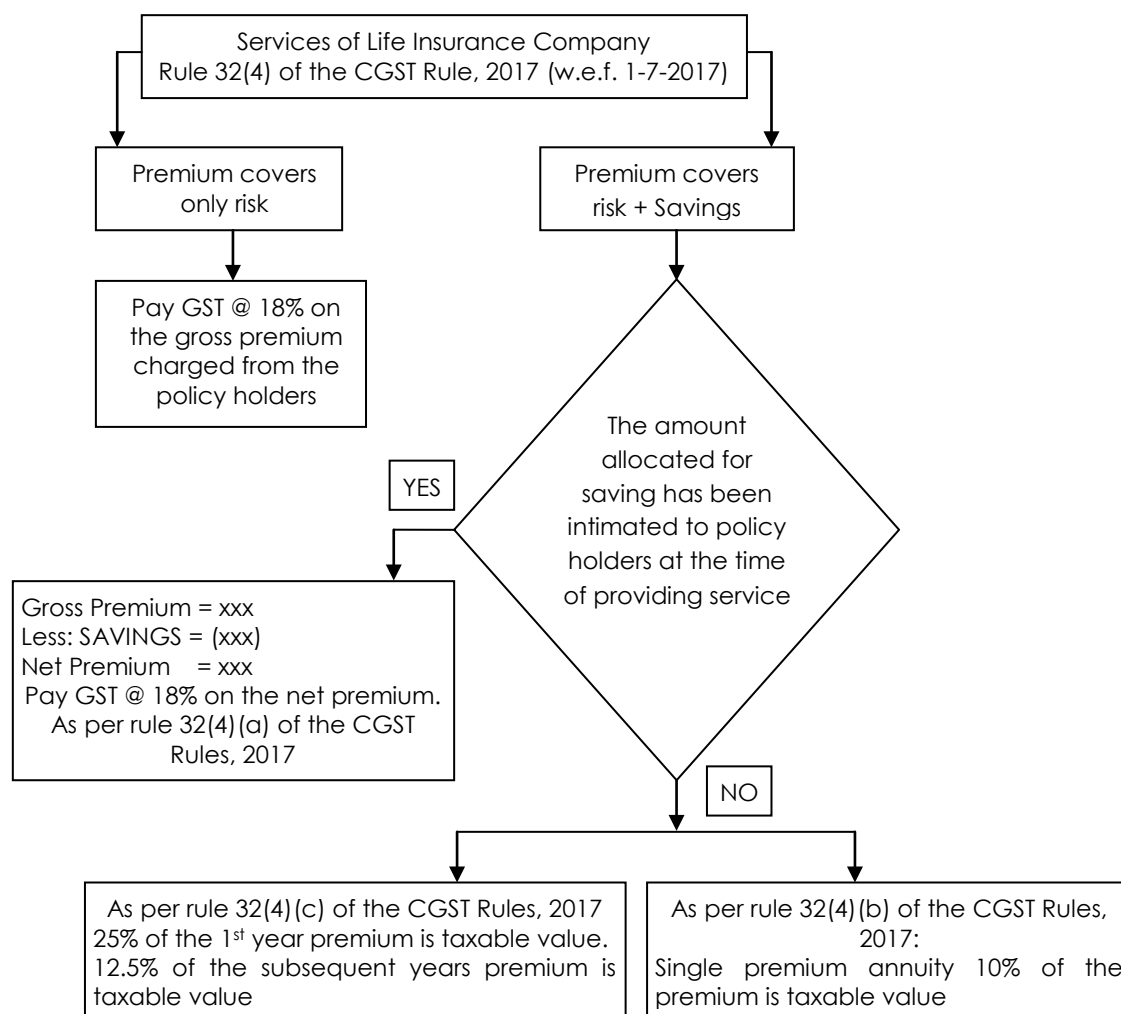
Services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory is exempted from GST.

For example: Granting monthly pensions to the aged over 65 years, those without subsistence income or family support, paid by the Central Government of India under the National Social Assistance Programme (NSAP). Pension amount to the Insurance companies exempt from GST.

All other insurance premiums collected by insurance companies are taxable supplies and GST will be levied.



w.e.f. 1-7-2017, Services of Life Insurance Company [Rule 32(4) of the CGST Rule, 2017] - taxable value of supply:



Example : 167

Arihant Life Insurance Company Ltd. (ALICL) has started its operations in the year 2017-18 (w.e.f. 1-7-2017). During the year 2017-18, Arihant Life Insurance Company Ltd. (ALICL) has charged gross premium of ₹ 180 lakh from policy holders with respect to life insurance policies; out of which ₹ 100 lakh have been allocated for investment on behalf of the policy holders.

Compute the GST liability of ALICL for the year 2017-18 under rule 32(4) of the CGST Rules, 2017

- (i) if the amount allocated for investment has been intimated by ALICL to policy holders at the time of providing service.**
- (ii) if the amount allocated for investment has not been intimated by ALICL to policy holders at the time of providing of service.**
- (iii) if the gross premium charged by ALICL from policy holders is only towards risk cover.**

Applicable rate of GST 18%.

Answer:

- (i) **GST liability of ALICL for the year 2017-18 will be computed as under:**
 $= ₹14.40 \text{ lakhs} (₹ (180-100) \text{ lakh} \times 18\%)$
- (ii) **25% of the 1st year premium is value of taxable supply. Thus, GST liability of ALICL for the year 2017-18, being first year of its operations, will be computed as under:**
Value of taxable supply = ₹ 180 lakh $\times$ 25% = ₹ 45 lakh
GST liability = ₹ 8.10 lakh (i.e. ₹ 45 lakh $\times$ 18%)
- (iii) **GST liability of ALICL for the year 2017-18 will be computed as under:**
 $= ₹ 32.40 \text{ lakh} (₹ 180 \text{ lakh} \times 18\%)$

Example : 168

LIC of India provides you the following information for the month of Oct 2017. You are required to compute GST payable by the company if the company has opted to pay GST as per Rule 32(4) of CGST Rules, 2017:

- (1) **General policies : Total premiums collected ₹12,000 lakhs (Out of which 1st year premium is ₹5,000 lakhs)**
 (2) **Only Risk Cover Policies : Premiums collected ₹500 lakhs.**
 (3) **Variable Insurance Policies: Premiums collected ₹8,000 lakhs. (80% of the amount is allocated for investments on behalf of policy holder for which policy holder is given separate break up in premium receipts).**

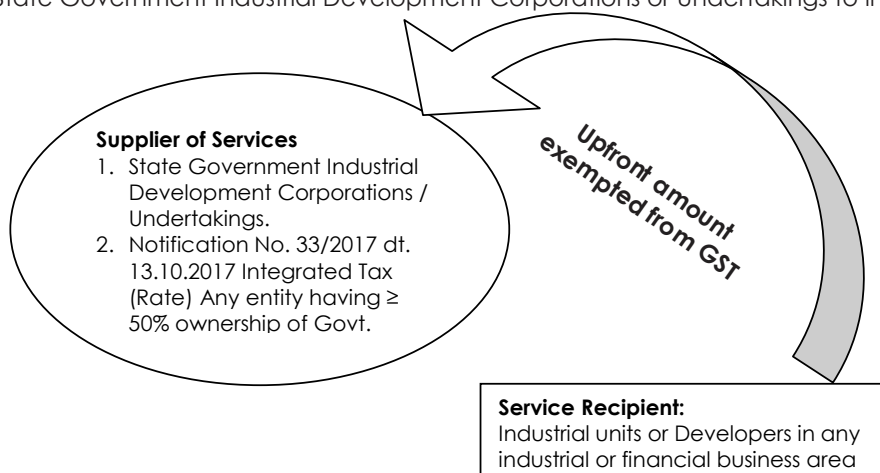
Answer:

Statement showing GST liability of LIC of India for the month of OCT 2017 under Rule 32(4) of the CGST Rules, 2017 :

Particulars	Value ₹ in lakhs	Working note
General policies		
1st Year premium	1,250	5,000 $\times$ 25%
2nd Year Premium	875	7,000 $\times$ 12.5%
Only Risk cover policies	500	
Variable insurance policies premium	1,600	(8,000 – 6,400)
Total taxable supply of service	4,225	
CGST 9%	380.25	(4,225 $\times$ 9%)
SGST 9%	380.25	(4,225 $\times$ 9%)

Entry No. 41**Upfront Fee in Long Term Lease exempted from GST:**

One time upfront amount (called as premium, salami, cost, price, development charges or by any other name) leviable in respect of the service, by way of granting long term (thirty years, or more) lease of industrial plots, provided by the State Government Industrial Development Corporations or Undertakings to industrial units.





Entry No. 42 already covered.

Services provided by the Central Government, State Government, Union territory or local authority by way of allowing a business entity to operate as a telecom service provider or use radio frequency spectrum during the period prior to the 1st April, 2016, on payment of licence fee or spectrum user charges, as the case may be.

Entry No. 43

Services of leasing of assets (rolling stock assets including wagons, coaches, locos) by the Indian Railways Finance Corporation to Indian Railways exempted from GST.

Entry No. 44

Services provided by an incubatee

Services provided by an incubatee up to a total turnover of ₹ 50 lakh in a financial year subject to the following conditions, namely:-

- (a) the total turnover had not exceeded fifty lakh rupees during the preceding financial year; and
 - (b) a period of three years has not elapsed from the date of entering into an agreement as an incubatee.
- are exempted from GST.

"INCUBATEE" means an entrepreneur located within the premises of a Technology Business Incubator (TBI) or Science and Technology Entrepreneurship Park (STEP) recognized by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Government of India and who has entered into an agreement with the TBI or the STEP to enable himself to develop and produce hi-tech and innovative products.

Example : 169

Cloud M Power Technologies Pvt. Ltd., is a business incubatee provided following taxable services in the financial year 2017-18 (after July 2017):

Cloud computing services	=	₹ 25,00,000
Mobile application services	=	₹ 20,00,000
Social networking and location aware applications	=	₹ 10,00,000

Note:

- (i) Previous year taxable services is ₹ 22,00,000.
- (ii) Service provider enter into an agreement with STEP in the year 2016-17.

Find GST liability of Cloud M Power Technologies Pvt. Ltd. for the financial year 2017-18. Assume applicable rate of GST 18%.

Answer:

Statement showing GST liability of Cloud M Power Technologies Pvt. Ltd for the year 2017-18:

Particulars	Taxable Services in (₹)	Remarks
Cloud computing services	Nil	Exempted up to ₹ 50 lakh
Mobile application services	Nil	-do-
Social networking and location aware applications	5,00,000	Over and above ₹ 50 Lakh is taxable in the financial year 2017-18
Taxable services	5,00,000	
CGST 9%	45,000	(5,00,000 x 9%)
SGST 9%	45,000	(5,00,000 x 9%)

Entry No. 45
Arbitral tribunal, Advocate or Senior Advocate services

Service Provider	Service Receiver	Taxable	Comments
Arbitral Tribunal	Any person Or Business entity with a turnover up to ₹ 20 lakh (₹10 lakh in case of special category states) in the P.Y.	No	All types of legal services are exempted
Arbitral Tribunal	Business entity with a turnover > ₹ 20 lakh (> ₹10 lakh in case of special category states) in the P.Y.	Yes. Business entity is liable to pay GST under reverse charge	All types of legal services like Advisory, consultancy, representational services before any court, tribunal or authority are taxable
Individual Advocate or Firm of Advocates (Other than a senior advocate), by way of legal services	An advocate or firm of advocates Or Other than a business entity Or Business entity with a turnover up to ₹ 20 lakh (₹ 10 lakh in the case of special category states) in the P.Y.	No	All types of legal services like Advisory, consultancy, representational services before any Court, Tribunal or Authority are exempted
Individual Advocate or Firm of Advocates	Business entity (includes sole proprietors firm) with a turnover > ₹ 20 lakh (> ₹ 10 in case of special category states) in the P.Y.	Yes. Business entity is liable to pay GST under Reverse Charge	All types of legal services like Advisory, consultancy, representational services before any Court, Tribunal or Authority are Taxable
Senior advocate by way of legal services	Other than a business entity Or Business entity with a turnover up to ₹ 20 lakh (₹ 10 lakh in the case of special category states) in the P.Y.	No	All types of legal services like Advisory, consultancy, representational services before any court, tribunal or authority are exempted
Senior advocate by way of legal services	Business entity (includes sole proprietors firm) with a turnover > ₹ 20 lakh (> ₹ 10 in case of special category states) in the P.Y.	Yes. Business entity is liable to pay GST under Reverse Charge	All types of legal services like Advisory, consultancy, representational services before any Court, Tribunal or Authority are Taxable

Summary:

Service provider	Recipient of service	Taxability	Who Is liable to pay GST
Arbitral Tribunal	Business entity P.Y. Turnover > ₹ 20 lakhs (> ₹ 10 lakhs in case of special category States)	Taxable supply	Recipient is liable to pay GST.
Advocates			
Senior Advocates			



Entry No. 46

Services by a veterinary clinic in relation to health care of animals or birds exempted from GST:

Example : 170

Good and Bad Pvt. Ltd. provided the bio-medical waste treatment facility to a veterinary clinic. Is it a taxable supply of service? If so, will GST be levied?

Answer:

It is taxable supply of service.

Scope of the exemption under entry 75 is restricted to services provided by operators of the common Bio-medical Waste Treatment Facility to a clinical establishment and not to veterinary clinic.

Entry No. 47 already covered.

Services provided by the Central Government, State Government, Union territory or local authority by way of-

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

Entry No. 48

Supply of services by a Technology Business Incubator exempted from GST

A “**business incubator**” is a company that helps new and startup companies to develop by providing services such as management training or office space or equipment’s or some time monitory assistance and capital.

Taxable services, provided or to be provided, by

- a Technology Business Incubator or
- a Science and Technology Entrepreneurship Park recognised by the National Science and Technology Entrepreneurship Development Board of the Department of Science and Technology, Government of India or
- bio incubators recognised by the Biotechnology Industry Research Assistance Council, under the Department of Biotechnology, Government of India.

are exempted from GST.

Example : 171

Technopark Technology Business Incubator (T-TBI), provided the following taxable services in the financial year 2017-18 (on or after 1-7-2017):

- Entrepreneurship Awareness Camps to a Business incubatee for ₹ 20 lakh.**
- Commercial space provided to AB Ltd. a non-incubatee for ₹ 2 lakh.**

Find GST liability of Technopark Technology Business Incubator?

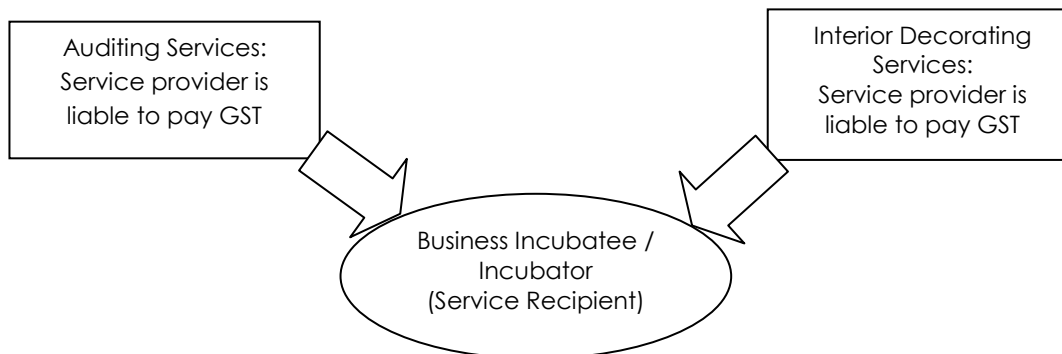
Answer:

Statement showing GST liability of Technopark Technology Business Incubator

Particulars	Taxable services in (₹)	Remarks
Entrepreneurship Awareness Camps to a Business incubatee.	Nil	Exempted service.

Commercial space provided to AB Ltd. a non-incubatee	Nil	Exempted service
Taxable supply of services	Nil	

Services provided to Business incubatee / Incubator presently not exempted from GST:



Entry No. 49

Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India exempted from GST:

Entry No. 50

Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material exempted from GST.

Entry No. 51

Services provided by the Goods and Services Tax Network to the Central Government or State Governments or Union territories for implementation of Goods and Services Tax exempted from GST.

Entry No. 52

Services by an organiser to any person in respect of a business exhibition held outside India exempted from GST

Place of supply of service:

Place of supply of services provided by way of organization of a [Sec. 12(7) of IGST Act, 2017]:

S. No.	Nature of service (Section 12(7) of IGST Act, 2017)	Place of supply of service
1	Cultural	Services ancillary thereto or assigning of sponsorship to such events. Provided to a registered person: • Location of recipient of Service Provided to an un-registered person: • Location where the event is actually held and • if the event is held outside India, the place of supply shall be the location of the recipient.
2	Artistic	
3	Sporting	
4	Scientific	
5	Educational	
6	Entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events	

Place of supply of services supplied by way of admission to, or organization of [Sec 13(5) of IGST Act]:



Nature of service (Section 13(5) of IGST)	Place of supply of service
• Cultural • Artistic • Sporting • Scientific • Educational • Entertainment event • Celebration • Conference • Fair • Exhibition • Similar events and • Services ancillary to such admission or organisation	Where event is actually held.

Example : 172

Mr. X an event organiser, located in Chennai received an order from M/s Lesley publications, Mumbai to conduct a book fair at Chennai. Find the Place of supply of service and GST in the following two cases:

Case 1: Lesley publications is a registered person.

Case 2: Lesley publications is a un-registered person.

Answer:

Case 1: Mumbai (i.e. location of recipient of service)

Mr. X of Chennai is liable to pay IGST.

Case 2: Chennai (i.e. location where the event is actually held)

Mr. X of Chennai is liable to pay CGST & SGST.

Example : 173

Mr. D of Delhi being an event organizer hosted an exhibition at Mumbai to exhibit the products of exhibitor namely, Chennai Silks, Chennai, a registered person.

Answer:

POS = Chennai (i.e. location of service recipient).

IGST is liable to pay by Mr. D of Delhi

Example : 174

Mr. C of Chennai being an event organizer hosted an exhibition at Dhaka to exhibit the products of exhibitor (namely Chennai Silks) located Chennai.

Answer:

POS = Chennai (i.e. location of service recipient)

GST is not liable to pay by Mr. C.

Note: Services by an organiser to any person in respect of a business exhibition held outside India is exempted from GST (vide Entry No. 52).



Example : 175

Mr. Roy a Jalandhar based comedian hosted a comedy show at Singapore with help of event organizer located in Dubai.

Answer:

POS = Singapore.

GST will not be levied.

Example : 176

Mr. D of Delhi being an event organizer hosted an exhibition at Mumbai to exhibit the products of exhibitor (namely M/s S Silks Ltd. of Singapore).

Answer:

POS = Mumbai

IGST is liable to pay by Mr. D of Delhi

Entry No. 53:

Services by way of sponsorship of sporting events organised,-

- (a) by a national sports federation,
 - (b) by Association of Indian Universities, Inter-university Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
 - (c) by Central Civil Services Cultural and Sports Board;
 - (d) as part of national games, by Indian Olympic Association; or
 - (e) under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme;
- are exempted from GST.

Entry No. 81

Services by way of right to admission to-

- (a) circus, dance, or theatrical performance including drama or ballet;
- (b) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event;
- (c) recognised sporting event,

where the consideration for admission is not more than ₹ 250 per person as referred to in (a), (b) and (c) above.

Example : 177

M/s DLF Ltd., sponsored ₹ 20 lakhs in respect of a Tournament organized by Board of Council for Cricket in India (BCCI).

(a) Is it taxable supply of service?

(b) If so who is liable to pay GST?

Answer:

(a) Yes, the given service is taxable supply of service.

(b) M/s DLF Ltd., is liable to pay GST under reverse charge being a recipient of such sponsorship services from BCCI.

Note: *BCCI is not a National Sports Federation.*



Example : 178

BCCI conducted a tournament in the month of October 2017, in India (i.e. India vs. Australia) by selling tickets in the following denominations:

- a) 1,00,000 tickets @ 195 per ticket**
- b) 10,000 tickets @ 350 per ticket.**

Find the GST if any?

Answer:

(a) Where the consideration for admission is not more than ₹ 250 per person is exempted from GST.

(b) GST liability is as follows:

₹ 350 x 10,000 tickets = ₹ 35,00,000

CGST @14% = ₹ 4,90,000

SGST @14% = ₹ 4,90,000

Note:

(1) Entry fee per person per ticket exceeding ₹ 250 fully taxable.

(2) Admission to all sports events organized by recognized sports federations were to attract 28% GST

Entry No. 54

Agriculture activities exempted from GST

The following are exempted :

- Cultivation, harvesting,
- Commission on sale of Agricultural Produce
- All types of testing activities which are directly related to production of any agricultural produce
- Supply of farm labour
- Trimming, sorting etc., thereby marketable in the primary market
- Renting of agro machinery
- Loading, unloading, packing, storage and warehousing of agricultural produce
- Agricultural extension services
- Services by any agricultural produce marketing committee

Entry No. 55

Carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce also exempt from GST.

Agriculture or Agricultural Produce includes the following exempt from GST

Breeding of Fish

Rearing of Silk Worms

Cultivation of Ornamental Flowers

Horticulture Forestry

Poultry Farm

Plantation Crops like rubber, tea or coffee also covered under agricultural produce exempt from GST

Plantation of Rubber

Tea Plantation

Plantation of Coffee

Cleaning of wheat carried out outside the farm covered under Exemption. Hence, no GST

Shelling of paddy carried out outside the firm not covered under exemptions list

However, if shelling is done by way of a service (i.e., on job work) then the same would be covered under the exemption relating to "carrying out of intermediate production process as job work in relation to agriculture". Since, covered under entry 55 exempted from GST

Example : 179

Mark Agro Products Ltd., furnishes the following details of various services provided by it in the month of August, 2017:

S. No.	Particulars	Amount (₹)
1	Rearing of Silkworm and horticulture	2,50,000
2	Plantation of tea and coffee	2,00,000
3	Renting of vacant land for performing marriage ceremony	4,50,000
4	Sale of wheat on commission basis	50,000
5	Sale of rice on commission basis	2,00,000

Compute the value of taxable supply of services and the GST liability to Mark Agro Products Ltd. for the month of August 2017. Assume rate of GST 18%.

Answer:

S. No.	Particulars	Amount (₹)
1	Rearing of Silkworm and horticulture	Exempted Supply
2	Plantation of tea and coffee	Exempted Supply
3	Renting of vacant land for performing marriage ceremony	4,50,000
4	Sale of wheat on commission basis	Exempted Supply
5	Sale of rice on commission basis	2,00,000
	Taxable Supply	6,50,000
	GST 18% of ₹ 6,50,000	1,17,000

Example : 180

From the following information find GST liability of M/s A. Ltd. for the month of October 2017:

Particulars	₹ in Lakh
(i) Renting of Agro-machinery	5.0
(ii) Cultivation of Ornamental flowers	2.5
(iii) Processing of Tomato Ketchup under the brand name of Y Ltd.	3.0
(iv) Plantation of Rubber	3.5
(v) Processing of Potato chips on jobwork basis	1.5



Assume applicable CGST 2.5% & SGST 2.5%.

Answer:

Statement Showing GST Liability of M/s A. Ltd. for the month fo October 2017:

Particulars	₹ in Lakh
(i) Renting of Agro-machinery	Exempted supply of Service
(ii) Cultivation of Ornamental flowers	Exempted supply of Service
(iii) Processing of Tomato Ketchup under the brand name of Y Ltd.	3.0
(iv) Plantation of Rubber	Exempted supply of Service
(v) Processing of Potato chips on jobwork basis	1.5
Taxable supply of service	4.50
CGST 2.5%	0.1125
SGST 2.5%	0.1125

Entry No. 56

Services by way of slaughtering of animals are exempt from GST

Services by way slaughtering services exempted from GST

Services by way of slaughtering of all animals are exempted from GST

Example : 181

Validate the following:

- (1) State Government grant fresh license to slaughterhouses by charging fee of ₹ 12,000. It is taxable supply of service and GST will be levied.
- (2) Meat shops selling meat is taxable supply of goods and GST will be levied.

Answer:

- (1) The given statement is invalid:

It is exempted supply of service under entry no. 4, notification no. 12/2017-Central Tax (Rate) dt.28-06-2017 and hence, GST will not be levied.

- (2) The given statement is invalid:

It is exempted supply of goods under Notification No. 2/2017-Central Tax (Rate) Dt. 28-06-2017 and hence, GST will not be levied.

Entry No. 57

Services by way of pre-conditioning, precooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables.

Services by way of Pre-conditionig, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or later the essential characteristics of the said fruits or vegetables are exempted from GST.

Entry No. 58

Services provided by the National Centre for Cold Chain Development under the Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination exempted from GST

**Entry No. 59**

Services by a foreign diplomatic mission located in India are exempt from GST

Entry No. 60

Services by a specified organisation in respect of a religious pilgrimage facilitated by the Ministry of External Affairs, the Government of India, under bilateral arrangement are exempted from GST

To claim exemption from GST the following conditions should be satisfied:

1. Services shall be provided by specified organizations.
 - (a) Committee or State Committee as defined in Section 2 of the Haj Committee Act, 2002 (OR)
 - (b) Kumaon Mandal Vikas Nigam Limited a Government of Uttarakhand Undertaking; or
2. The service shall be in respect of a religious pilgrimage.
3. Religious pilgrimage shall be facilitated by Ministry of External Affairs of the Government of India, under bilateral arrangement.

Entry No. 61 Already covered

Entry No. 62 Already covered

Entry No. 63 Already covered

[under the heading 'list of services which are specifically exempted']

Entry No. 64 Already covered

Entry No. 65 Already covered

Entry No. 66

Services provided by Educational Institution or to Educational Institution

(a) Services provided by educational institution to its students, faculty and staff. "educational institution" means an institution providing 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 recognized by any law for the time being in force; (iii) education as a part of an approved vocational education course.	All the services are Exempted from GST
(b) Services provided to an educational institution, by way of,- i. Transportation of students, faculty and staff ii. Catering, including any mid-day meals scheme sponsored by the Government; iii. Security or clearing or house-keeping services performed in such educational institution; iv. Services relating to admission to, or conduct of examination by, such institution. "Educational institution" means an institution providing services by way of: (i) pre-school education and education up to higher secondary school or equivalent. Thus, institutions other than above will not be entitled to claim exemption.	Exempted from GST.



Example : 182

Transport facility provided by a school to its students through a fleet of buses and cabs owned by the School.

Answer:

Exempted supply of service. GST will not be levied.

Example : 183

Transport facility provided by a school to its students through a private Bus/Cabs Operator.

Answer:

Exempted supply of service. GST will not be levied.

Example : 184

Service provided by a private transport operator to a school in relation to transportation of students to and from a school.

Answer:

Exempted supply of service. GST will not be levied.

Example : 185

Service provided by a School in relation to a tour to its students and staff.

Answer:

Exempted supply of service. GST will not be levied.

Example : 186

Service provided by a private transport operator to a school in relation to a tour and travel services of students and staff.

Answer:

Taxable Supply. GST will be levied

Example : 187

Mr. C a practicing CMA provided services to the Institute of Cost Accountants of India by way of teaching to Students.

Answer:

Taxable supply.

Example : 188

Restaurant services provided to the students of the Institute of Cost Accountants of India (ICAI), which is accessible by the others also. Is it taxable service?

Answer:

Taxable supply.

Example : 189

Security services provided by a Safety and Security Bureau in Chennai, to the ICAI New Delhi for four months. Monthly charges ₹ 1,200. Is it taxable supply of service? Applicable GST 18%. Find the GST liability.

Answer:

This given activity is a taxable supply of service. Security Bureau is liable to pay GST .

IGST liability = ₹ 864

(₹ 1,200 pm x 4 months) x 18%


Example : 190

Campus Interviews conducted by the Institute of Cost Accountants of India, by collecting entry fee from the corporate houses. Is it taxable supply of service under GST?

Answer:

Yes. It is taxable supply of service

Example : 191

Hr. Sec. School provided auditorium hall on rent to Guidelines Academy in Chennai. Monthly charges ₹ 1,21,200 through out the year (w.e.f 1-7-2017). Is it taxable supply of service? Applicable GST 18%. Find the GST liability.

Answer:

This given activity is a taxable supply of service. Hr. Sec. School is liable to pay GST .

GST liability = ₹ 1,96,344

(₹1,21,200 pm x 9 months) x 18%

Entry No. 67

Service supplied by Indian Institute of Management (IIM's) are exempted from GST

Services provided by the Indian Institutes of Management, as per the guidelines of the Central Government, to their students, by way of the following educational programmes, except Executive Development Programme, -

- Two year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT), conducted by Indian Institute of Management;
- Fellow programme in Management
- Five year integrated programme in Management.

Example : 192

Indian Institute of Management, Ahmedabad provided the following services in the month of July 2017:

- Post Graduate Diploma in Management services provided to those candidates who selected through Common Admission Test (CAT) for ₹ 25 lakhs.**
- Services provided by way of Executive Development Programme ₹ 55 lakhs.**

Find the GST liability if rate of GST is 18%?

Answer:

(a) Post Graduate Diploma in Management where admission to such programme is through Common Admission Test (CAT) is exempted supply of service. Exempted from GST.

(b) Executive Development Programme is taxable supply. GST is ₹ 9.9 lakh (₹ 55 lakh x 18%)

Entry No. 68

Recognised sport body exempted from GST

Services provided to a recognised sports body by-

- an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognised sports body;
- Another recognised sports body;



Recognised sports body means,-

- (i) The Indian Olympic Association
- (ii) Sports Authority of India.
- (iii) A national sports federation recognised by the Ministry of Sports and Youth Affairs of the Central Government, and its affiliated federations.
- (iv) National sports promotion organizations recognised by the Ministry of Sports and Youth Affairs of the Central Government.
- (v) The International Olympic Association or a federation recognised by the International Olympic Association
- (vi) A federation or a body which regulates a sport at international level and its affiliated federations or bodies regulating a sport in India.

Sports players participated in IPL tournament or acting as brand ambassador, or appear in T.V. Commercial advertisements are fully taxable under GST.

Example : 193

Mr. M.S. Dhoni provided services to Chennai Super Kings (a franchisee) in a premier league. Is it taxable service?

Answer:

Yes, it is taxable in the hands of Mr. M.S. Dhoni.

Since, the service of a player to a franchisee which is not a recognized sport body.

Example : 194

Mr. Krishnamachari Srinivasan provided services as umpire in a premier league (IPL). Is this service taxable?

Answer:

No. the given service is exempt from GST.

Since, services of an individual as umpire, provided directly to a recognized sport body (BCCI) shall be exempt.

Entry No. 69

NSDC exempted from GST

Any services provided by NSDC:

- Any services provided by
- (i) The National Skill Development Corporation set up by the Government of India;
 - (ii) A Sector Skill Council approved by the National Skill Development Corporation;
 - (iii) An assessment agency approved by the Sector Skill Council or the National Skill Development Corporation;
 - (iv) A training partner approved by the National Skill Development Corporation or the Sector Skill Council

in relation to

- (a) The National Skill Development Programme implemented by the National Skill Development Corporation; or
 - (b) A vocational skill development course under the national Skill Certification and Monetary Reward Scheme; or
 - (c) Any other Scheme implemented by the National Skill Development Corporation.
- are exempted from GST**

Entry No. 70

Services of assessing bodies empanelled centrally by the Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under the Skill Development Initiative Scheme.

This exemption has been provided to assessing bodies who are empanelled by Directorate General of Training and the entrepreneurship by way of assessments under Skill Development Scheme.

Example : 195

Industrial and Technical Consultancy Organisation of Tamilnadu Limited (ITCOT) is accredited for conducting assessment for Modular Employable Skills (MES) courses under SDI scheme.

Following services provided in the month of Oct 2017:

- 1. Skill development services for ₹ 20 lakhs;**
- 2. Skill Assessment examination and certification under SDI for ₹ 25 lakhs;**
- 3. Feasibility reports to various industries for ₹ 60 lakhs.**

Find the GST liability?

Note:

- (i) ITCOT is a registered person under GST Law.**
- (ii) Assume GST applicable @ 18%.**

Answer:

Statement showing GST liability

Particulars	Value ₹ (lakhs)	Remarks
Skill development services	20	Taxable supply of service
Skill Assessment examination and certification	Nil	Exempted supply of service
Feasibility reports to various industries	60	Taxable supply of services
Total taxable services	80	
GST 18%	14.40	

Entry No. 71**Deen Dayal Upadhyaya Grameen Kaushalya Yojana exempted from GST****Exemption to certain training providers**

Services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana under the Ministry of Rural Development by way of offering skill or vocational training courses certified by National Council For Vocational Training.

The exemption is provided subject to the following conditions:

- a) Project implementing agency under Deen Dayal Upadhyaya Grameen Kaushalya Yojana under Ministry of Rural Development
- b) The services shall be in the nature of skill or vocational training courses certified by National Council for Vocational Training

The service provider may be Government Agency or any private agency but he should provide the services as mentioned above.

Entry No. 72

Services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union territory administration.

Validate the following Statement:

The Government of Tamil Nadu granted the aid of ₹ 20 lakh to Nicolas Educational and Research Institute for providing training in Automotive Service Technician (two and three wheelers) for the year 2017-18 under the Pradhan Mantri Kaushal Vikas Yojana is taxable supply of service under GST.



Answer:

The given statement is invalid. It is exempted supply of service, since, covered under Entry No. 72, NT 12/2017 Central Tax (Rate) with nil rate of tax.

Entry No. 73

Cord Blood Bank exempted from GST

Specified services provided by Cord Blood Banks have been exempted from levy.

"Services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation".

Entry No. 74

Health care services exempted from GST

Health Care Services

Exempted Services	Taxable Services
Services in recognized systems of medicines in India are exempt. Nursing staff, physiotherapists, technicians, lab assistants, 108 services etc. w.e.f. 1-4-2015 Ambulance services provided by an entity which is not a clinical establishment or an authorised medical practitioner or paramedics would also be exempt from GST.	Hair transplant or cosmetic or plastic surgery, except when undertaken due to congenital defects, developmental abnormalities, injury.

As per Section 2(h) of the Clinical Establishments Act, 2010 the following systems of medicine are recognized systems of medicines:

1. Allopathy
2. Yoga
3. Naturopathy
4. Ayurveda
5. Homoeopathy
6. Siddha
7. Unani
8. Any other system of medicine that may be recognized by the Central Government.

Diagnosis, treatment or care provided in these systems of medicines in India are excluded from the purview of taxability.

Pranic healing treatment: taxable supply of services

Acupressure treatment: taxable supply of services

Acupuncture treatment: taxable supply of services

Reiki treatment: taxable supply of services

Reiki is an ancient Eastern healing method that uses energy to balance the mind, body and spirit. Reiki is one of the oldest healing systems in use today.

Colour therapy : taxable supply of services

Entry No. 75

Bio-medical wastage treatment facility exempted from GST

Services provided by operators of the common Bio-medical Waste Treatment Facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto exempt from GST.

**Example : 196**

Synergy Waste Management (P) Ltd. provided following services to Apollo Hospitals Chennai during the month of Oct 2017:

- (i) Collection, transportation, Treatment & Disposal of Bio-Medical Waste for ₹ 5,25,000.
- (ii) Training on Segregation of Bio-Medical Waste to Hospital Staff to further increase efficiency of Bio-Medical Waste Management Services for ₹1,25,000.
- (iii) Laundry services for ₹ 50,000.
- (iv) Common Bio-medical Waste Treatment Facility services provided to Arvind pharma company during Oct 2017 for ₹ 2,00,000.

Find the GST liability for the month of OCT 2017?

Answer:

Statement showing GST liability of Synergy Waste Management (P) Ltd.

Particulars	Value in ₹	Remarks
Collection, transportation, Treatment & Disposal of Bio-Medical Waste	Nil	Exempted supply of service
Training on Segregation of Bio-Medical Waste	Nil	Exempted supply of service
Laundry services	50,000	Taxable service
Common Bio-medical Waste Treatment Facility services provided to Arvind pharma company.	2,00,000	Taxable service. Since, exemption is given to a clinical establishment by way of treatment or disposal of bio-medical waste
Total taxable supply of service	2,50,000	
GST 18%	45,000	

Example : 197

Validate the following statement:

Hospital charging room rent per day per room is ₹ 1,200 on rooms provided to in-patients. It is exempted supply of service.

Answer:

The given statement is valid. it is treated as health care service and hence "room rent in hospitals is exempt".

Example : 198

Kamakshi charitable trusts running a hospital by hiring visiting doctors/ specialists.

Medical services to patients at a concessional rate charged by hospital for ₹ 2,25,500 from patients and paid to visiting doctors/specialists ₹ 2,00,000.

Find the following:

- (a) Exempted supply if any.
- (b) GST liability if any.

Applicable rate of GST 18%.

Answer:

(a) Fee collected from Patients ₹ 2,25,500 is exempted from GST.

(b) Hospital is liable to pay GST on such amount (i.e. ₹ 25,500) deducted from fees paid to doctors. GST payable is ₹ 4,590



Entry No. 76

Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets; are exempted from GST

Entry No. 77

Service by an unincorporated body or a non- profit entity

Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution -

- (a) as a trade union;
- (b) for the provision of carrying out any activity which is exempt from the levy of GST; or
- (c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;

are exempted from GST.

Example : 199

Green Tree society provided following services in the month of Oct 2017:

- (i) Banquet hall provided to a Member of the society on hire for the purpose of celebrating his son birthday party for ₹ 25,000.
- (ii) Payment of electricity bill issued by third person, in the name of its members; collected ₹ 1,10,000 from its members and paid to electricity department ₹1,00,000.
- (iii) contribution per month per member is ₹ 5,500 for 20 members and ₹ 2,500 for 30 members has been received in the Oct 2017.

Find the tax liability of the Green Tree Society for the month of Oct 2017.

Answer:

Statement showing GST liability of Green Tree society for the month of Oct 2017:

Particulars	Amount (₹)	Remarks
Banquet hall rent	25,000	Taxable service
Service charges	10,000	Taxable service
Maintenance charges	1,10,000	5,500 x 20
Total taxable value of supply of services	1,45,000	
GST @18%	26,100	

Entry 78

Artist exempted from GST

Services by an artist by way of aperformance in folk or classical art forms of-

- (a) music, or
- (b) dance, or
- (c) theatre,

if the consideration charged for suchperformance is not more than ₹ 1,50,000:

Provided that the exemption shallnot apply to service provided by suchartist as a brand ambassador.

The following artists are exempted from GST if consideration not exceeds ₹ 1,50,000 for such performance:

**Example : 200**

Mr. Navab, a performing artist, provides the following information relating to August, 2017.

Receipts from:

	₹
Performing classical dance	98,000
Performing in television serial	2,80,000
Services as brand ambassador	12,00,000
Coaching in recreational activities relating to arts	2,10,000
Activities in sculpture making	3,10,000
Performing western dance	90,000

Determine the value of taxable supply of services and GST payable by Mr. Navab for August, 2017. GST @ 18%.

Answer:

Receipts from	Value in ₹	Remarks
Classical dance	Nil	Exempt as receipt is less than or equal to ₹ 1,50,000
Performing in television serial	2,80,000	
Brand ambassador	12,00,000	
Coaching in recreational activities in relation to arts	Nil	
sculpture making	3,10,000	
Western dance	90,000	
Value of taxable supply of service	18,80,000	
GST 18%	3,38,400	

Entry No. 79

Admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo exempted:

Admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo exempted:

Entry No. 80 already covered

Entry No. 81

Admission to entertainment exempted from GST

Services by way of right to admission to-

- circus, dance, or theatrical performance including drama or ballet;
- award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event;
- recognised sporting event,

where the consideration for admission is not more than ₹ 250 per person as referred to in (a), (b) and (c) above.

Exempted from GST:

Admission to award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event, where the consideration for admission is not more than 250 per person.

Admission to recognized sporting events exempt from GST provided fee is less than or equal to ₹ 250 per person.

Recognized sporting event means:

- Organized by a recognized sports body where the participating team or individual represent any district, state zone or country;
- Recognised sport body means refer Entry No. 68.

Example : 201

Admission to IPL is ₹ 195 and entertainment tax ₹ 25. Whether this is activity exempt from GST?

Answer:

Exempted supply of service. Since, transaction value ₹ 220 (i.e ₹ 195 plus ₹ 25) not exceeds ₹ 250 per ticket.

Admission to fashion show : Attract GST

Since, this activity is specifically not exempted from any exemption Notification.

Apart from above, list of services exempt from IGST by Notification No. 9/2017-Integrated Tax (Rate) Dated 28th June 2017 also include following three services.

(1) Services received from a provider of service located in a non- taxable territory by –

- the Central Government, State Government, Union territory, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;
- an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or
- a person located in a non-taxable territory:

Provided that the exemption shall not apply to –

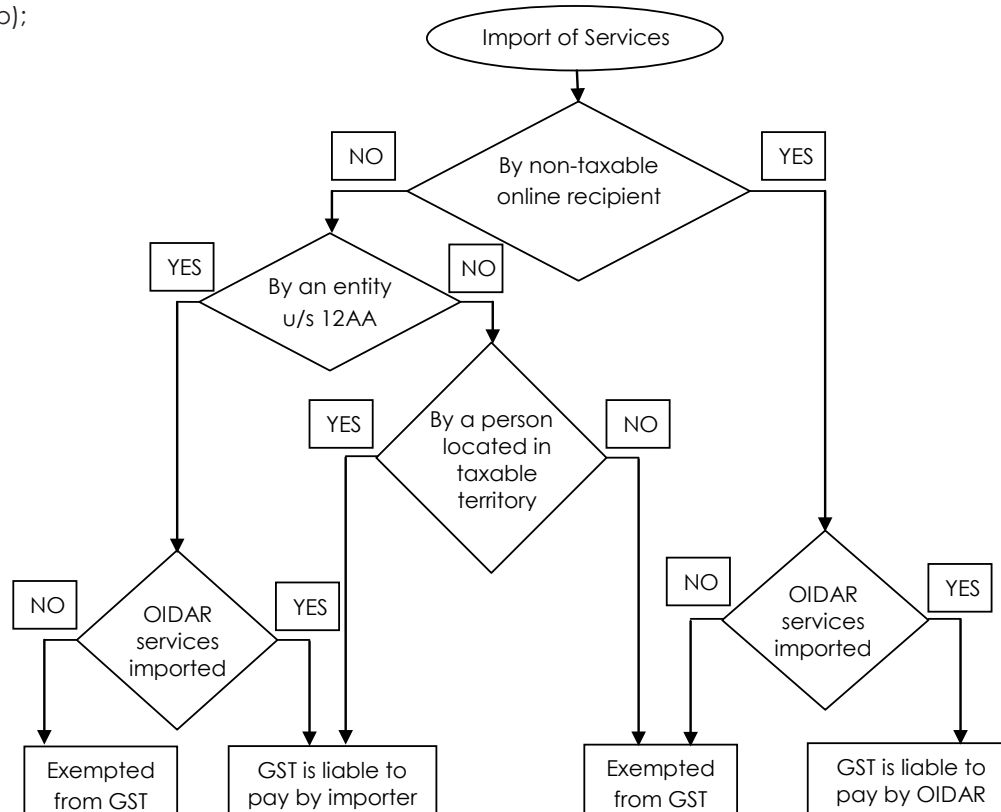
- online information and database access or retrieval services received by persons specified in entry (a) or entry (b); or
- services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry.

it means item no. (i) and (ii) are taxable.

Summary:

Provided that the exemption shall not apply to –

- online information and database access or retrieval services received by persons specified in entry (a) or entry (b);





Or

Provided that the exemption shall not apply to –

- (ii) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry.

However, if the following goods are imported into India by vessel are falling are exempted from payment of IGST:-

- (a) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
- (b) defence or military equipments;
- (c) newspaper or magazines registered with the Registrar of Newspapers;
- (d) railway equipments or materials;
- (e) agricultural produce;
- (f) milk, salt and food grain including flours, pulses and rice; and
- (g) organic manure.

Person liable to pay GST has been prescribed in relation to service of transportation of goods by a vessel – IMPORTER:

The person liable for paying GST in relation to services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India is the importer (as defined u/s 2(26) of the Customs Act, 1962).

Thus, the importer will be liable to pay tax (under Reverse Charge), and accordingly now, he can take ITC on the basis of challan against payment of GST.

Where the value of taxable service provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India is not available with the person liable for paying integrated tax, the same shall be deemed to be 10% of the CIF value (sum of cost, insurance and freight) of imported goods." [Vide IGST Tax (Rate) Notification No 8/2017 dated 28-Jun-2017 read with Corrigendum dated 30-Jun-2017].

Accordingly tax liability under GST Regime w.e.f 01 Jul 2017:

- GST on Ocean Freight is @ 5% under Reverse Charge Mechanism (RCM).
- If freight is not known then GST would be 5% on 10% of CIF value of goods. Hence tax applicability would be 0.5% on CIF value of goods.
- GST on Air Freight is @ 0%
- GST on all Destination Charges (i.e., Domestic Transportation till Consignee/Buyer's place) in India is @18%.

Place of supply of goods in case of cross border transactions:

Place of provision of a service of transportation of goods, other than by way of mail or courier Sec. 13(9) of IGST:

Place of supply of Service = Destination of such Goods

Example : 202

M/s Ram Ltd. of Chennai being importer furnished the following information:

(i) CIF price of imported goods from Indonesia: USD1,00,000.

(ii) Submitted the Bill of entry on 15.07.2017.

(iii) Rate of exchange is ₹ 65 per USD.

Note: the exact amount of freight paid by the foreign exporter to the foreign shipping line is not known. You are required to answer:

(a) Value of taxable supply

(b) Who is liable to pay GST

(c) Total tax liability



Answer:		
Particulars	Value in ₹	Remarks
CIF value of import	65,00,000	(1,00,000 USD x ₹ 65)
(a) Value of taxable supply of service (i.e. ocean freight)	6,50,000	₹ 65,00,000 x 10%
(b) Importer (Ram Ltd.) is liable to pay GST @5% on the taxable value of supply of service		
(c) GST liability = ₹ 32,500 (₹ 6,50,000 x 5%)		

2. Services received by the Reserve Bank of India from outside India in relation to management of foreign exchange reserves exempted from GST:

Specialized financial services received by RBI from outside India, in the course of management of foreign exchange reserves are exempted from GST.

Examples : 203

- External asset management,
- Custodial services,
- Securities lending services etc.

Example : 204

Validate the following statement:

Indian Bank, Mound Road Branch in Chennai imported external asset management services is exempt from GST.

Answer:

The given statement is invalid. It is taxable supply of service and hence IGST will be levied.

3. Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India exempted from GST

(Notification No. 9/2017-Integrated Tax (Rate) Dated 28th June 2017):

Example : 205

Service provided by Indian tour operator to a Sri Lankan for a tour conducted in Bhutan. Is it taxable supply?

Answer:

It is exempted supply of service and hence GST will not be levied.

Exemption from payment of GST on advance received on account of supply of goods

As per Notification No. 66/2017 – Central Tax, dated 15.11.2017, the Central Government, on the recommendations of the Council, exempts all taxpayers from payment of GST on advances received in case of supply of goods. Previously, the persons whose aggregate turnover in the preceding financial year did not exceed one crore and fifty lakh rupees or the person whose aggregate turnover in the year in which such person has obtained registration is likely to be less than one crore and fifty lakh rupees and who did not opt for the composition levy, are exempted from payment of GST on advances received for supply of goods (Notification No. 40/2017 – Central Tax, dated 13.10.2017). This exemption would apply in case of change in rate of tax also and the place of supply of goods will be the earlier of the following:

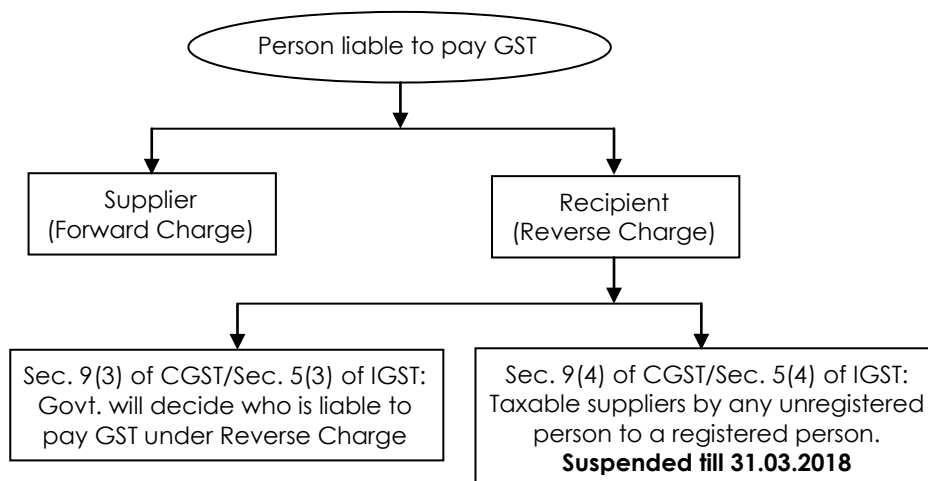
- the date of issue of invoice by the supplier or the last date on which he is required to issue the invoice with respect to the supply or
- the date on which the supplier receives the payment with respect to the supply;

Notification No. 66/2017 – Central Tax, dated 15.11.2017,

In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act) and in supercession of notification No. 40/2017-Central Tax, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.1254(E), dated the 13th October, 2017, except as respects things done or omitted to be done before such supercession, the Central Government, on the recommendations of the Council, hereby notifies the registered person who did not opt for the composition levy under section 10 of the said Act as the class of persons who shall pay the central tax on the outward supply of goods at the time of supply as specified in clause (a) of sub-section (2) of section 12 of the said Act including in the situations attracting the provisions of section 14 of the said Act, and shall accordingly furnish the details and returns as mentioned in Chapter IX of the said Act and the rules made thereunder and the period prescribed for the payment of tax by such class of registered persons shall be such as specified in the said Act.]

2.7 PERSON LIABLE TO PAY GST

Generally, the supplier of goods or services is liable to pay GST. However, in specified cases like imports and other notified supplies, the liability may be cast on the recipient under the reverse charge mechanism. Reverse charge means the liability to pay tax is on the recipient of supply of goods or services instead of the supplier of such goods or services in respect of notified categories of supply.



GST Council, in its 22nd Meeting dt. 6 Oct. 2017, has recommended that the reverse charge mechanism (RCM) under Section 9(4) of the CGST Act, 2017/ Section 5(4) of the IGST Act, 2017 shall remain deferred/ suspended till 31.03.2018 and will be reviewed by a committee of experts.

Sec. 9(3) of CGST/Sec. 5(3) of IGST: Govt. will decide who is liable to pay GST under Reverse Charge.

The following goods on which GST shall be levied under Reverse Charge have been notified (vide Notification No. 04/2017 dt. 28th July 2017):



S.No.	Description of supply of goods	Supplier of goods	Recipient of Goods
1	Cashew nuts not shelled or peeled.	Agriculturist	Any registered person. Recipient of goods is liable to pay GST.
2	Bidi wrapper leaves (tendu)	Agriculturist	Any registered person. Recipient of goods is liable to pay GST.
3	Tobacco leaves	Agriculturist	Any registered person. Recipient of goods is liable to pay GST.
4	Supply of lottery	State Government, Union Territory or any local authority	Lottery distributor or selling agent. Distributor or selling agent is liable to pay GST.
5	Silk yarn	Any person who manufactures silk yarn from raw silk or silkworm cocoons for supply of silk yarn.	Any registered person. Recipient of goods is liable to pay GST.
6	Used vehicles, seized and confiscated goods, old and used goods, waste and scrap. Notification No. 36 /2017-Central Tax (Rate) Dated 13.10.2017 Notification No. 37/2017- Integrated Tax (Rate) Dated 13.10.2017	Central Government, State Government, Union territory or a local authority.	Any registered person. Recipient of goods is liable to pay GST.

Sec. 9(3) of CGST/Sec. 5(3) of IGST : Govt. will decide who is liable to pay GST under Reverse Charge.

w.e.f. 1st July 2017: As per Notification No. 13/2017 Central Tax (Rate) Dt. 28th June 2017 and Notification No. 10/2017- Integrated Tax (Rate) Dt. 28th June 2017 the following 9 services (are identical under CGST & IGST) on which GST shall be levied under Reverse Charge have been notified.

S. No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
1	GTA Services	Goods Transport Agency (GTA)	Any factory, society, co-operative society, registered person, body corporate, partnership firm, casual taxable person; located in the taxable territory.	Recipient
2	Legal Services by advocate	An individual advocate, including a senior advocate or a firm of advocates	Any business entity located in the taxable territory	Recipient



3	Services supplied by an arbitral tribunal to a business entity	An arbitral tribunal	Any business entity located in the taxable territory	Recipient
4	Services provided by way of sponsorship to any body corporate or partnership firm	Any person	Any body corporate or partnership firm located in the taxable territory.	Recipient
5	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding: - (1) Renting of immovable property, and (2) Services specified below: - (i) Services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers.	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.	Recipient
6	Services supplied by a director of a company or a body corporate to the said company or the body corporate	A director of a company or a body corporate	The company or a body corporate located in the taxable territory	Recipient
7	Services supplied by an insurance agent to any person carrying on insurance business	An insurance agent	Any person carrying on insurance business, located in the taxable territory	Recipient
8	Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company.	A recovery agent	A banking company or a financial institution or a non-banking financial company, located in the taxable territory	Recipient
9	Supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer or the like	Author or music composer, photographer, artist, or the like	Publisher, music company, producer or the like, located in the taxable territory	Recipient



Notification No. 10/2017- Integrated Tax (Rate) Dt. 28th June 2017, the following 2 services under IGST on which GST shall be levied under Reverse Charge have been notified:

S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
10	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient. Non-taxable online recipient means: As per Section 2(16) of the Integrated Goods and Services Tax (IGST) Act, 2017, - any Government, - local authority, - governmental authority, - an individual or - any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient.	Recipient
11	Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India	A person located in nontaxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962(52 of 1962), located in the taxable territory.	Importer

Sec. 9(5) of CGST/Sec. 5(5) if IGST:Govt. will decide who is liable to pay GST under Reverse Charge.

Notification No. 17/2017-Central Tax (Rate) Dt. 28th June 2017 and Notification No. 14/2017-Integrated Tax (Rate) Dt. 28th June 2017 the following 2 services (are identical under CGST & IGST) on which GST shall be levied under Reverse Charge have been notified:

12	services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle;	Driver	Any person. However, the tax on intra-State or inter-State supplies shall be paid by the Electronic Commerce Operator (ECO).	ECO
13	services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under clause (v) of section 20 of the Integrated Goods and Services Tax Act, 2017 read with sub-section (1) of section 22 of the said Central Goods and Services Tax Act.	Unregistered person Supplying services through Electronic Commerce Operator (ECO).	Any person. However, the tax on intra-State or inter-State supplies shall be paid by the Electronic Commerce Operator (ECO).	ECO

**Note:**

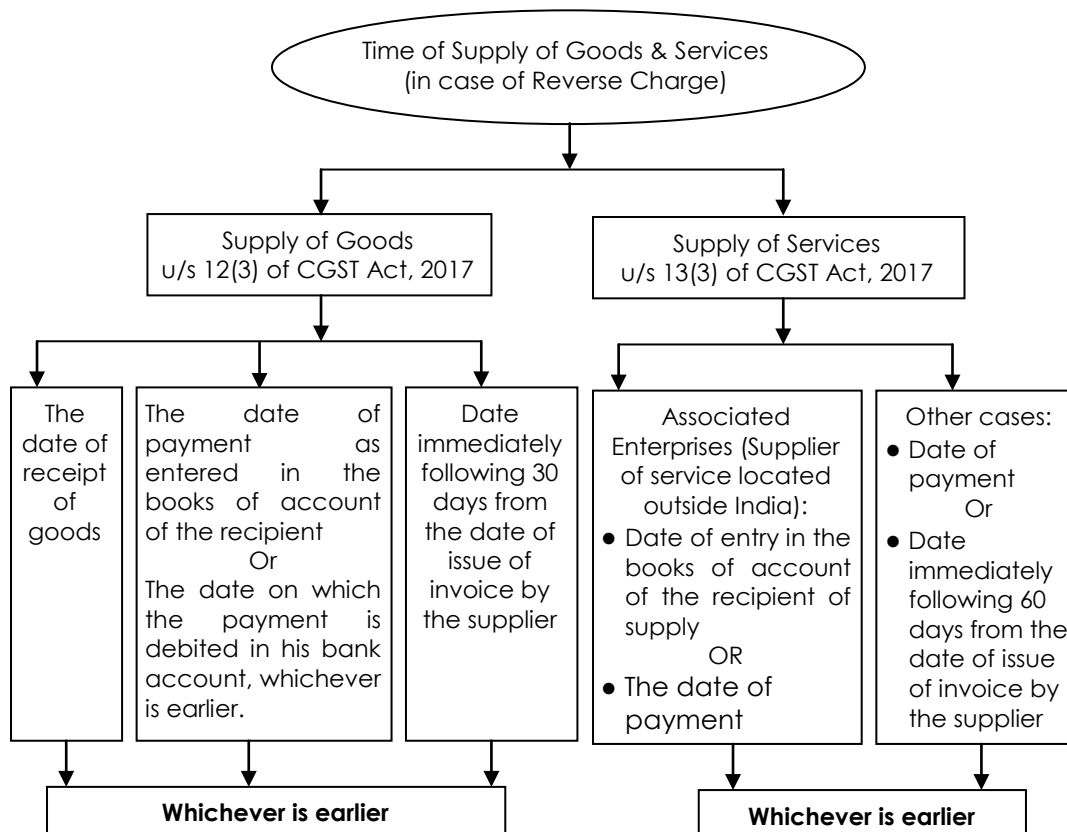
- (a) The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.
- (b) "Body Corporate" has the same meaning as assigned to it in clause (11) of section 2 of the Companies Act, 2013.
- (c) the business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services for the purpose of this notification.
- (d) "radio taxi" means a taxi including a radio cab, by whatever name called, which is in twoway radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS);
- (e) "maxicab", "motorcab" and "motor cycle" shall have the same meanings as assigned to them respectively in clauses (22), (25) and (26) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988).

Important points:

- (A) Registration: A person who is required to pay tax under reverse charge has to compulsorily register under GST and the threshold limit of ₹ 20 lakhs (₹ 10 lakhs for special category states except J & K) is not applicable to him.
- (B) ITC: A supplier cannot take ITC of GST paid on goods or services used to make supplies on which the recipient is liable to pay tax.
- (C) Compliances in respect of supplies under reverse charge mechanism:
 - 1. As per section 31 of the CGST Act, 2017 read with Rule 46 of the CGST Rules, 2017, every tax invoice has to mention whether the tax in respect of supply in the invoice is payable on reverse charge. Similarly, this also needs to be mentioned in receipt voucher as well as refund voucher, if tax is payable on reverse charge.
 - 2. Maintenance of accounts by registered persons: Every registered person is required to keep and maintain records of all supplies attracting payment of tax on reverse charge.
 - 3. Any amount payable under reverse charge shall be paid by debiting the electronic cash ledger. In other words, reverse charge liability cannot be discharged by using input tax credit. However, after discharging reverse charge liability, credit of the same can be taken by the recipient, if he is otherwise eligible.
 - 4. Invoice level information in respect of all supplies attracting reverse charge, rate wise, are to be furnished separately in the table 4B of GSTR-1.
 - 5. Advance paid for reverse charge supplies is also leviable to GST. The person making advance payment has to pay tax on reverse charge basis.

Time of supply in case of reverse charge:

The time of supply is the point when the supply is liable to GST. One of the factor relevant for determining time of supply is the person who is liable to pay tax. In reverse charge, the recipient is liable to pay GST. Thus, time of supply for supplies under reverse charge is different from the supplies which are under forward charge.



Note: If time of supply cannot be determined with the help of above provisions then the time of supply shall be the date on which entry in the books of the recipient of goods & services is made.

Example : 206

Mr. X being a farmer cultivated cashew nuts not shelled or peeled in the State of Kerala. These goods are sold to M/s Raj Industries for ₹ 2,50,000 a registered person in the State of Kerala. Applicable rate of GST 5%. M/s Raj Industries has input tax credit CGST ₹ 5,250 and SGST ₹ 5,250.

You are required to answer the following:

- Who is liable to pay GST.
- Net liability of GST.

Answer:

(a) GST is liable to pay by recipient. In the given case M/s Raj Industries is liable to pay GST.

(b) Net liability of GST:

Particulars	CGST (₹)	SGST (₹)	Remarks
Output tax	6,250	6,250	ITC is not allowed to utilize by recipient while paying GST under RCM.
Less: Input Tax Credit (ITC)	NA	NA	
CGST			
SGST			
Net tax liability of M/s Raj Industries	6,250	6,250	

**Example : 207**

Mr. X being an agent of cashew nuts (peeled) in the State of Kerala registered under GST. These goods are sold to M/s Raj Industries for ₹ 2,50,000 a registered person in the State of Kerala. Applicable rate of GST 5%. Mr. X has input tax credit CGST ₹ 5,250 and SGST ₹ 7,250.

You are required to answer the following:

(a) Who is liable to pay GST.

(b) Net liability of GST.

Answer:

(a) GST is liable to pay by supplier of goods. In the given case Mr. X is liable to pay GST.

(b) Net liability of GST:

Particulars	CGST (₹)	SGST (₹)	Remarks
Output tax	6,250	6,250	Excess credit of SGST is not allowed to adjust against CGST and viz a versa
Less: Input Tax Credit (ITC) CGST SGST	(5,250)	(7,250)	
Net tax liability of Mr. X	1,000	Nil	
Excess credit c/f	Nil	2,000	

Example : 208

Mr. X being a farmer cultivated Bidi wrapper leaves (tendu) in the State of Telangana. These goods are sold to M/s Sri Vijaya Industries for ₹ 2,12,500 a registered person in the State of Kerala. Applicable rate of GST 5%.

You are required to answer the following:

(a) Who is liable to pay GST.

(b) Net liability of GST.

Answer:

(a) GST is liable to pay by recipient of goods. In the given case M/s Sri Vijaya Industries.

(b) Net liability of M/s Sri Vijaya Industries:

Particulars	IGST (₹)	Remarks
Output tax	10,625	ITC is not allowed to utilize by recipient while paying GST under RCM.
Less: Input Tax Credit (ITC)	NA	
Net tax liability of M/s Sri Vijaya Industries	10,625	

Example : 209

Mr. Raj being a agriculturist cultivated tobacco leaves in the State of West Bengal and also registered under GST. These goods are sold to M/s RR Industries for ₹ 5,75,000 a registered person in the State of Andhra Pradesh. Applicable rate of GST 5%. M/s RR Industries has input tax credit CGST ₹ 3,250 and SGST ₹ 3,250.

You are required to answer the following:

(a) Who is liable to pay GST.

(b) Net liability of GST.

Answer:

(a) GST is liable to pay by recipient of goods. In the given case M/s RR Industries is liable to pay IGST.

(b) Net liability of M/s RR Industries:

Particulars	IGST (₹)	Remarks
Output tax	28,750	ITC is not allowed to utilize by recipient while paying GST under RCM.
Less: Input Tax Credit (ITC)	NA	
Net tax liability of M/s RR Industries	28,750	

**Supply of lottery (i.e. Supply of Goods):**

Supply of lottery has been treated as supply of goods under the Central Goods and Services Tax (CGST) Act, 2017.

It has been decided that supply of lottery shall attract GST rates as under:

Nature of transaction	Rate of GST
Lottery run by State Governments	12% of face value of lottery ticket sold.
Lottery authorized by State Governments	28% of face value of lottery ticket sold.

Example : 210

M/s Martin Pvt. Ltd. is a distributor or selling agent of lottery tickets, authorized by the State of Kerala. Who is liable to pay GST and also find GST liability from the following:

Particulars	Maha Lakshmi (Printed) (Lottery run by State Govt.)	Bhaghya Lakshmi (Online) (Lottery authorized by State Govt.)
No. of tickets proposed	2,50,000	3,00,000
Face value of ticket	₹10 each	₹ 500 each
Guaranteed prize payout	@ 60%	@ 90%
No. of tickets sold	2,00,000	2,35,000

Answer:

(a) M/s Martin Pvt. Ltd. is liable to pay GST.

(b) GST liability of M/s Martin Pvt. Ltd. is as follows:

Particulars	Maha Lakshmi (Printed) (Lottery run by State Govt.) (₹)	Bhaghya Lakshmi (Online) (Lottery authorized by State Govt.) (₹)
Aggregate face value of lottery ticket sold (2,50,000 x ₹ 10); (2,35,000 x ₹ 500)	25,00,000	11,75,00,000
	6% CGST	6% SGST
GST liability	1,50,000	1,50,000
	14% CGST	14% SGST
	1,64,50,000	1,64,50,000

Note: In case of Maha Lakshmi (printed) State Govt. sold to agent 2,50,000 tickets.

Example : 211

M/s Dinesh Industries (registered person under GST) manufacturer cum seller of silk yarn in Coimbatore. In the month of Oct 2017 supplied 2000 kgs of silk yarn at ₹ 250 per kg. to M/s Annapoorna Pvt. Ltd. located in Chennai. Applicable GST rate @5%.

You are required to answer

(a) Who is liable to pay GST.

(b) Net liability of GST.

Answer:

(a) GST is liable to pay by recipient of goods. In the given case M/s Annapoorna Pvt. Ltd. is liable to pay GST.

(b) Net liability of GST:

Particulars	2.5% CGST (₹)	2.5% SGST (₹)
Output tax	12,500	12,500
Less: Input Tax Credit (ITC)	NA	NA
Net tax liability of M/s Annapoorna Pvt. Ltd.	12,500	12,500

**Example : 212**

The customs authority confiscated the gold from Mr. TYN, at the time of import from Dubai. Subsequently sold these goods through auction to M/s C Ltd. of Chennai for ₹ 22,25,000. Applicable rate of GST 18%. You are required to answer the following:

(a) person liable to pay GST.

(b) GST liability.

Answer:

(a) the person liable to pay GST is M/s C Ltd.

(b) GST liability is ₹ 4,00,500/-.

Sec. 9(3) of CGST/Sec. 5(3) of IGST:Govt. will decide who is liable to pay GST under Reverse Charge.

w.e.f. 1st July 2017: As per Notification No. 13/2017 Central Tax (Rate) Dt. 28th June 2017 and Notification No. 10/2017- Integrated Tax (Rate) Dt. 28th June 2017 the following 9 services (are identical under CGST & IGST) on which GST shall be levied under Reverse Charge have been notified.

S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
1	GTA Services	Goods Transport Agency (GTA)	Any factory, society, co-operative society, registered person, body corporate, partnership firm, casual taxable person; located in the taxable territory.	Recipient

Already covered under exemption

2	Legal Services by advocate	An individual advocate, including a senior advocate or a firm of advocates	Any business entity located in the taxable territory	Recipient

Example : 213

Senior Advocate supplied services of ₹1,50,000/- to business entity for Legal services. Business entity has ITC of ₹ 7,000. Senior Advocate has registered office in Chennai. Business entity is located in Madurai.

Find the following:

a) Who is liable to pay GST?

b) Net GST liability?

Note:

(i) all services rendered in the month of Oct 2017.

(ii) Turnover of business entity in the previous year ₹ 43 lakh.

(iii) Applicable rate of GST @18%

Answer:

(a) Business entity being recipient of service is liable to pay GST.

(b) Net GST liability of the business entity:

CGST 9% on ₹ 1,50,000 = ₹ 13,500/-

SGST 9% on ₹ 1,50,000 = ₹ 13,500/-

Note: recipient is not allowed to utilize ITC against his GST liability. However, after payment of GST under RCM, the same can be availed as ITC against his outward supplies.

**Example : 214**

With reference to the provisions of GST law (w.e.f. 1-7-2017), briefly explain as to who is the person responsible to pay GST in the following:

- i) Legal services are provided by Senior Advocates to business entities.**
- ii) Representation services are provided by Senior Advocates to any business entity.**
- iii) Were Contracts for representation service provided by the Senior Advocates to any business entity has been entered into through another advocate or firm of advocates.**

Answer:

Service provider	Service recipient	Nature of service	Taxability	Person responsible to pay GST
(i) & (ii) Senior Advocate	Business Entity (whose turnover exceeds ₹ 20 Lakh in P.Y.)	Representation services	Taxable supply of service	Recipient of service, which is the business entity, who is litigant, applicant or petitioner.

(iii) Recipient of service that is the business entity, who is the litigant, applicant or petitioner, is liable to pay GST.

Note: Previous year turnover more than ₹ 20 lacs (in case of special category States is ₹ 10 lakh).

S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
3	Services supplied by an arbitral tribunal to a business entity	An arbitral tribunal	Any business entity located in the taxable territory	Recipient

Example : 215

Mr. X and Mr. Y paid fee to an arbitrator to appoint a panel of three arbitrators for settlement of their personal dispute as per the Arbitration and Conciliation Act, 1996.

Fee received by the arbitrator on appointment of Arbitral Tribunal is exempt from GST and fee received by the three arbitrators for the services provided to the tribunal shall also be exempt.

However, Arbitral Tribunal services to a business entity are taxable supply of service is liable to tax in the hands of recipient (namely business entity), provided previous year turnover of the entity is more than ₹ 20 lakh (in case of special category states more than ₹ 10 lakh).

S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
4	Services provided by way of sponsorship to any body corporate or partnership firm.	Any person	Any body corporate or partnership firm located in the taxable territory.	Recipient.

Note: If the above conditions are not satisfied then the GST is payable by the supplier of service (i.e. Forward Charge)

Entry No. 53: Services by way of sponsorship of sporting events organized,-

- (a) by a national sports federation,
- (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
- (c) by Central Civil Services Cultural and Sports Board;
- (d) as part of national games, by Indian Olympic Association; or
- (e) under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme;

are exempted from GST.

Example : 216

GT Jewellers Ltd. paid ₹ 50 lakhs for sponsorship of Miss India beauty pageant in Mumbai to a Stylish & Co., a partnership firm. It is taxable supply, if so who is liable to pay GST.

Answer:

Yes. It is taxable supply of service. GST is liable to pay recipient of supply of service namely GT Jewellers Ltd. under RCM.

5. Governemnt or Local Authority to Business Entity

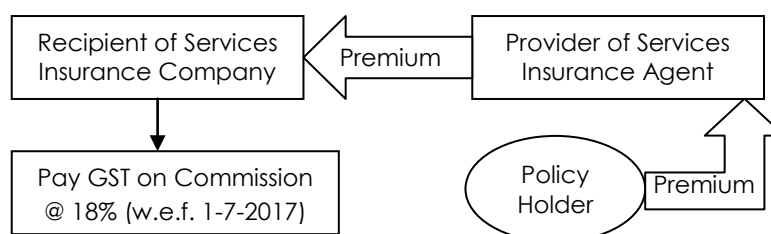
Already covered under exemptions.

6. A director of a company or a body corporate to company or a body corporate

Already covered under Scope of Supply.

S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
7	Services supplied by an insurance agent to any person carrying on insurance business.	An insurance agent	Any person carrying on insurance business, located in the taxable territory	Recipient

Insurance Agent Services:

**Case Study : 3**

Department contention: In the said case, department demanded the GST liability under reverse charge on brokerage/ commission paid to agents for finalising deals with reinsurer treating it as insurance agent's service.

Assessee view: The Appellant has pleaded that such agents would not come in the category of Insurance agents as defined in section 2(10) of the Insurance Act, 1938 as they were not soliciting or procuring insurance business, instead they were only engaged to help out in finalising deals with reinsurers. Thus, services received from agents merely helping in reinsurance deals would be considered as services received from insurance intermediaries and not from insurance agents; hence reverse charge provisions would not apply on services provided by them.

Decide the case with help of decided case law if any.

Answer:

Oriental Insurance Company Ltd. v. Commissioner of Central Excise & Commissioner of Service Tax (2016) 67 376(New Delhi-CESTAT):

Reverse charge would not be applicable on the commission paid to agents helping merely in finalising deals with "reinsurers".

Affirming the contentions of appellant, Honorable CESTAT-New Delhi decided the case in favour of the assessee and ruled out that services received from agents merely helping in reinsurance deals would be considered as services received from insurance intermediaries and not from insurance agents; hence reverse charge provisions would not apply on services provided by them.



S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
8	Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company.	A recovery agent	A banking company or a financial institution or a non-banking financial company, located in the taxable territory.	Recipient

Example : 217

M/s Shakshi Associates a recovery agent (located in Chennai) empanelled by State Bank of India, Local Head Office, Nungambakkam, Chennai. The following service supplied M/s Shakshi Associates in the month of Nov 2017 are as follows:

- (1) Fee of ₹ 2,25,825 for supply of services in relation to recovery of dues from the defaulting Borrowers at the place of business/occupation and if such Borrowers is/are unavailable at the place of business then at his/her residence.**
- (2) Supply of services with regard to demand for recovery or taking possession of the security from defaulting Borrowers, for which separate fee charge from the bank ₹ 55,175/-**

Find the following:

- (a) Is it supply of service.**
- (b) If so, who is liable to pay GST.**
- (c) Find the GST liability**

Note: Assume applicable rate of GST for recovery agent services @18%.

Answer:

- (a) Yes. It is taxable supply of service**
- (b) State Bank of India being recipient of service is liable to pay GST under RCM.**
- (c) GST liability = ₹ 50,580 [i.e ₹ 2,25,825 + 55,175) x 18%]**

S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
9	Supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer or the like	Author or music composer, photographers, artist or the like	Publisher, music company, producer or the like, located in the taxable territory	Recipient

Example : 218

Mr. TYN has written a book on Indirect Taxes which is published by M/s Dev Law Publications of New Delhi.

You are required to find the following:

- (a) who is liable to pay GST?**
- (b) Rework, if publisher is located in New York, then who is liable to pay GST?**

Answer:

- (a) M/s Dev Law Publications of New Delhi being recipient of service is liable to pay GST under RCM.**
- (b) If M/s Dev Law Publications located in New York then it is treated as export of service provided payment received in convertible foreign currency.**

Otherwise, tax will be payable by the author.

**Example : 219**

Mr. A.R. Rehaman being a music director (registered person under GST). He made following supplies:

(a) Indigenous handmade musical instruments for ₹ 2,00,000.

(b) Composted hello tune and transferred permanently for ₹ 30,00,000.

(c) Pianos for ₹ 1,50,000

(d) Percussion musical instruments (like drums, xylophones) for ₹ 5,00,000.

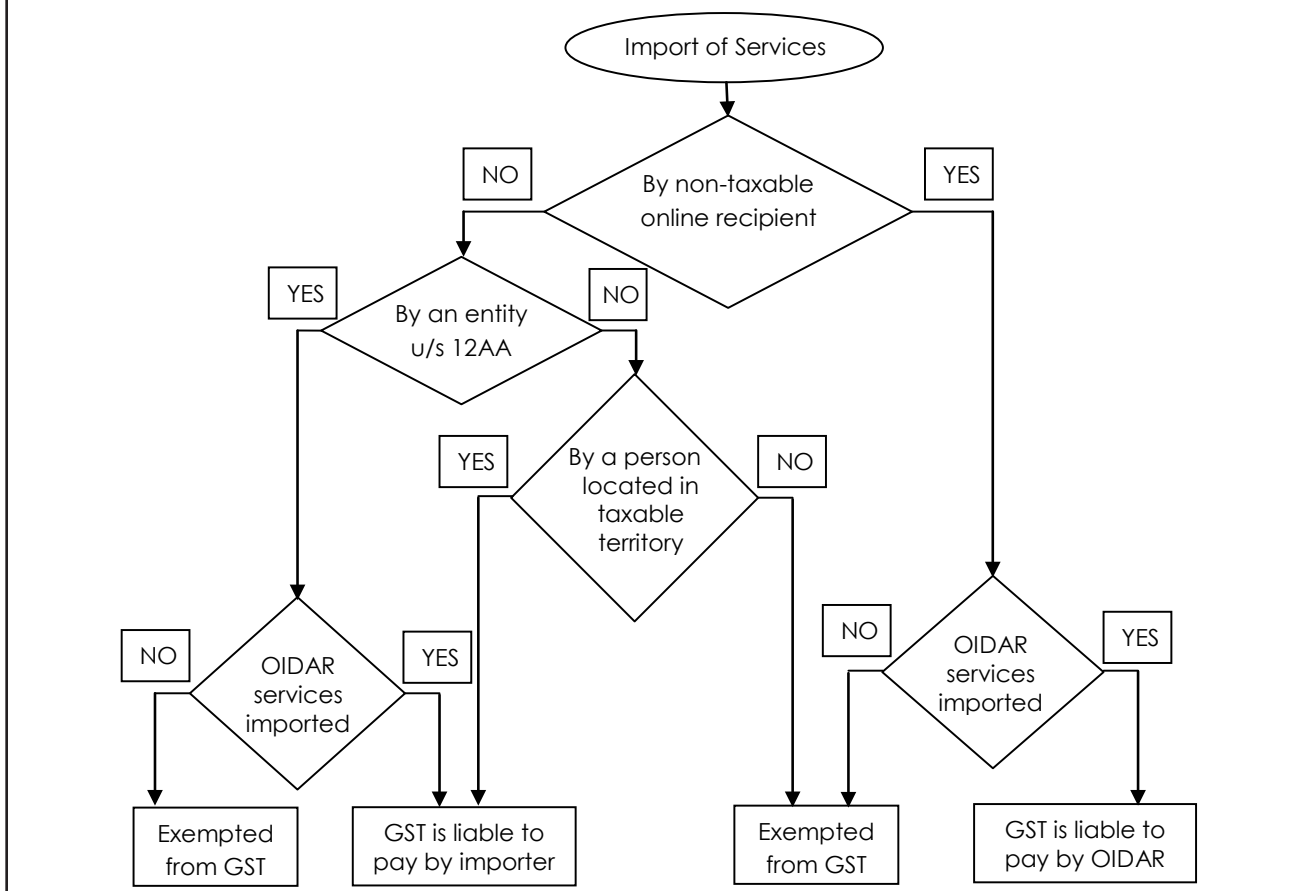
Find the GST liability. Applicable rate GST 28%. All transactions took place within the state of Tamil Nadu.

Answer:

Particulars	Value in ₹	Remarks
Indigenous handmade musical instruments	Nil	Exempted supply of goods.
Composted hello tune and transferred permanently	Nil	Exempted supply of service
(As per Schedule II it is supply of service)		
Sale of Pianos	1,50,000	Taxable supply of goods
Sale of Drums, xylophones	5,00,000	-do-
Total taxable supply of goods	6,50,000	
CGST 14%	91,000	(6,50,000 x 14%)
SGST 14%	91,000	

Notification No. 10/2017- Integrated Tax (Rate) Dt. 28th June 2017, the following 2 services under IGST on which GST shall be levied under Reverse Charge have been notified:

S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
10	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient. Non-taxable online recipient means: As per Section 2(16) of the Integrated Goods and Services Tax (IGST) Act, 2017, - any Government, - local authority, - governmental authority, - an individual or - any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient.	Recipient

Example : 220

TDS under Income Tax vs GST

CBDT has clarified through Circular No. 23/2017 Dated 19th July 2017 that if GST on services has been indicated separately in the invoice, then no tax would be deducted on GST component.

In the light of the fact that even under the new GST regime, the rationale of excluding the tax component from the purview of TDS remains valid, the Board hereby clarifies that wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XV II-B of the Act on the amount paid or payable without including such 'GST on services' component.

Example : 221

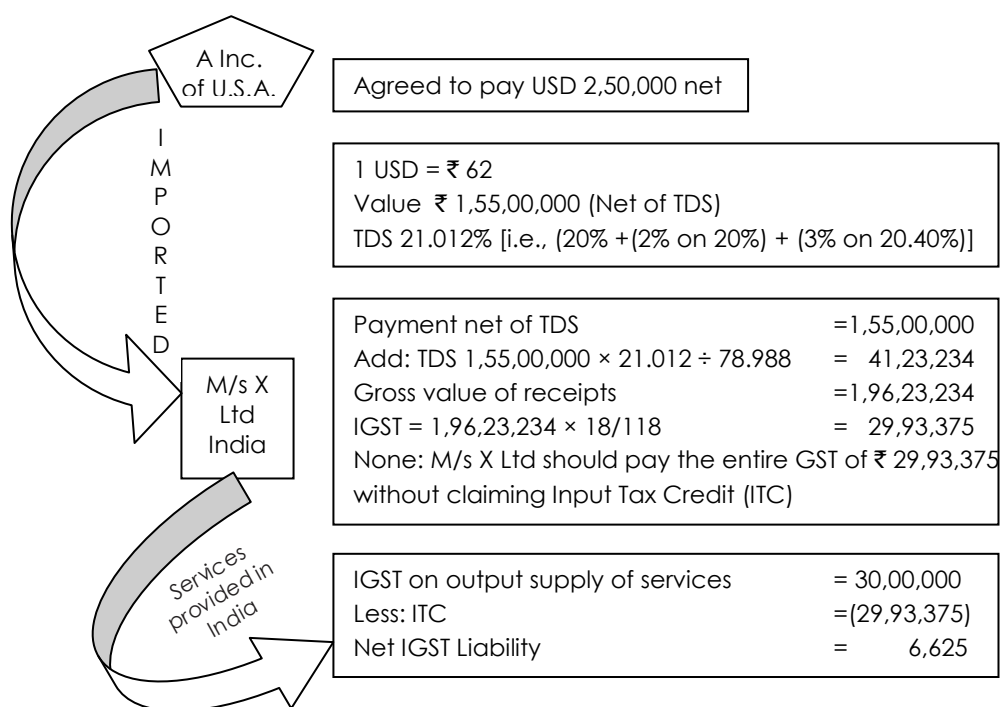
CMA Ram received ₹ 2,05,200 (after TDS @ 10%) from client on 1st Nov 2017 for taxable services rendered in the month of July 2017. Find the GST liability. Applicable rate of CGST 9% and SGST 9%.

Answer:

Payment received net of TDS u/s 194J	= 2,05,200
Add: TDS u/s 194J	= 19,000 (Note)
Gross value of Bill (i.e. inclusive of GST)	= 2,24,200
CGST (2,24,200 x 9/118)	= 17,100
SGST (2,24,200 x 9/118)	= 17,100

Note:

Assume taxable value of supply	X
Add: CGST & SGST	0.18x
Value of Bill	1.18x
Less: TDS @ 10% on X (u/s Sec 194J of the Income Tax Act, 1961)	-0.1X
Net Paid	1.08X
X (i.e. 2,05,200/1.08) [i.e. taxable value of supply]	1,90,000
TDS u/s 194J 10% on 1,90,000	19,000

Case Study : 4**Note:** Assume applicable rate of IGST 18% and applicable rate of TDS 20% under Income Tax Act, 1961.

Notification No. 10/2017- Integrated Tax (Rate) Dt. 28th June 2017, the following 2 services under IGST on which GST shall be levied under Reverse Charge have been notified:

S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
11	Services supplied by a person located in non- taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India	A person located in non taxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962(52 of 1962), located in the taxable territory.	Importer



Case Study : 5

Department contention:

Assessee being an importer of goods from Indonesia is liable to pay GST on Ocean Freight. Since, place of supply of service is destination of goods as per Sec. 13(9) of IGST Act, 2017.

Assessee view:

Since, goods imported into India, paid customs duty on such ocean freight which is inclusive of Cost, Insurance and Freight (CIF value). Therefore, question of levying of GST would not arise at all.

Deside the case with the help of decided case if any.

Answer:

Facts of the Case: Import of goods into India completed when goods are landed on land mass of India (as per the Garden Silk Mills Ltd. case of the Hon'ble Supreme Court of India). Ocean freight on import of goods into India is subject to customs duty. As per the Department contention Ocean Freight is subject to GST again.

Grounds on Appeal:

In the case of United Shippers Ltd. 2015 (37) STR 1043 (Tri-Mumbai) has held that when the value of transportation charges have been added in CIF value on which customs duty is paid. GST again cannot be recovered on the same value.

The department's appeal against the order of Tribunal to the Hon'ble Supreme Court of India has been dismissed as reported in 2015(39) STR J369(S.C.). It means the judgment of Hon'ble Tribunal-Mumbai has been confirmed as whole good.

The ratio of this judgment is equally applicable to Goods and Services Tax Law also.

Therefore, payment of GST on Ocean Freight does not arise.

Sec. 9(5) of CGST/Sec. 5(5) if IGST: Govt. will decide who is liable to pay GST under Reverse Charge.

Notification No. 17/2017-Central Tax (Rate) Dt. 28th June 2017 and Notification No. 14/2017-Integrated Tax (Rate) Dt. 28th June 2017 the following 2 services (are identical under CGST & IGST) on which GST shall be levied under Reverse Charge have been notified:

S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
12	services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle;	Driver	Any person. However, the tax on intra-State or inter-State supplies shall be paid by the Electronic Commerce Operator (ECO).	ECO [Sec. 9(5) of CGST Act, 2017]

Example : 222

Reon operating radio taxi services in India. In the month of Nov 2017, the following services are rendered by it:

(a) Free services provided to new customers who travelled for the first time. However, payment made to taxi drivers ₹ 10,00,000.

(b) Hire charges collected from customers ₹ 12,25,500. Payment made to taxi drivers ₹ 11,00,000.

Reon appointed X Pvt. Ltd., as their representative in India. Person liable to pay GST is willing to avail exemption if any.

You are required to find:

- Who is liable to pay GST.**
- Taxable value of supply.**
- Net GST liability.**

**Answer:****(a) X Pvt. Ltd., being recipient of service is liable to pay GST.****(b) & (c) Taxable value of supply:**

Particulars	Value in ₹	Remarks
Free services provided to new customers. However, payment made to taxi drivers	10,00,000	Reverse charge applicable
Hire charges	12,25,500	Gross value is subject to GST.
Gross value of Bills	22,25,500	
CGST 2.5%	52,988	(22,25,500 x 2.5/105)
SGST 2.5%	52,988	(22,25,500 x 2.5/105)
Taxable value of supply	21,19,524	

Sec. 9(5) of CGST/Sec. 5(5) of IGST: Govt. will decide who is liable to pay GST under Reverse Charge.

Notification No. 17/2017-Central Tax (Rate) Dt. 28th June 2017 and Notification No. 14/2017-Integrated Tax (Rate) Dt. 28th June 2017 the following 2 services (are identical under CGST & IGST) on which GST shall be levied under Reverse Charge have been notified:

S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
13	services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under clause (v) of section 20 of the Integrated Goods and Services Tax Act, 2017 read with sub-section (1) of section 22 of the said Central Goods and Services Tax Act.	Unregistered person supplying services through Electronic Commerce Operator (ECO)	Any person. However, the tax on intra-state or inter-state supplies shall be paid by the Electronic Commerce Operator (ECO).	ECO [Sec. 9(5) of CGST Act, 2017]

Electronic Commerce Operator:

Electronic Commerce Operator has been defined in Sec. 2(45) of the CGST Act, 2017 to mean any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

As per section 22(1) of the CGST Act, 2017, person whose aggregate turnover in the previous financial year has exceeds ₹ 20 lakh (₹ 10 lakh for specified States) shall be liable to obtain registration compulsorily.

Thus, if the aggregate turnover in the previous financial year of any hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes not exceeds ₹ 20 lakh (or not exceeds ₹ 10 lakh for special category States) and such person exclusively makes supply of accommodation service through Electronic Commerce Operator (ECO), the liability to pay GST will be on the Electronic Commerce Operator (ECO).

On the other hand, if the person exclusively makes supply of accommodation service through Electronic Commerce Operator (ECO) and his aggregate turnover exceeds ₹20 lakh (or exceeds ₹10 lakh in case of special category States), the liability to pay GST will be on the person providing the service and not on the Electronic Commerce Operator (ECO).

Example : 223

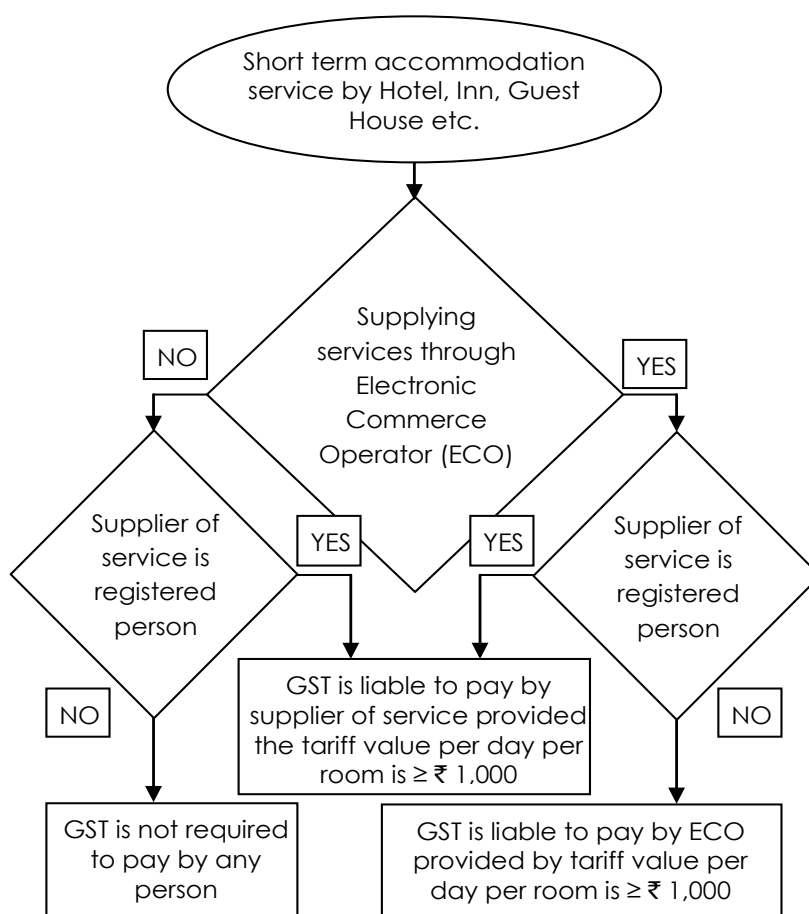
Whether a person supplying goods or services through e-commerce operator would be entitled to threshold exemption?

Answer:

No. Section 24(ix) of the CGST Act, 2017 lays down that the threshold exemption is not available to such persons and they would be liable to be registered irrespective of the value of supply made by them. This requirement is, however, applicable only if the supply is made through such electronic commerce operator who is required to collect tax at source under section 52 of the CGST Act, 2017.

However, where the e-commerce operators are liable to pay tax on behalf of the suppliers under a notification issued under section 9(5) of the CGST Act, 2017, the suppliers of such services are entitled for threshold exemption.

Summary of the above provision:



Example : 224

Raman Hotels supplying only accommodation services in Chennai. Turnover of Raman Hotels is less than 20 Lakhs. Raman Hotels listed hotel on online platform namely Makemytrip.

The following categories of rooms get booked by the Makemytrip company who pay to Raman Hotels after deducting their commission.

(a) Declared Tariff per room (category 1), Non AC Room ₹ 950 per Night.

(b) Declared Tariff per room (category 2), AC Room ₹ 1,800 per Night.

(c) Declared Tariff per room (category 3), AC Room ₹ 7,000 per Night, where additional bed ₹ 1,800 per Night.

(d) Declared Tariff per room (category 4), AC Room ₹ 10,000 per Night, but amount charged is ₹ 7000.

You are required to answer:

(i) who is liable to pay GST and (ii) Net GST liability.

Answer:

Particulars	Value in ₹	GST ₹	Remarks
(a) Declared tariff ₹ 950	Nil		Since, declared tariff less than ₹ 1,000. It is exempted supply of service.
(b) Declared tariff ₹ 1,800	1,800	216	Taxable supply. GST @12% is applicable
(c) Declared tariff ₹ 7,000	8,800	1,584	Taxable supply. Since, declared tariff not exceeds ₹ 7,500, applicable rate is 18%. However, GST will be charged on transaction value.
(d) Declared tariff value ₹10,000	7,000	1,960	Taxable supply. Since, declared tariff exceeds ₹7,500, applicable rate is 28%. However, GST will be charged on transaction value.
Total		3,760	

Case Study : 6

Mr. A, a taxable service provider, provided taxable supply of services to Mr. B. The contract of service entered into between them stipulated that Mr. A will bear all the taxes, duties and other liabilities in connection with discharge of his obligations. While the service was being provided, an amendment in the law shifted the liability to pay GST in case of such taxable supply of services from service provider to service receiver retrospectively, i.e. reverse charge provisions were made applicable.

You are required to answer the following questions with the help of the decided case law(s), if any:

- Can Mr. B, who is the person liable to pay GST under reverse charge, shift the burden of such GST on Mr. A by deducting the same from the payment made against the bills raised by Mr. A?
- Can Mr. B ask the Revenue to recover GST from Mr. A since the contract of service stipulates that Mr. A will bear all the taxes, duties and other liabilities in connection with discharge of his obligations?

Answer:

- Yes. As per the *Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran* 2012 (260) S.T.R. 289 (S.C.), Mr. B can shift the burden of GST on Mr. A by deducting the same from the payment made against the bills raised by Mr. A.
- No. As per the *Delhi Transport Corporation v. Commissioner Service Tax* 2015 (038) STR 673 (Del.), Mr. B cannot ask the Revenue to recover GST from Mr. A since the contract of service stipulates that Mr. A will bear all the taxes, duties and other liabilities in connection with discharge of his obligations.



Case Study : 7

Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran 2012 (260) S.T.R. 289 (S.C.):

Point of dispute: Whether the service tax liability created under law can be shifted by a clause entered in the contract?

Decision: Yes. Assessee can contract to shift their liability.

Regarding transferring of service tax liability by way of contract was correct. It means service provider will bear all the taxes, and service receiver can shift the burden of service tax payable by him to service provider by deducting the same from the bills raised by service provider.

Case Study : 8

Delhi Transport Corporation v. Commissioner Service Tax 2015 (038) STR 673 (Del.)

Facts of the Case: The appellants entered into contracts with seven various agencies for display of advertisements; inter alia, on bus-queue shelters and time-keeping booths. The terms of the contract clearly stated that it would be the responsibility of the contractors/advertisers to pay directly to the concerned authority the tax/levy imposed by such authority in addition to the license fee.

Department issued show cause notice asking the appellant (service provider) to pay service tax along with interest and penalties on the service of display of advertisements rendered by them.

Appellant's Contentions: The appellant argued that they were under a bona fide belief that the liability to remit service tax stood transferred to the recipient as per the agreements; this caused the failure to file returns and remit service tax. They relied upon *Rashtriya Ispat Nigam Limited v. Dewan Chand Ram Saran 2012 (26) STR 289 (SC)* to urge that having entered into the contracts in the nature mentioned above, it was a legitimate expectation that the service tax liability would be borne by the contractors/advertisers and, thus, there was no justification for the appellant being held in default or burdened with penalties.

Decision: The High Court held that undoubtedly, the service tax burden could be transferred by contractual arrangement to the other party. However, on account of such contractual arrangement, the assessee cannot ask the Revenue to recover the tax dues from a third party (the other party) or wait for discharge of the liability by the assessee till it has recovered the amount from its contractors (the other party).

Therefore, the appellant was an assessee, and statutorily bound to not only get itself registered but also submit the requisite returns as per the prescription of law and rules framed thereunder.

2.8 SUPPLY OF GOODS OR SERVICES OR BOTH TO OR BY SPECIAL ECONOMIC ZONE

"Special Economic Zone" shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 [Section 2(19) of the IGST Act]. As per section 2(za) of the Special Economic Zones Act, 2005, "Special Economic Zone" means each Special Economic Zone notified under the proviso to sub section (4) of section 3 and sub section (1) of section 4 (including Free Trade and Warehousing Zone) and includes an existing Special Economic Zone;

"Special Economic Zone developer" shall have the same meaning as assigned to it in clause (g) of section 2 of the Special Economic Zones Act, 2005 and includes an Authority as defined in clause (d) and a Co-Developer as defined in clause (f) of section 2 of the said Act [Section 2(20) of the IGST Act].; As per section 2(g) of the Special Economic Zones Act, 2005, "Developer" means a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub section (10) of section 3 and includes an Authority and a Co Developer;



As per section 7(5) of the IGST Act, supply of goods or services or both to or by a Special Economic Zone developer or a Special Economic Zone unit, shall be treated to be a supply of goods or services or both in the course of inter-state trade or commerce.

In case where the location of the supplier and the place of supply of goods or services are in the same state or same union territory, then the said supply of goods or services shall not be treated as intra-state supply, it will be treated as inter-state supply.

Supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit, is a "zero rated supply". Credit of input tax may be availed for making zero-rated supplies.

2.9 EXEMPT SUPPLY, NON TAXABLE SUPPLY AND NON GST SUPPLY

Exempt Supply: As per Section 2(47) of the CGST Act, 2017, "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply.

Exempt supplies comprise the following three types of supplies:

- Supplies taxable at a 'NIL' rate of tax;
- Supplies that are wholly or partially exempted from CGST or IGST, by way of a notification amending Section 11 of CGST Act or Section 6 of IGST Act;
- Non-taxable supplies as defined under Section 2(78) – supplies that are not taxable under the Act (For Example Alcoholic liquor for human consumption).

Tax need not be paid on these supplies. Input tax credit attributable to exempt supplies will not be available for utilization/setoff.

Non Taxable supply: As per Section 2(78) of the CGST Act, 2017, "non-taxable supply" means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;

A transaction must be a 'supply' as defined under the GST law to qualify as a non-taxable supply under the GST. Only those supplies that are excluded from the scope of taxation under GST are covered by this definition – i.e., alcoholic liquor for human consumption, articles listed in section 9(2) or in schedule III.

Non GST Supply: Goods or services on which GST is not leviable are called Non GST supply. Input tax credit of inputs and / or input services used in providing non GST supply is not available i.e. no input tax credit on non GST supplies.

Third Country sale is an example of non-GST supply. These supplies do not come under the purview of GST law.

2.10 RATES OF GST

The GST is levied at variable rates on variable items. The highest rate of tax as prescribed by the GST law is 40%.

Broadly, six rates of IGST have been notified for goods, viz., 0.25%, 3%, 5%, 12%, 18% and 28%. With respect to CGST, broadly six rates have been notified for goods, viz., 0.125%, 1.5%, 2.5%, 6%, 9%, 14%. SGST/ UTGST at the equivalent rate is also leviable. For services, broadly four rates of IGST have been notified, viz., 5%, 12%, 18%, 28%. For CGST, broadly four rates of CGST have been notified, viz., 2.5%, 6%, 9%, 14%. Equivalent rate SGST/ UTGST will also be leviable.

For certain specified goods and services, nil rate of tax has been notified.



Study Note - 3

CLASSIFICATION OF GOODS AND SERVICES UNDER GST - READING THE RATE SCHEDULE



This Study Note includes

- 3.1 Introduction**
- 3.2 General Rule of Interpretation**
- 3.3 Classification of Goods as per Notification**
- 3.4 Classification of Services as per Notification**

3.1 INTRODUCTION

The term "Classification" is defined as systematic arrangement in groups or categories according to established criteria. Under the given concept, the arrangement of varied items is into mutually exclusive but related classes.

Under the Indirect Tax regimes prevalent across the Globe including India, the classification of various items which are the subject matter of tax, be it goods or services, is an essential and integral part of the whole levy and collection mechanism. It is important both from the taxpayer's perspective and tax collector's perspective to have a definite class or group under which subject matters of tax can be divided. The primary intention of classifying them is to determine whether or not the same would be encumbered by the levy of these taxes and if so, under which category the tax liability would arise.

However, the requirement of classification is not restricted only for understanding the rate of tax on a specific subject matter of tax. The various benefits of classification are as under:

1. **Leviability of Tax**

Classification of subject matters of tax into various classes identifies the taxable and non-taxable items for determining the scope of leviability of tax through a particular legislation.

2. **Goods versus Services**

After determining whether a particular subject matter is leviable to tax or not, classification principles further assist in determining if they are taxable as goods or as services. The differentiation between 'goods' and 'services' not only impacts the rate of tax, but also the time, place and value for the tax.

3. **Exemptions**

The Government exempts specific categories of items from levy of taxation. Exemption from tax is a policy decision of the Government which finds its base from the classification of items into specific categories which are driven by various socio-economic factors.

4. **Rate of Tax**

The Government is assisted by the principles of classification to identify the demerit and merit rates of various categories of items. Such categorization helps the Government to ensure that the burden of taxation is not regressive for the tax payers and also does not negatively affect the revenue collection for the Government.

5. **Standardization and avoiding differentiation**

Classification also helps the Government to collect data about various trades and industries in a systematic and standardized manner. Further it helps to bring on par various similar and like items sold by different industries and sizes of business to ensure uniformity.



Classification under Goods and Services Tax

Across the Globe under various GST regimes, classification as a subject is not a complex issue for the simple reason that across the Globe, most economies have a two rate GST structure. Under such structure, the two rates are Merit Rates and Demerit Rates. All the items under the ambit of GST are classified under given two rates only. The merit rate is the rate which is closer to 5% tax bracket and demerit rate is the rate which is within the bracket of 16% to 20%. Hence disputes for classification under GST are less or minimal.

Under the Indian environment, the GST is also indigenous. Hence the issues relating to classification which are not prevalent across the world are applicable in India. There are various reasons which add up to the complexity under the classification in India. One major reason for same is the multiple GST Rate structure. Today, Indian GST has 8 different types of GST Rates namely 0%, 0.25%, 1%, 3%, 5%, 12%, 18% and 28%. Since the industry structures are different and exemptions add to this complex web of multi point rate structure, a situation of arbitrage due to classification arises. Some reasons for such multiple rate structure are:

1. Principle of Equivalence and size of revenue collection

In the context of Indian economy, the size of tax collection from Direct and Indirect Taxes is an important factor for economic prosperity. In developed countries the dependence on tax revenues for Governments is only up to 18% to 22% from total collections, whereas, the benchmark of tax collection dependence in developing countries is between 52% to 54% from total revenue collections. However, in India, dependence on tax collections by Governments is significantly high and ranges from 60% to 64% from the total revenue collections.

Since tax collection contributes significantly to the government revenue, when migration to Goods and Services Tax happened from Central Excise, Service Tax and State VAT regime, there was an anxiety that tax collections should not dip from current levels under GST and ambition of collecting higher tax was obviously pivotal.

Thus the challenge of collecting steady or higher revenue bounded Government to keep the rate of tax at certain levels and it was backed by the Principle of Equivalence. According to this principle, the rate of tax under GST should be within the deviation of up to 3% (either at the higher or at the lower side) from the rate of tax which was applicable cumulatively under Central Excise, Service Tax and State VAT. The rate of taxes under the erstwhile regime was multi fold and chaotic.

Hence with a view to maintain the rate of taxes which were under the erstwhile indirect tax regime, the rates of tax under GST is multifold applicable on different classes of items (be it goods or services) differently.

2. Political Factors

The ideal GST structure in India would have been a 3 layered rate structure comprising of merit rate, demerit rate and standard rate (or mid-point rate). The merit rate would have been ideally an exemption rate whereas demerit rate would have been around 20% (which is now 28%) and mid-point rate around 12% to 15%. But since the consensus formed in Parliament was for a GST rate not greater than 18% the government could not keep items above 18% and if items were pegged to 12% (i.e. mid-point rate) then to offset the revenue deficit more items were pegged to 28% GST Rate. Due to this the rate of 28% had more than 250 items. With increase in political pressure, almost 200 items were taken out of 28% rate subsequently.

In multiple Tax Rate structure, there is always a certain amount of arbitrage created between the tax payer and the tax collector for classification of items. Example the tussle to classify items between the rates 18% or 28% shall be always on the cards. Since the Government in India as explained above, is heavily dependent on the tax collections as its source of revenue, they will always be tempted to classify items at the rate bracket of 28% and for tax payer the situation will be vice-versa. The 10% gap between the rates opens the flood gates for litigation and divergent interpretations. In fact tax rate gap of 7% between 5% and 12% rates is also significant.

Classification disputes are not new in the Indian Taxation system. According to an estimate, currently around 11200 cases are pending before the Supreme Court of India which are pure classification issues under erstwhile Central Excise, Service Tax and VAT regime. Hence India has 70 years of History in the disputes over classification of items under tax legislations.



Applicable Laws Useful For Classification under GST

The scheme of Goods and Services Tax in India is governed through following laws:

- The Central Goods and Services Tax Act, 2017
- The State Goods and Services Tax Act, 2017
- The Integrated Goods and Services Tax Act, 2017
- The Union Territory Goods and Services Tax Act, 2017
- The Goods and Services Tax (Compensation to States) Act, 2017

Under each law, the charge of tax is on supply which has been defined under Section 7. However the various Governments (Central State or UT) derive power to levy and collect taxes at specified rates under Section 9(1) of the CGST Act 2017, Section 5(1) of the IGST Act 2017 and Section 9(1) of the SGST/UTGST Act 2017.

Various Steps in Classification of Goods or Services

Since classification and its principles are of considerable importance for taxability and other allied purposes for goods and services, it is important to understand the process flow which should be followed to identify the correct classification, rate of tax and HSN Code for various items. Various provisions of law which are of assistance in this regard are as under:

1. Definition of 'Goods' and 'Services'
2. Activities listed in Schedule-II
3. Activities listed in Schedule-III
4. Identification of Composite Supplies or Mixed Supplies
5. Identification of HSN Code from the rate notification
6. Applicability of Principles of Interpretation applicable on Customs Tariff Act 1975 now made applicable vide Notification No 01/2017-CT (Rate) dated 28.06.2017.
7. Understanding the Service Code (Tariff) applicable on services in accordance with Annexure to Notification No 11/2017-CT (Rate) dated 28.06.2017.

3.2 GENERAL RULE OF INTERPRETATION

If the description read with section or Chapter notes is not enough to correctly classify the goods, then general rules of interpretation have to follow. The principles governing the appropriate classification of goods under the Tariff, as set out in the 'General Rules for Interpretation of this Schedule' to the Customs Tariff are set out below.

Rules to be applied sequentially

Classification is to be first tested on the basis of Rule 1. Only if Rule 1 does not resolve the issue, the other Rules are to be looked at sequentially.

Rule 1: Classification to be determined per the "Headings"

Rule 1 states :

The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require.

As stated above, each Section is divided into Chapters. Further, each Chapter within the Sections have Chapter titles.

As per Rule 1, the Section or Chapter Titles cannot be used for classification. The use of Chapter heading alone



may not provide an accurate picture of what the Chapter covers. For example the Heading of Chapter 84 refers to nuclear reactors, machinery, etc. but even a hand pump falls under Chapter 84.

According to Rule 1, one should give primacy to the Headings along with Chapter and Section Notes. The above rule lays down the following propositions:

- (a) The titles of sections, Chapters and sub-chapters do not have any legal force.
- (b) Terms of headings read with the related section and Chapter notes are relevant for the purpose of classification.

The rules of interpretation need not be resorted to when classification is possible on the basis of description in headings, sub-heading, along with the Chapter notes and section notes.

The Section Notes and Chapter Notes are part of the Act itself, and have statutory backing. Thus, no further Rule is required to be looked into, if classification is possible on the basis of the Tariff Entry read with Chapter Notes and Section Notes.

For instance, an assessee was manufacturing Aluminum foil cone containers. The assessee was classifying the same under Customs Tariff Heading (CTH) 76.16 [Other articles of aluminum], whereas the Department sought to classify the goods under CTH 48.23 [Other paper, paperboard, cellulose wadding and webs of cellulose fibers; other articles of paper pulp, paper, paper-board]. However, the Tribunal in case of *Monita Containers v. CCE* (2007) 213 ELT 262 (CESTAT) while classifying the product under CTH 76.16, held:

When the Note is specific in its excluding the said goods, they cannot be included by mere reference to the title of Chapter 48: "Paper and Paper board; Articles of Paper Pulp, of Paper or of Paper board", as was sought to be urged on behalf of the Revenue. Even the contention that the Chapter Note will not apply because Rule 3(b) of the Interpretative Rules, is misconceived, as it has been specifically provided in Rule 1 of the Rules for the interpretation of the First Schedule. Therefore, if there is no specific Chapter Note requiring otherwise, Rule 2 onwards including Rule 3(b) of the Rules for the Interpretation cannot be invoked.

The Supreme Court in case of *CCE s M/s Simplex Mills Co Ltd* (2005) 181 ELT 345 (SC) (3 Member Bench) held that Rule-1 gives primacy to the Section and Chapter Notes along with terms of the headings. They should be first applied. If no clear picture emerges then only can one resort to the subsequent rules.

Rule 2(a): Classification of incomplete or un-assembled goods

Rule 2(a) of the Interpretation Rule :

2.(a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented un-assembled or dis-assembled.

According to this Rule, if an incomplete article has the essential characteristics of the final product, then the Tariff Item covering the said final product would also cover the incomplete product, so presented. Further, the finished article would also include the article presented in an unassembled state.

For example, an assessee was manufacturing crayplas shapeless plastic crayon. The assessee was classifying the same under CETH 9609 00 which covers "pencils, crayons, pencil leads, pastels, drawing charcoals, writing or drawing chalks", whereas the Department asserted coverage under sub-heading 3204.19 relating to "pigments and preparation based thereon other than those in unformulated and unstandardized or unprepared form, not ready for use." The Supreme Court in case of *Camlin Ltd. v. CCE* (2003) 155 ELT 138 (CEGAT) [affirmed in (2005) 180 E.L.T. 307 (S.C.)] while classifying the goods under CETH 9609 00, held:

GIR 2(a) also, allows classification of incomplete or unfinished goods having the essential characteristics of complete or finished goods under a heading appropriate to such complete or finished goods. In the instant case, the impugned goods only require to be given the shape of crayons before they can be made into finished crayons and as such, they can be considered as incomplete or unfinished goods.



In another case of LML Ltd. v. CC (1999) 105 ELT 718 (CEGAT) affirmed in 1999 (107)

A119 (S.C)], it was held that a scooter body unit without engine is classifiable as scooter (CETH 871190). The Court placed reliance on HSN Explanatory Note for Rule 2(a) which states:

"An incomplete or unfinished vehicle is classified as the corresponding complete or finished vehicle provided it has the essential character of the latter [see Interpretative Rule 2(a)] as for example:

- (A) A motor vehicle, not yet fitted with the wheels or tyres and battery.
- (B) A motor vehicle not equipped with its engine or with its interior fittings.
- (C) A bicycle without saddle and tyres.

This Chapter also covers parts and accessories which are identifiable as being suitable for use solely or principally with the vehicles included therein, subject to the provisions of the Notes to Section XVII (see the General Explanatory Note to the Section)."

Determination of "essential characteristics"

In the case of Shivaji Works Ltd. v. CCE (1994) 69 ELT 674 (CEGAT), it was held that the functional test is the correct test for determining the character of a product, i.e. 'primary function' is 'essential characteristic.' Unless the incomplete product is incapable of functioning like the finished goods, this rule is not applicable.

Goods in SKD or CKD condition

According to the second part of Rule 2(a), goods in unassembled condition would be covered along with the finished goods.

This is essential when certain goods are to be dismantled prior to despatch, for convenience of transport.

In the case of CCE s. Scan Machineries, (2009) 234 ELT 282 (CESTAT) the assessee cleared machinery in a phased manner but paid the entire duty at the time of the first clearance of parts, as per trade practice. The clearance was against a single purchase order. It was held that clearance is of a single machine and not as parts of machine.

In case of CC. s Sony India (2008) 231 ELT 385 (SC) while deciding whether import of Colour Television components in CKD condition was assessable as CTVs, the Supreme Court held that components imported were not treatable as complete TV because "Rule 2(a) of Rules for Interpretation of Tariff is applicable only if all components presented at same time for customs clearance. When goods are brought in 94 different consignments then clubbing of all consignments of different dates is not permissible since goods brought are not having essential character of CTV and cannot be taken as complete CTVs. In fact there is no finding that goods brought could make specified number of CTVs. Also a complicated process to be undertaken for making impugned goods useable for assembling CTVs which fails the test of essential character."

In the case of Tata Motors v. CCE (2008) 222 ELT 289 (CESTAT) affirmed in (2016) 337 E.L.T. A99 (S.C.), it was observed that the expression "as presented" should be given the same meaning as "as cleared." Thus, if different parts were cleared from different units at different points of time, duty cannot be demanded by treating them as motor vehicle chassis in CKD condition.

However, the same principle may not be applicable for an import entitlement which is specifically meted out to "parts" as held in case of Union of India v. Tara Chand (1983) 13 ELT 1456 (SC); CC v. Reliance Industries Ltd. (2000) 115 ELT 15.

Rule 2(b): Classification of Mixture or Combinations

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.



Rule 2(b) states In case of CC v National Carbon Co. (1989) 41 ELT 433 (Tribunal) the scope of Rule 2(b) was defined as

"It consists of two parts. The first part relates to the mention of material or substance under any heading and it has been set out that the reference to the material or substance shall be taken to include a reference to mixtures of that materials or substances. This part does not talk about finished goods made out of the material or substance. The second part of the rule deals with the goods of a given material or substance mentioned under any heading of the tariff and reference is to be taken to include a reference to goods consisting of such material or substance. This part does not deal with the composite goods made."

On the basis of the same it can be understood that for classification of composite goods made of different materials, interpretative rule 2(b) is not applicable. (Rule 3(b) needs to be referred).

In the case of Dhariwal Industries s. CCE (2014) 304 ELT 585 (CESTAT) maintained in (2015) 319 E.L.T. A123 (S.C.), the assessee was manufacturing "Calcutta meetha pan" which was a mixture of various items, primary ingredient being pan leaf. The product contained 70% of dry dates and mixture of spices and sweetener. It was held that classification, as per Rules 2(b) and 3(b), ought to be under "Fruits, Nuts and Other Edible parts" under CETH 20.08 and not as "pan masala."

While applying the aforesaid rules, some conflict may arise.

For example:

- a mixture or combination containing more than one material may be classified under more than one heading by applying rule 2(b). If it contains two items A and B, one classification may be on the basis of "A" and other on the basis of "B".
- There may be two descriptions which may both be possible In such cases, resort to Rule 3 needs to be made :

Rule 3(a): Prefer the Specific entry over the general entry

Rule 3(a) states :

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more heading search refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

Rule 3 stipulates that the Heading that provides the more specific description shall be preferred over an entry with generic description.

In case of Jyoti Industries v. CCE (2000) 115 ELT 559 (CEGAT), it was held that Kitchen sink is more appropriately covered under "sanitaryware" (i.e. CTH 7324 [Sanitary ware and parts thereof]) which is a specific description than "household articles of iron and steel" (i.e. CTH 7323 [Household articles of iron and steel]) which is a general description.

In case of Dunlop India Ltd v UOI (1983) 13 ELT 1566 (SC) , it was held that Vinyl Pyridine latex is classifiable as 'raw rubber' under Item 39 of the Indian Tariff Act, 1934 and not under Item No. 87 as residuary item or under Item 82(3) as artificial or synthetic resins. The principle was laid down that "when an article is by all standards classifiable under a specific item in the Tariff Schedule it would be against the very principle of classification to deny it the parentage and consign its residuary item".

In case of Commissioner of VAT v Taneja Mines (2011) 273 ELT 228 (Delhi) (DB) it was held that religious picture would mean pictures used for purpose of religious worship and propagation. The mere fact that the religious pictures are mounted/framed is a matter of irrelevance. Also, the cost of the item is again irrelevant. Frames are nothing more than accessories for safe keeping and do not give any essential characteristics to the goods. Hence



use of gold in religious pictures which depict divinity is in consonance with the concept of the divine. The use of gold plated nickel foil would add ambience to the pictures and thereby increase its value in the aesthetic sense for a man of religious sentiment and theist views.

Rule 3(b): Essential character test for Mixtures or Composite Goods

Rule 3(b) states :

(b) Mixtures, composite goods consisting of different material is or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

In the case of mixtures or composite goods, resort is to be had to determining the material/ component of the product which gives it its essential character.

In the case of CCE v. INARCO . (2015) 318 ELT 604 (SC), it was held that floor tiles containing 13.3% PVC (plastic), 84.9% limestone with plastic as binder is to be classified as 'article of stone, cement' as per the test of 'essential character'.

In the case of Xerox India Ltd. v. CC, Bombay, citation where the dispute pertained to classification of digital printers, with several functions (fax, copier, etc), reliance was placed on Rule 3(b) to classify the item under CTH 8471 as printer, since printing emerged as the principal function.

In re Samsung India Electronics P. Ltd. – (2016) 340 ELT 430 (AAR) it was held that mobile phone with zoom camera is to be classified as a phone, and not as camera, as per its primary function.

In A V Venkateswaran, Collector of Customs v. Ramchand Subhraj 1983 (13) ELT 1327 (SC)

fountain pens with gold nibs, caps, were held to be classifiable as fountain pens.

However, it is to be noted that the said rule would not apply if the articles have a separate identity. In the case of CC v. Siyaram Silk Mills (2009) 235 ELT 241 (CESTAT) where a shirt and tie were sold together, it was held that the set cannot be classified as shirt, and they would be classified as separate items.

Rule 3(c): If both are specific – latter the better

Rule 3(c) states :

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

In case of Mahindra & Mahindra v. CCE – (1999) 109 ELT 739 (CEGAT), it was held that if tariff entries 87.03 and 87.04 are equally applicable, then goods will be classifiable under 87.04, as it occurs later in the Tariff.

Rule 4: Akin goods

Rule 4 states :

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

In the case of CCE vs. KWH Helioplastics Ltd. (1998) 97 ELT 385 (SC), it was observed that in order to resolve the persisting classification dispute, the relationship of the goods under dispute vis-à-vis the description of the goods under the disputed headings should be ascertained. The relationship with a particular heading depends upon the description, purpose and use of goods. If the relationship is established, goods should be classified where they are akin to the description in the Tariff.

Rule 5: Classification of packing containers and packing materials

Rule 5 states:

5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(b) Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use.

This provision is made to ensure that the packing and the goods are charged at the same rate of duty.

In the case of *Print-o-pack v. CCE* (2012) 275 ELT 95 (CESTAT), the assessee was placing sugar cone (i.e. ice-cream cone) in an Aluminium foil cone. It was held that the Aluminium foil cone is used only as packing and the entire item would be classified as 'ice-cream cone' only.

Rule 6: Goods are comparable at the same level only

Rule 6 states:

6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub-headings and any related sub-headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub-headings at the same level are and Chapter Notes also apply, unless the context otherwise requires.

comparable.

The sub-headings within the same heading are comparable with each other, but not with sub-headings under any other heading. Accordingly, the heading is to be first determined, and then the sub-heading has to be ascertained.

Classification of Parts as per Section/Chapter Notes

Classification of parts is subject to the notes in the Sections and Chapters. Broadly, parts suitable solely for a particular machine generally fall under the same heading/ sub-heading in which the main item falls.

However, there are certain exceptions to this general rule.

Parts of General Use

Parts of general use consist of tube and pipe fittings, ropes, cables, chains, screws, bolts, etc. For example, a bolt used in a vehicle will be classified as "bolt" and not as "motor vehicle part."

Part of part is part of whole

In the case of *Needle Roller Bearings v. CCE* (2000) 124 ELT 577 (CEGAT); *Kanwar Sewing Machine, New Delhi v. CC, Bombay* (1983) 12 E.L.T. 804 (C.E.G.A.T.), it was held that ball bearings form part of a machine. Hence, a part of a ball bearing is also a part of a machine.

In the case of *Nalanda Manufacturing Co. v. CCE* (1998) 102 ELT 289 (Tribunal), it was similarly held that part of a refill is also a part of a ball point pen.

3.3 CLASSIFICATION OF GOODS AS PER NOTIFICATION

The Central Government, on the recommendations of the GST Council, has issued Notifications Number 01/2017-CT (Rate) dated 28.06.2017 prescribing the Rate of Tax (Schedules) for specified goods under CGST/IGST ("Rate Notification"). This Notification is divided into 6 Schedules, as follows:



- (i) 2.5% (Schedule I);
- (ii) 6% (Schedule II);
- (iii) 9% (Schedule III);
- (iv) 14% (Schedule IV);
- (v) 1.5% (Schedule V); and
- (vi) 0.125% (Schedule VI)

The Central Government by way of further Notifications has amended the Rate Notification to specify any change of rate of duty on any commodity, from time to time.

It is pertinent to note that the Explanation to the Rate Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 states thus :

For the purposes of this Notification:

- (iii) "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).
- (iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

Therefore, while the Rate Notification under GST provides the rate of tax on goods and services, in order to interpret these Rate Notifications for purposes of levy of GST, one has to read the same along with the First Schedule (including the Section and Chapter Notes and General Explanatory Notes) of the Customs Tariff Act, 1975 ("Tariff").

The broad outlay of the Customs Tariff Act, 1975, its Schedules, Rules of Interpretation, the Harmonised System of Nomenclature vis-à-vis the Tariff and the relevance of erstwhile classification disputes in the new GST regime are enumerated as under:

Harmonized System of Nomenclature ("HSN")

With increase in international trade, the World Customs Organization ("WCO") developed a Harmonized System of Nomenclature ("HSN"), in order to facilitate trade flow and analysis of trade statistics. The following are the features of the HSN:

- (a) Adopted by 137 countries to ensure uniformity in classification of products;
- (b) Contains about 5,000 commodity groups – each identified by a 6-digit code (it is pertinent to note that both the Tariff in India follow an 8 digit code system for further clarity in trade volumes and a more specific classification of indigenous products);
- (c) Amended over regular intervals of 4/6 years, taking into consideration the technological advancements in any field – last amendment approved by the WCO in 2009, and brought into force with effect from 1-1-2012;
- (d) For ensuring uniformity, WCO has published the Explanatory Notes to various headings/ sub- headings;
- (e) The Customs Tariff in India was aligned to the HSN w.e.f. 28.02.1986 (whereas the Excise tariff was aligned w.e.f. 1-3-1986).

Customs Tariff Act, 1975

Prior to the advent of GST, in order to determine the Customs duty leviable on a particular commodity, one had to refer to the Customs Tariff Act, 1975 ("CTA") for the appropriate classification of the goods. The following are the broad features of the CTA:



Sl. No.	Particulars	Customs Tariff Act, 1975 ("CTA")
1.	Chapter linking the main Act with the Tariff Act	Section 12 of the Customs Act, 1962 states that duties of customs shall be levied at such rates as may be specified under [the Customs Tariff Act, 1975 (51 of 1975)], or any other law for the time being in force, on goods imported into, or exported from, India.
2.	Number of Schedules	2
3.	Schedules	Import Tariff
		Export Tariff (contains 49 items [as of 01.03.2011] , most of which are exempt)
4.	Sections	21
5.	Chapters	99 (Chapter 77 is blank, reserved for future use)
6.	Columns	5 (Tariff Item, Description of goods, Unit, Standard Rate of duty and Rate of duty for Preferential Area – e.g. Nepal, Myanmar, etc.)

Broad outline of the Tariff

It is of primary importance to understand the structure of the Tariff, and the nomenclature used for various parts of the same, in order to begin classification of any relevant item, which is as set out below:

- (a) Section
- (b) Chapters, and sub-chapters
- (c) Headings and Sub-Headings

Section	Chapter	Headings
• SECTION is a grouping of a number of Chapters which codify a particular class of goods. Each Section is related to a broad class of goods, for instance: • Section I : Live Animals • Section IV – Prepared foodstuffs, beverages • Section XII – Footwear, Headgear, Umbrella, Articles of human hair	• CHAPTER and sub- chapters contain a particular class of goods, for instance the Section on Prepared foodstuffs, beverages covers Chapters like • Chapter 16: Preparations of meat, fish, etc. • Chapter 17: Sugar and sugar confectionery • Chapter 18: Cocoa and cocoa preparation	• Each chapter is further divided into various HEADINGS and sub-headings depending upon the different type of goods covered within the Chapter, for instance Sugar and Sugar confectionery is further divided into headings like a) Cane or beet sugar. b) Other sugars, molasses (refining of sugar) c) Other sugar confectionery

Reading the Tariff

Arrangement of Goods under the Tariff

It is important to first narrow down the search for the relevant classification by scaling it down to a particular Section or Chapter.

It is interesting to note that the various commodities grouped under the Sections, Chapters, etc are arranged in increasing order of manufacturing process required on the said commodity

– for instance, the Tariff begins with natural products, raw materials, goes on to semi- finished goods and concludes with fully manufactured goods.

Reliance is not to be placed solely on the Section or Chapter Titles to classify the product therein.



Eight-digit classification

Once the search has been restricted to a Specific Chapter, each Chapter begins with a set of Notes that are to be interpreted along with various headings in the Chapter. Such Notes may contain definitions of terms used in the Chapter and specific inclusions and exclusions in the Chapter.

The next portion in the Chapter would comprise a table setting out the Tariff Item, description of goods, Unit, and Rate of duty applicable thereon.

The Indian Tariff System employs the 8-digit format, which is explained below by way of an example.

2008	11	00
↓	↓	↓
Heading	Sub – Heading	Tariff Item

The rate of duty in the Tariff is mentioned against the respective Tariff Items.

Relevance of Dashes

The dashes at the beginning of the description of a group of items indicate the following:

Dashes	Meaning
(-) single dash	A Group of goods
(- -) Two dashes	Sub - group
(- - -) Triple dash or (- - - -) Quadruple dash	Sub – sub classification

Examples within Chapter 20 would be as follows:

Tariff Item	Description of Goods	Unit	Rate of Duty (Standard)	Rate of Duty (Preferential)
2008	Fruit, nuts and other edible parts of plants, otherwise prepared or pre-served, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included			
	- Nuts, groundnuts and other seeds, whether or not mixed together			
2008 11 00	-- Ground nuts	Kg.	30%	--
2008 19	- Others, including mixtures			
2008 19 10	--- Cashew nut, roasted, salted or roasted and salted	g.	45%	--
2008 19 20	--- Other roasted nuts and seeds	g.	30%	--

↓	↓	↓	↓	↓
Heading	Sub-heading	Tariff Item	Unit	Rate of duty

The Mumbai CESTAT in case of Schnectady Herdilla Ltd v CCE (2007) 208 ELT 110 held that for classification under Tariff headings with double (--) entry before them, the goods have to satisfy specifications of single dash (-) preceding them.



Other facets of the Tariff

- (a) The Third Column of the Tariff – “Unit” – indicated by abbreviations – these are mandatory for use in Customs documents, except when impractical (e.g. oil in kgs).
- (b) The % sign in Column 4 indicates that duty is charged “ad valorem” on the value of goods.
- (c) Only sub-headings at the same level (same dashes) are comparable; for instance, in the above example, cashew nuts, roasted and other roasted nuts is comparable, but cashew nuts and ground nuts are not comparable.

Special provisions in Customs Tariff made applicable to GST Rate Schedule for Goods

Though most of goods are classified as per the above system of HSN, special classification is used in certain cases.

Like the following

- All goods imported under “project imports-98.01”
- All laboratory chemicals in packs less than 500 gms or 500 ml -98.02
- All baggage of passengers or member of crew-98.03
- Goods for personal use imported by post or air-98.04
- Stores on board of vessel or aircraft-98.05

These goods will be classified in these headings, irrespective of actual classification as per the Customs Tariff.

Section Notes and Chapter Notes

Each Section and Chapter under the Tariff is accompanied by the notes known as “Section Notes” and Chapter Notes. These are given at the beginning of the Section or Chapter respectively which governs the concerned Section or Chapter as the case may be. In the case of Section Notes, they are applicable to each Chapter which is part of a specific section of the Tariff.

Classification is to be determined only on the basis of description of the heading read with relevant section or Chapter notes. Since these notes are part of Tariff itself, these have full statutory backing. Various Tribunals have held that coverage of respective headings has to be determined in the light of the respective section and Chapter note. Hence in this sense, the section and Chapter note have overriding force over the respective headings and sub-headings.

In *Fenner (India) Ltd v CCE* (1995) 97 ELT 8 (SC), it was observed that tariff schedule would be determined on terms of headings and any relevant section or Chapter notes. In *CC. v Sanghavi Swiss Refills P Ltd* (1997) 94 ELT 644 (CEGAT), it was held that section notes and Chapter notes, being statutory in nature, have precedence over functional test of commercial parlance for the purpose of classification.

In the case of interpretation of an exemption notification also, the Supreme Court in the case of *Gujarat State Fertilizers Co v CCE* (1997) 91 ELT 3 SC laid down the principle in its judgment that Chapter Notes of Chapter of Tariff referred to in the notification have to be read as part and parcel of exemption notification.

Only in cases where a notification is clear and expresses a specific intent the scope of Section Note or Chapter Note as the case may be, is restricted and the language of the notification shall be given preference. It was held so in the case of *New Holland Tractors v.s CCE* (2010) 253 ELT 249 (CESTAT).

However when a notification grants exemption with reference to a particular heading or sub - heading, the notification will have to be interpreted and applied in the light of section notes and

Chapter notes to Tariff as held by CESTAT in case of *CCE v Bharat Metal Industries* (1999) 105 ELT 494 (CESTAT)

HSN and Classification

At the outset, the HSN Explanatory Notes cannot override and dilute the language under the CTA. However, in case of ambiguity, resort to the HSN is permissible provided there is no conflict with the Headings, Chapter Notes



or Tariff Notes. In *CCE v. Wood Craft Products Ltd.* (1995) 77 ELT 23 (SC), it was held that as per the Statement of Objects and Reasons of Central Excise Tariff Bill, 1985, the new tariff has been introduced, based on HSN to reduce classification disputes. Thus, in case of doubt, the HSN is a safe guide for ascertaining the true meaning of any expression used in the Act, unless there is an expressly different intention indicated in the Tariff itself.

The HSN Explanatory notes have also been held to have overriding effect over trade parlance in case of *Health India Laboratories v. CCE* (2007) 216 ELT 161 (CESTAT) affirmed in (2008) 22 E.L.T. A133 (S.C.)

At the same time, in the case of *New India Industries Ltd. v. CC, Bombay* (1994) 73 ELT 723 it was held that the HSN Explanatory Notes have persuasive value but do not have any statutory authority.

Furthermore, in the case of *Consolidated Coin Co. P. Ltd. v CCE* (2013) 287 ELT 221 (CESTAT), the Court observed that US Customs Rulings may be considered for classification disputes, since both US and India follow the HSN based classification.

Department to prove classification

The burden of proof that a product is classifiable under a particular Tariff head is on the Department and must be discharged by proving that it is so understood by the consumers of products in common parlance. It was held so in case of *CCE v. Vicco Laboratories* (2005) 179 ELT 17 (SC 3 Member Bench).

Practical Guide for Classification under GST

Step-wise approach

In terms of the foregoing, given below is a step-wise approach for classification of goods under GST:

- **Step 1:** Identify the goods that require classification.
- **Step 2:** In the Tariff Schedule, commodities are arranged in increasing order of manufacturing process - Identify the broad Sections and Chapters, the said commodity would fall under
- **Step 3:** By way of application of General Rules of Interpretation, classify the product in terms of the 8-digit-classification
- **Step 4:** Find the relevant sub-heading, as per Step 3. The GST Rate Schedule (along with amending notifications) has specified various rates, grouped under 4-digit or 6-digit-classification. Further, a particular Heading may appear in several Schedules, for example, CTH 2106 [Food preparations not specified elsewhere]
- **Step 5:** Find the relevant description of heading in GST Rate Schedule and corresponding Rate

Logical Steps to be followed at the time of classification under Tariff Schedules

- Whether the Section is not applicable on specific goods?
- If yes, no need to look into any of the Chapters within the said Section.
- Whether the Section is applicable on specific goods
- Whether the Chapter is not applicable on specific goods
- If yes, no need to look into any of the Headings within the said Chapter
- If the Chapter is applicable on specific goods

Then, within the Chapter see the description of the Heading which accommodates given Goods.

Thereafter find out the sub-heading which covers the given goods.

3.4 CLASSIFICATION OF SERVICES AS PER NOTIFICATION

The Central Government, on the recommendations of the GST Council, has issued Notifications Number 11/2017-CT (Rate) dated 28.06.2017 prescribing the Rate of Tax (Schedules) for specified services under CGST/IGST ("Rate Notification").



The Central Government by way of further Notifications amends from time to time the Rate Notification to specify any change of rate of tax on any service, from time to time.

It is pertinent to note that the Explanation to the Rate Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 states thus :

For the purposes of this Notification:

- (i)
- (ii) Reference to "Chapter", "Section" or "Heading", wherever they occur, unless the context otherwise requires, shall mean respectively as "Chapter", "Section" and "Heading" in the annexed scheme of classification of services (Annexure).

Along with the rate notification a detailed annexure for scheme of classification of services has been given . However unlike for goods, no method has been prescribed as to how one has to read the given annexure along with the Rate Notification.

Reading the Annexure to Notification No 11/2017-CT Rate dated 28.06.2017

The given annexure is based on a six digit format which is akin to HSN Classification for goods. Section 5 of Chapter 99 of Annexure reads as under:

Annexure : Scheme of Classification of Services			
Sl. No.	Chapter, Section, Heading or Group	Service Code (Tariff)	Service Description
(1)	(2)	(3)	(4)
1	Chapter 99		All Services
2	Section 5		Constructions Services
3	Heading 9954		Constructions Services
4	Group 99541		Constructions Services of Buildings
5		995411	Construction services of single dwelling or multi dwelling or multistoried residential buildings
6		995412	Construction services of other residential buildings such as old age homes, homeless shelters, hostels and the like
7		995413	Construction services of industrial buildings such as buildings used for production activities (used for assembly line activities), workshops, storage buildings and other similar industrial buildings
8		995414	Construction services of commercial buildings such as office buildings, exhibition and marriage halls, malls, hotels, restaurants, airports, rail or road terminals, parking garages, petrol and service stations, theatres and other similar buildings.
9		995415	Construction services of other non-residential buildings such as education institutions, hospitals, clinics including veterinary clinics, religious establishments, courts, prisons, museums and other similar buildings
10		995416	Construction services of other buildings nowhere else classified
11		995417	Services involving repair, alterations, additions, replacements, renovation, maintenance or remodeling of the buildings covered above.

**Contents of an Entry**

- Here Chapter is of 2 digits (Chapter 99)
- Section is of 1 digit after Chapter (Section 5)
- Heading is of 1 digit after Section (Heading 9954)
- Tariff Item is of 2 digits after Heading (995411)

Principles of Classification

No principles for classification of services have been prescribed under notification for rate or under law for the services. The principles of classification as applicable for Goods cannot be applied on services ..

A clue can be taken from the erstwhile service tax provisions and also from CPC (Central Product Classification) by United Nations Statistical Commission whose list of services is akin to the Annexure to Notification No 11/2017-CT Rate dated 28.06.2017.

Interestingly, The Central Board for Indirect Tax and Customs issued **"Explanatory Notes to the Scheme of Classification of Services"** on 12th June 2018 wherein it has been specified that-

The Scheme of Classification of Services adopted for the purposes of GST is a modified version of the United Nations Central Product Classification. 2. The Explanatory notes for the said Scheme of Classification of Services is based on the explanatory notes to the UNCPC.

The explanatory notes indicate the scope and coverage of the heading, groups and service codes of the Scheme of Classification of Services. These may be used by the assessee and the tax administration as a guiding tool for classification of services. However, it may be noted that where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.

What is CPC (Central Product Classification)?

In the Preface to the document issued by Department of Economic and Social Affairs (Statistical Division) of United Nations in 2015 titled "Central Product Classification-Version 2.1", it has been stated thus :

"The Central Product Classification (CPC) constitutes a complete product classification covering all goods and services. It serves as an international standard for assembling and tabulating all kinds of data requiring product detail, including statistics on industrial production, domestic and foreign commodity trade, international trade in services, balance of payments, consumption and price statistics and other data used within the national accounts. It provides a framework for international comparison and promotes harmonization of various types of statistics related to goods and services".

Further in the Overview to the said document it has thus been stated about CPC:

The Central Product Classification (CPC) consists of a coherent and consistent classification structure for products based on a set of internationally agreed concepts, definitions, principles and classification rules. The classification structure represents a standard format to organize detailed information on products – be it on production, transformation, trade or consumption – according to economic principles and perceptions.

It is pertinent to note that with regard to services, before the development of the CPC, no international classification covering the whole spectrum of outputs of the various service industries and serving the different analytical needs of statistical and other users was available

Structure of CPC

The overall set of products is subdivided into a hierarchical, five -level structure of mutually exclusive categories.

- The categories at the highest level are called sections, which are numerically coded categories. The sections sub-divide the entire spectrum of products into broad groupings, such as "Agriculture, forestry and fishery products" (section 0), "Constructions and construction services" (section 5) or "Community, social and personal services" (section 9).



- The classification is then organized into successively more detailed categories, which are numerically coded: two-digit divisions; three-digit groups; four-digit classes; and, at the greatest level of detail, five-digit sub-classes.

Principles, Definitions and classification rules for reading CPC

Various principles enumerated for reading and understanding CPC are given as its integral part of document. The relevant points in relation to classification for services under CPC are briefed below:

1. The CPC, covering all services, is a system of categories that are both exhaustive and mutually exclusive. This means that if a service does not fit into one CPC category, it must automatically fit into another. Consistent with the other principles used, homogeneity within categories is maximized.
2. The CPC classifies services based on the properties and its intrinsic nature as well as on the principle of industrial origin.
3. The importance of the industrial origin of services was underscored by the attempt to group into one CPC subclass mainly the services that are the output of a single industry. Through their linkage to the criterion of industrial origin, the input structure, technology and organization of characteristics of services are also reflected in the structure of the CPC.
4. In addition, efforts have been made to define each sub-class in sections 0 to 4 of the CPC as the equivalent of one heading or sub-heading or the aggregation of several headings or subheadings of the Harmonized Commodity Description and Coding System (HS), owing to the fact that the HS is a detailed classification of transportable goods that is widely accepted for use in international trade statistics by virtually all countries.

Application of CPC

I. Rules of Interpretation

According to the rules of interpretation of CPC in the context of services, it should be classified on following principles:

- A) When services are, prima facie, classifiable under two or more categories, classification shall be effected as follows, on the understanding that only categories at the same level (sections, divisions, groups, classes or subclasses) are comparable:
 - a) The category that provides the most specific description shall be preferred to categories providing a more general description;
 - b) Composite services consisting of a combination of different services which cannot be classified by reference to (a) shall be classified as if they consisted of the service which gives them their essential character, in so far as this criterion is applicable;
 - c) When services cannot be classified by reference to (a) or (b), they shall be classified under the category that occurs last in numerical order among those that equally merit consideration.
- B) Services that cannot be classified in accordance with the above rules shall be classified under the category appropriate to the services to which they are most akin.

II. Explanatory Notes

The explanatory notes provide descriptions of services that are included in each subclass, as well as examples of similar services that are excluded, for reference purposes. In some cases explanatory notes are also available for categories of higher aggregated levels of the CPC structure. Whenever an exclusion statement is provided, it is accompanied by an exact cross - reference to indicate the code of the subclass where the product in question is actually classified. The exclusions are sorted by cross-referenced CPC code in numerical order; they do not indicate a ranking by importance. Although the title description should define the boundary of the sub-class, the explanatory notes clarify further the border and content of the sub -class.

The explanatory notes are not intended to present an exhaustive list of all the products under each heading; they should be regarded only as lists of examples to illustrate the subclass content.



It has been further provided in the CPC document issued by United Nations that

"It should be noted that if CPC categories are utilized for purposes other than statistical ones - for example as a source for the preparation of legal documents or for such purposes as procurement - those who prepare the legal document in which reference is made to CPC categories, not the developers of the classification, are responsible for explaining the use of those categories in the legal document".

Example on CPC Structure and Understanding

The CPC and its related rules can also be best understood with some illustrations which are given below –

The facility of mining is provided by government to various business entities. These are services provided by government and are liable for payment of GST under RCM by mine holder. The rate for government services are generally 18%. However under entry no.17 in heading 9973 for leasing, read with annexure there is a specific entry which reads as under –

250	Group 99733		Licensing services for the right to use intellectual property and similar products
251		997331	Licensing services for the right to use computer software and databases
252		997332	Licensing services for the right to broadcast and show original films, sound recordings, radio and television programme and the like
253		997333	Licensing services for the right to reproduce original art works
254		997334	Licensing services for the right to reprint and copy manuscripts, books, journals, and periodicals
255		997335	Licensing services for the right to use research and development products
256		997336	Licensing services for the right to use trademarks and franchises
257		997337	Licensing services for the right to use minerals including its exploration and evaluation
258		997338	Licensing services for right to use other natural resources including telecommunication spectrum
259		997339	Licensing services for the right to use other intellectual property products and other resources nowhere else classified.

Further the Explanatory Notes under UNCPD to the Classification 9973 reads as under:

99733 Licensing services for the right to use intellectual property and similar products

This group includes permitting, granting or otherwise authorizing the use of intellectual property products and similar products.

Note: This covers rights to exploit these products, such as licensing to third parties; reproducing and publishing software, books, etc.; using patented designs in production processes to produce new goods and so on. Limited end user licences, which are sold as part of a product (e.g., packaged software, books) are not included here.

This group does not include:

- Licence fees as integral part of customer goods (e.g., end-user licenses for books, records, software)
- Preparation, drafting and certification services concerning patents, trademarks, copyrights and other intellectual property rights, cf. 998213
- Management services for copyrights and their revenues (except from motion pictures), cf. 998599
- Management services for rights to industrial property (e.g., patents, licences, trademarks, franchises etc.), cf. 998599
- Management services for motion picture rights, cf. 999614
- Management services for artistic rights, cf. 999629



The said sub-classification is further classified as under (reproduced)

997337 Licensing services for the right to use minerals including its exploration and evaluation

This service code includes licensing services for the right to use, mineral exploration and evaluation information, such as mineral exploration for petroleum, natural gas and non-petroleum deposits.

997338 Licensing services for the right to use other natural resources including telecommunication spectrum

Now, on a perusal of the said classification on which Notification No. 11/2017-CT (Rate) dated 28.06.2017 is based, it is evident that the classification of service in question can be made under tariff item 997337 or 997338 as the case maybe. Since the entry is unambiguous and defines the nature of the service clearly, the classification as given by UNPCPC should be followed.

The rate of GST in case of tariff item 997337 is the rate applicable on the goods which are extracted from the mine. Generally the rate for such goods under GST is 5%. Hence when a specific entry has been given, the rate of GST for such royalty payment should be 5% instead of 18% as general rate.

Broad Structure of CPC

The broad structure of CPC in relation to services on the basis of which the CGST Rate Notification No 11/2017 dated 28.06.2017 is also based, is summarized as under:

Section	Division		Groups	Classes	Sub classes
5		Constructions and construction services			
	53	Constructions	2	10	24
	54	Construction services	7	37	61
6		Distributive trade services; accommodation, food and beverage serving services; transport services; and electricity, gas and water distribution services			
	61	Wholesale trade services	2	18	120
	62	Retail trade services	5	45	269
	63	Accommodation, food and beverage services	4	10	16
	64	Passenger transport services	2	8	28
	65	Freight transport services	3	7	28
	66	Rental services of transport vehicles with operators	1	3	8
	67	Supporting transport services	7	22	25
	68	Postal courier services	1	3	7
	69	Electricity, gas and water distribution (on own account)	2	5	6
7		Financial and related services; real estate services; and rental and leasing services			
	71	Financial and related services	7	24	57
	72	Real estate services	2	7	14
	73	Leasing or rental services without operator	3	16	28
8		Business and production services			
	81	Research and development services	4	8	40
	82	Legal and accounting services	4	9	12
	83	Professional, technical and business services (except research, development, legal and accounting services)	9	33	80



	84	Telecommunications, broadcasting and information supply services	6	21	38
	85	Support services	6	27	47
	86	Support and operation services to agriculture, hunting, forestry, fishing, mining and utilities	3	12	25
	87	Maintenance, repair and installation (except construction) services	3	17	29
	88	manufacturing services on physical inputs owned by others	9	31	125
	89	Other manufacturing services, publishing and printing and reproduction services, materials recovery services	4	8	10
9		Community, social and personal services			
	91	Public administration and other services provided to the community as a whole; compulsory social security services	3	17	32
	92	Education services	6	12	14
	93	Human health and social care services	5	12	32
	94	Sewage and waste collection, treatment and disposal and other environmental protection services	6	15	28
	95	Services of membership organizations	3	6	14
	96	Recreational, cultural and sporting services	7	23	38
	97	Other services	4	13	13
	98	Domestic services	1	1	1
	99	Services provided by extraterritorial organizations and bodies	1	1	1

Legal Backing to UNCPC

However, these rules of classification have not been prescribed under the GST Laws and hence cannot be enforced upon the tax payer or the tax authorities. The given CPC schedule is the clear base on which Notification No. 11/2017-CT (Rate) dated 28.06.2017 is based, but since reference to the same has been given only through a Press Release the same shall stand on weak ground in case the same is referred completely, by any of the stakeholders at the time of classification disputes. The judicial precedents from courts shall have a binding effect over the CPC Schedule.



Study Note - 4

TIME OF SUPPLY UNDER GST



This Study Note includes

4.1 Time of Supply

4.2 Change in Rate of Tax in respect of Supply of Goods or Services

4.1 TIME OF SUPPLY

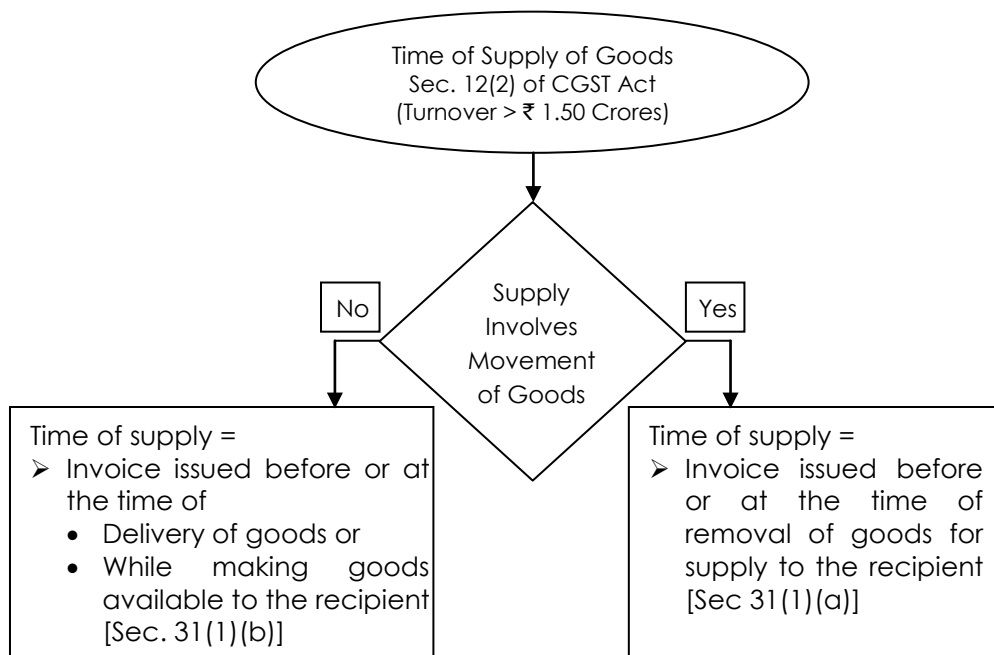
It means the date on which the charging event has occurred. As a result the rate of CGST/SGST or IGST or UTGST will be decided in accordance with the time of supply. Based on time of supply we will also determine the due date of payment of GST.

Due date of payment of GST:

S.No.	Nature of assessee	Due Date	Relevant provision
1	Composition scheme	18th of the month following the quarter	Sec.39(2)
2	Tax Deducted at Source (TDS)	10th of the following month	Sec. 39(3)
3	Non-resident taxable person	20 days after the end of the calendar month or 7 days after last date of validity period of registration.	Sec. 39(5)
4	Tax Collected at Source (TCS)	10th of the following month	Sec. 56(2)
5	Other than above	20th of the following month	Sec. 39(1)
6	Assessee turnover not exceeds ₹ 1.50 crore in the P.Y.	20th of the following month from the end of relevant quarter.	Commencing from Oct-Dec in the financial year 2017-18.

Section 12 and 13 of CGST Act, 2017:

Time of Supply of Goods		Time of Supply of Services	
Section 12(1)	The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section.	Section 13(1):	The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.
Section 12(2)	Time of Supply of Goods under Forward Charge.	Section 13(2)	Time of Supply of Services under Forward Charge.
Section 12(3)	Time of Supply of Goods under Reverse Charge.	Section 13(3)	Time of Supply of Services under Reverse Charge.
Section 12(4)	Time of Supply in case of Supply of Vouchers.	Section 13(4)	Time of Supply in case of Supply of Vouchers.
Section 12(5)	Residuary Clause. [where the time of supply cannot be determined under sub-section (2) to sub-section (4) of Section 12]	Section 13(5)	Residuary Clause. [where the time of supply cannot be determined under sub-section (2) to sub-section (4) of section 13]
Section 12(6)	The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.	Section 13(6)	The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

**(A) Time of Supply of Goods [Sec. 12(2) of CGST Act, 2017]****Example 1:**

P of Chennai supplies goods to B of Bengaluru. P has to send the goods for delivery from Chennai to Bengaluru. P sends the goods to B on 30th Oct 2017. Turnover of P in the previous year was ₹ 2 crore. Find the time of supply in the following different scenarios:

Removal of Goods	Date of Issue of Invoice	Last Date for Issue of Tax Invoice	Date on which payment is entered in the books of account	Date on which payment is credited in the Bank Account	Time of Supply	Criteria for determining Time of Supply
30th Oct	30th Oct	30th Oct	31st Oct	1st Nov	30th Oct	Date of issue of Invoice
30th Oct	2nd Nov	30th Oct	31st Oct	1st Nov	30th Oct	Last Date for issue of Invoice
30th Oct	28th Oct	30th Oct	27th Oct	26th Oct	26th Oct	Date on which payment is credited in the Bank Account

Example : 2

Mr. Ram sold goods to Mr. Shyam worth ₹ 5,00,000. The invoice was issued on 15th November. The payment was received on 30th November. The goods were supplied on 20th November.

Find the time of supply of goods.

Previous year turnover of Mr. Ram was ₹ 172 lakhs.

Answer:

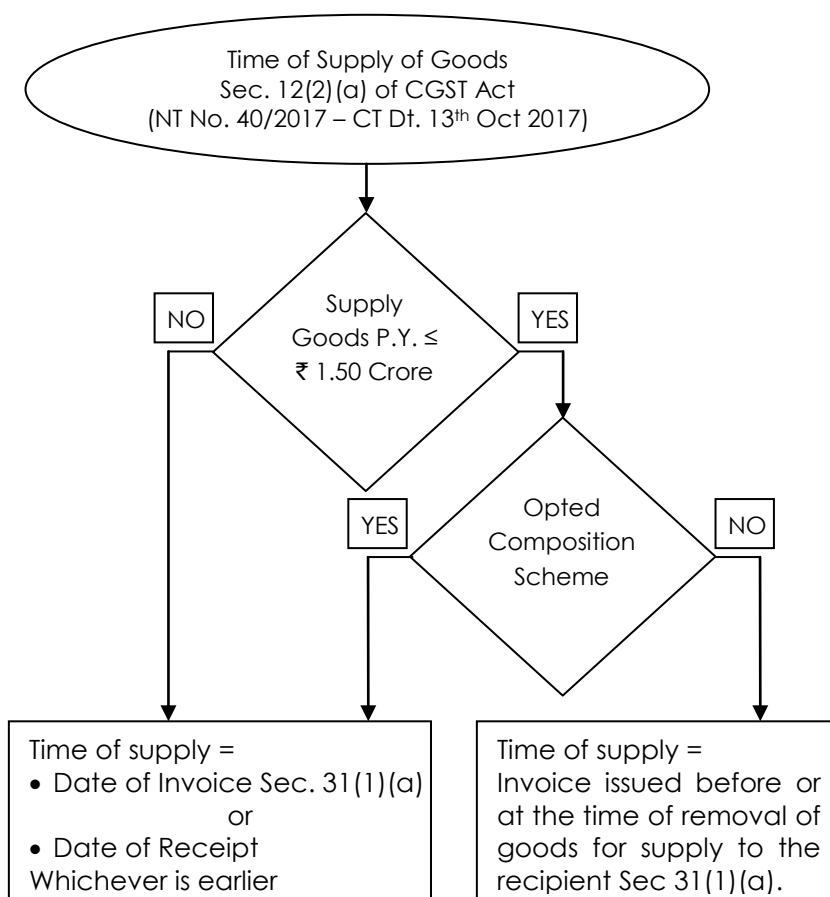
Particulars	Whichever is earlier
Date of issue of invoice	15th November
Last date on which invoice should have been issued	20th November
Date of receipt of payment	30th November

Therefore, time of supply of goods = 15th November.
Date of invoice or payment whichever is earlier.

No GST on Advance Payments received for Supply of Goods by Small Taxpayers having aggregate annual turnover of upto ₹ 1.5 crores:

Taxable persons whose aggregate turnover in the preceding year did not exceed ₹ 1.5 Crore or registered persons whose aggregate turnover in the year in which such person has obtained registration is likely to be less than ₹ 1.50 crore and who did not opt for the composition levy under section 10 of the said Act.

The liability to pay taxes by such persons shall be on invoice basis. This means GST liability on advance received is waived of through **Notification No. 40/2017 – Central Tax Dt 13th Oct 2017** for such taxpayers as mentioned above.



Example : 3

Mr. Ram sold goods to Mr. Ravi worth ₹ 5,00,000. The invoice was issued on 15th November. The payment was received on 31st October. The goods were supplied on 20th November.

Find the time of supply of goods.

Previous year turnover of Mr. Ram was ₹ 72 lakhs.

Answer:

Particulars		
Date of issue of invoice	15th November	Date of invoice is the criteria
Last date on which invoice should have been issued	20th November	
Date of receipt of payment	31st October	Advance is not a time of supply



Therefore, time of supply of goods = 15th November.

The phrase “the date on which supplier receives the payment” or “the date of receipt of payment” means:

- the date on which payment is entered in his books of accounts
 - or
 - the date on which the payment is credited to his bank account,
- whichever is earlier.

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:

Example 4:

X & Co., receives an advance of ₹ 2,500/- on 29.07.17 for goods worth ₹ 10,000/- to be supplied in the month of September 2017.

Find the following:

- (a) Value of supply of goods in the month of July 2017*
- (b) Due date of tax liability for the month of July 2017.*

Note: Previous year turnover ₹ 1.80 crore.

Answer:

- (a) Advance ₹ 2,500/- is treated as deemed supply.*
Therefore, X & Co., has made a supply of ₹ 2,500/- on 29.07.17.
- (b) Tax liability on ₹ 2,500/- is to be discharged by 20.08.17.*

An amount upto ₹ 1,000/- in excess of the amount indicated on the tax invoice.

Time of supply =

- The date of issue of invoice.
- Or
- Date of receipt of payment.

At the option of the supplier.

Example : 5

If a supplier of goods has received an amount of ₹ 1,500/- against an invoice of ₹ 1,100/- on 25.07.17 and the date of invoice of next supply to the said recipient is 14.08.17.

Find the following in respect of excess amount over and above invoice value:

- (a) Time of Supply of goods*
- (b) Due date of payment of tax.*

Answer:

- (a) Since, excess amount received over and above invoice value not exceeds ₹ 1,000, supplier has an option to treat the time of supply w.r.t ₹ 400/- either as 25.07.17 or 14.08.17.*
- (b) Due date of payment of tax*
 - If Time of Supply = 25.07.2017, then due date is 20.8.2017*
 - If Time of Supply = 14.08.2017, then due date is 20.9.2017*

**Example : 6**

M/s X Ltd., being a manufacturer, sold goods to M/s Y Ltd., wholesaler, and issued invoice for the sale on 01-08-2017.

Find the time of supply of goods in each of the following independent cases:

- (i) M/s X Ltd., removes the goods for delivery to M/s Y Ltd., on 16th August 2017.
- (ii) M/s. Y Ltd., collects the goods from premises of M/s X Ltd., on 10th August 2017.
- (iii) M/s Y Ltd., made full payment on 26th July 2017.
- (iv) M/s Y Ltd., credited the payment in bank account of M/s X Ltd., on 28th July 2017 for 3/4th of goods, M/s X Ltd., recorded the same as receipts in his books on 3rd August 2017. The goods were dispatched on 5th August 2017 from the warehouse.

Answer:

- (i) 1st August 2017 is the time of supply of goods.

i.e. Earlier of the following:

- Date of Invoice - 1st August 2017
- or
- Date on which invoice is required to be issued - 16th August 2017.

- (ii) 1st August 2017 is the time of supply of goods.

i.e. Earlier of the following:

- Date of Invoice - 1st August 2017
- or
- Date on which goods is delivered - 10th August 2017.

- (iii) 26th July 2017 is the time of supply of goods

i.e. Earlier of the following: -

- Date of Invoice - 1st August 2017
- or
- Date of Payment - 26th July 2017.

Note: assume P.Y. turnover exceeds ₹ 1.50 crore.

- (iv) The time of supply of goods for 3/4th of the goods will be 28th July 2017 as the payment has been made prior to the date of invoice and the time of supply of goods will be 1st August 2017 for remaining 1/4th goods.

Note: Assume previous year turnover exceeds ₹ 1.50 crore.

Continuous supply of goods

Time of supply =

- Time when each statement is issued.
- OR
- Time when each payment is received.

Whichever is earlier.

Note: Sec 31(4) of CGST Act, 2017, the Invoice shall be issued before or at the time of such statement is issued or, as the case may be each such payment is received.

Example : 7

M/s AB Oil Corporation entered into a contract with Mr. B to supply of oil throughout the year. M/s AB Oil Corporation issues monthly statement for the oil supplied to Mr. B.

Determine the time of supply of goods in following independent cases:

- (i) Mr. B made payment for the month of July on 31st July 2017 and M/s AB Oil Corporation issued statement for the month of July on 8th August 2017.
- (ii) M/s AB Oil Corporation issued statement for the month of August on 5th September 2017, the payment of which not received till 30th September 2017.



Answer:

(i) 31st July 2017 will be the time of supply.

Earliest of the following:

- **Date of Invoice: 8th August 2017**
- **Last date on which invoice has to be issued:**
Date of payment (31.07.2017) or
statement (08.08.2017).

whichever is earlier i.e. 31st July 2017.

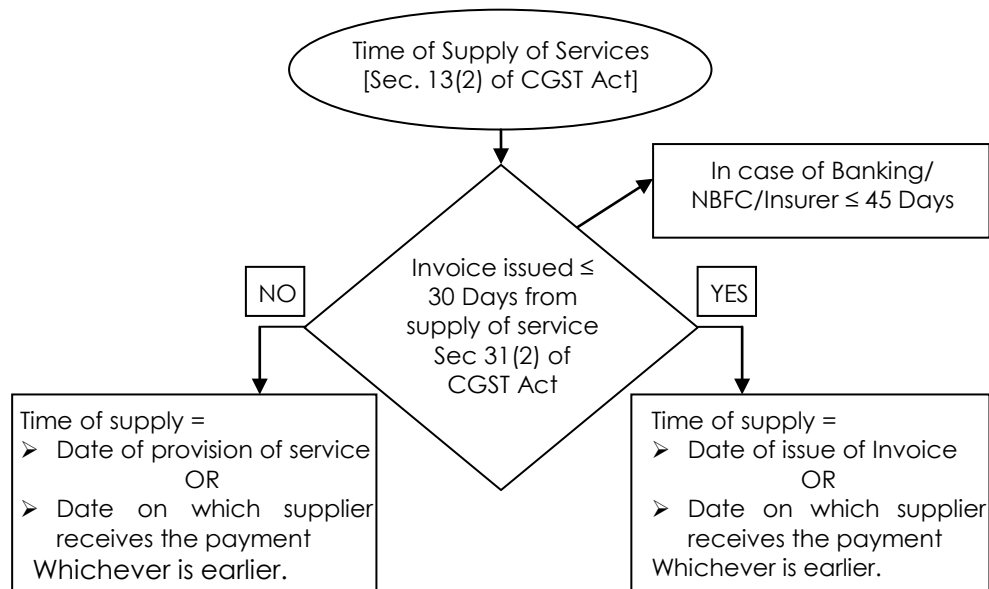
(ii) 5th September 2017 will be the time of supply.

Earliest of the following:

- **Date of Invoice: 5th September 2017.**
- **Last date on which invoice has to be issued:**
Date of payment (not known) or
statement (05.09.2017).

whichever is earlier i.e. 5th September 2017.

(B) Time of Supply of Services [Sec. 13(2) of CGST Act]:



Example : 8

ABC & Co., a Cost Accountants firm issued invoice for services rendered to Mr. Ram on 5th August 2017. Determine the time of supply in following independent cases:

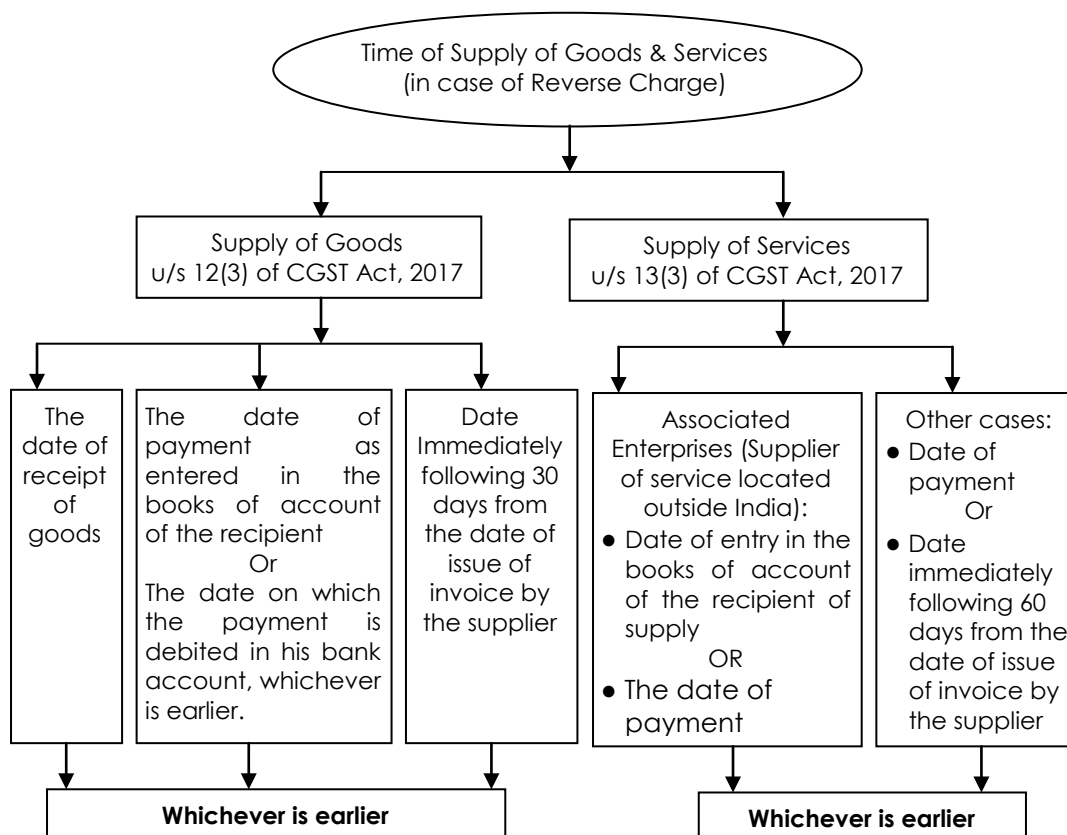
- The provisions of services were completed on 1st July 2017.**
- The provisions of services were completed on 15th July 2017.**
- Mr. Ram made the payment on 3rd July 2017, where provisions of services were remaining to be completed.**
- Mr. Ram made the payment on 15th August 2017, where provisions of services were remaining to be completed.**



Answer:

- (i) 1st July 2017 will be the time of supply of services as invoice is not issued within the time frame of 30 days.
- (ii) 5th August 2017 will be the time of supply of services as invoice is issued within the time frame.
- (iii) 3rd July 2017 will be the time of supply of services as payment received before invoice date.
- (iv) 5th August 2017 will be the time of supply of services as invoice is issued before the completion of provisions of services.

(C) Time of Supply of Goods & Services (in case of Reverse Charge)



If time of supply cannot be determined with the help of above provisions then the time of supply shall be the date on which entry in the books of the recipient of goods & services is made.

Example : 9

Mr. A, a registered person received goods (i.e. Bedi leaves) from Mr. B, an unregistered dealer. Mr. B issues invoice on 1st July 2017.

Find the time of supply of goods in following independent cases:

- (i) Mr. A received goods on 15th July 2017, payment of which is not made yet.
- (ii) Mr. A received goods on 3rd August 2017 & made payment for the same on 4th August 2017.
- (iii) Mr. A made payment on 8th July and received goods on the same date.
- (iv) Mr. A received goods on 10th July 2017 & made payment for the same on 9th July 2017.



Answer:

(i) Time of supply of goods	= 15-07-2017
Earliest of the following:	
Receipt of Goods	= 15-07-2017
Date of Payment	= not paid
Date immediately following 30 days from the date of invoice	= 31-07-2017
(ii) Time of supply of goods	= 31-07-2017
Earliest of the following:	
Receipt of Goods	= 03-08-2017
Date of Payment	= 04-08-2017
Date immediately following 30 days from the date of invoice	= 31-07-2017
(iii) Time of supply of goods	= 08-07-2017
Earliest of the following:	
Receipt of Goods	= 08-07-2017
Date of Payment	= 08-07-2017
Date immediately following 30 days from the date of invoice	= 31-07-2017
(iv) Time of supply of goods	= 09-07-2017
Earliest of the following:	
Receipt of Goods	= 10-07-2017
Date of Payment	= 09-07-2017
Date immediately following 30 days from the date of invoice	= 31-07-2017

Example : 10

C Ltd., a registered firm received services from a Raman & Co., an Advocate firm., an unregistered person. The firm issued invoice to C Ltd. on 1st July 2017. Determine the time of supply of services in the following independent cases:

- (i) C Ltd. made the payments to the firm on 15th August 2017.
(ii) C Ltd. made the payments to the firm on 11th September 2017.

Note: C Ltd turnover in the preceding financial year was ₹ 2 crore

Answer:

- (i) Time of supply of service = 15-08-2017
Note: as payment made earlier than the date immediately following 60 days from date of issue of invoice.
(ii) Time of supply of service = 30-08-2017
Note: as payment made after the date immediately following 60 days from date of issue of invoice.

Example : 11

X Ltd. & Y Ltd. (London) is associated enterprises. X Ltd., a registered firm received the services of Y Ltd., a unregistered firm. Determine the time of supply in following cases:

- (i) X Ltd. recorded the liability in the books on 15th July 2017 and payment will be made in the next month.
(ii) X Ltd. made advance payment to Y Ltd. on 10th July and recorded liability in the books on 15th Aug 2017.

Answer:

- (i) Time of supply = 15-07-2017
Note: as the date of entry in the books is prior to the date of payment.
(ii) Time of supply = 10-07-2017
Note: as the payment is made earlier to the date of entry in the books.

**Goods sent for approval:**

Time of supply =

- Time when it becomes known that supply is taken place.

OR

- Six month from the date of removal.

Whichever is earlier.

Time of Supply of Vouchers for Goods & Services [Section 12(4) & 13(4) of CGST Act, 2017]:

If the supplies is identifiable at that point:

- Time of supply = Date of issue of voucher.

If the supplies is not identifiable at that point:

- Time of supply = The date of redemption of voucher.

Example : 12

Reliable Industries a readymade garment manufacturer issued the voucher on 10-07-2017 to their prospective customer for enabling them to buy readymade garments manufactured by them from their shop. Customer purchased readymade garments on 20th Aug 2017.

Find the time of supply of goods?

Answer:

Time of supply of goods = 10-07-2017

Note: time of supply will be the issuance of the voucher. Since, the voucher is identifiable with the goods.

Example : 13

Shopper's Stop store a large retailer who sells various types of products like readymade garment, jewellery, cosmetics, fabrics, shoes etc., issued the voucher on 10-07-2017 to their prospective customer for enabling them to buy any product from their shop. Customer purchased readymade garments on 20th Aug 2017.

Find the time of supply of goods?

Answer:

Time of supply of goods = 20-08-2017

Note: time of supply will be the date of encashment of voucher (i.e. Redemption of voucher). Since, the voucher is not identifiable with any specific product.

Time of supply of goods or services (Residual provisions) [Section 12(5) and Section 13(5) of the CGST Act, 2017]:

In case it is not possible to determine the time of supply under aforesaid provisions, the time of supply is:

- Due date of filing of return, in case where periodical return has to be filed.
- Date of payment of tax in all other cases

Time of supply of goods or services related to an addition in the value of supply by way of interest, late fees or penalty [Section 12(6) and Section 13(6) of the CGST Act, 2017]:**Example : 14**

Mr. X being a supplier receives consideration in the month of September 2017, instead of due date of July 2017, and for such delay he is eligible to receive an interest amount of ₹ 1,000/- and the said amount is received on 15.12.2017.

Find the time of supply for the interest portion and due date of payment.

Answer:

The time of supply = 15.12.17

i.e. the date on which it is received by the supplier and

Due date of tax liability = 20.01.18.



4.2 CHANGE IN RATE OF TAX IN RESPECT OF SUPPLY OF GOODS OR SERVICES

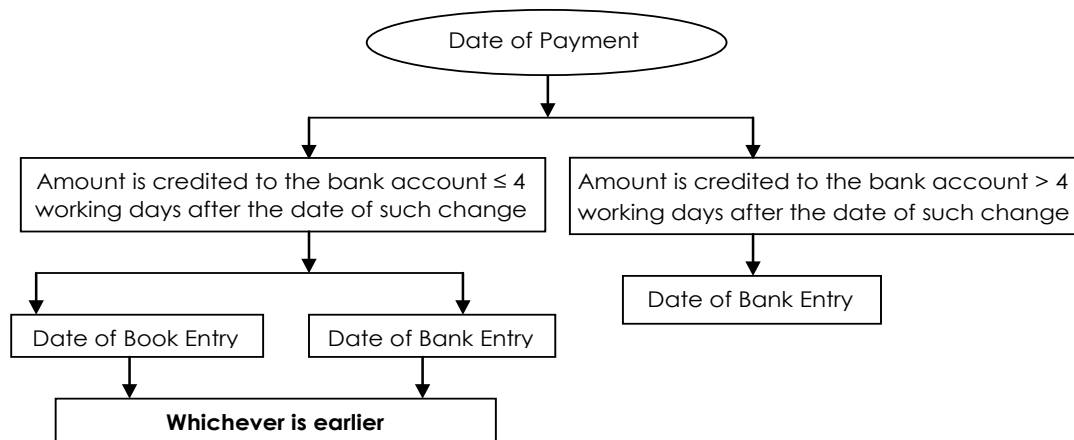
Change in Rate of Tax in respect of supply of goods or services Sec. 14 of the CGST Act, 2017:

S.No.	Supply is completed before the change in rate of tax	Invoice issued before the date of change in tax	Payment received before the date of change in tax rate	Time of supply	Applicable rate of tax
1	Yes	No	No	Earliest of the date of invoice or payment	New Rate of Tax
2	Yes	Yes	No	Date of issue of invoice	Old Rate of tax
3	Yes	No	Yes	Date of receipt of payment	Old Rate of tax
4	No	Yes	Yes	Earliest of the date of invoice or payment	Old Rate of Tax
5	No	Yes	No	Date of receipt of payment	New Rate of tax
6	No	No	Yes	Date of issue of Invoice	New Rate of tax

Date of receipt of payment in case of change in rate of tax: Normally the date of receipt of payment is the date of credit in the bank account of the recipient of payment or the date on which the payment is entered into his books of account, whichever is earlier.

However, in cases of change in rate of tax, the date of receipt of payment is the date of credit in the bank account if such credit is after four working days from the date of change in rate of tax.

Date of receipt of payment in case of change in rate of tax:



Example : 15

Mr. X is supplied goods to Mr. Y on 28th July 2017. The GST rate on goods is changed from 12% to 5% w.e.f. 1st January 2018. Mr. X issued invoice on 28th August 2017 and payment is credited in his bank account on 30th December 2017.

(i) What is the time of supply in this case?

(ii) Effective rate of GST?

Answer:

(i) Time of supply = 28th August 2017

(ii) Effective rate of GST = 12%

**Example : 16**

X Pvt. Ltd. engaged in providing taxable services by way of training and coaching activities in relation of information Accounting and Auditing since, 1st July 2017 has the following details in respect of that activity for the month of September, 2017:

<i>Date of issuance of invoice</i>	<i>Date on which payment received</i>	<i>Amount in ₹</i>
<i>16.09.2017</i>	<i>03.10.2017</i>	<i>2,50,000</i>
<i>20.10.2017</i>	<i>06.10.2017</i>	<i>25,000</i>
<i>02.10.2017</i>	<i>30.09.2017</i>	<i>1,25,000</i>

The date of change in effective rate of tax in this case is 01-10-2017 from 12% to 18%. These services are rendered in August 2017. Find the Time of Supply of service, effective rate of tax and due date of payment of tax.

Answer:

<i>Services rendered</i>	<i>Date of issuance of invoice</i>	<i>Date on which payment received</i>	<i>Amount in ₹</i>	<i>Time of supply of service</i>	<i>Effective Rate of tax</i>	<i>Due date of payment</i>
<i>Aug 2017</i>	<i>16.09.2017</i>	<i>03.10.2017</i>	<i>2,50,000</i>	<i>16.09.2017</i>	<i>12%</i>	<i>20.10.2017</i>
<i>Aug 2017</i>	<i>20.10.2017</i>	<i>06.10.2017</i>	<i>25,000</i>	<i>06.10.2017</i>	<i>18%</i>	<i>20.01.2018</i>
<i>Aug 2017</i>	<i>02.10.2017</i>	<i>30.09.2017</i>	<i>1,25,000</i>	<i>30.09.2017</i>	<i>12%</i>	<i>20.10.2017</i>



Study Note - 5

VALUE OF SUPPLY UNDER GST



This Study Note includes

5.1 Value of Supply

5.1 VALUE OF SUPPLY

Value of Supply in common terms is nothing but the amount paid by the recipient of supply to the supplier as consideration for supply (also known as transaction value). It means Value of supply is the figure upon which tax is levied and collected.

It is important to know to ascertain correct value of supply for correct levy of GST.

Valuation rules determine value of goods or services or both on which tax under GST has to be charged. Valuation rules have been prescribed under CGST Rules, 2017 for the purpose of determination of fair market value of goods or services or both supplied by the registered person. It means valuation rules are helpful to determine the value of supply where value not determined under Sec. 15(1) as mentioned under Sec. 15(4) of CGST Act, 2017.

Example : 1

Mr. A goes to shop of Mr. B and purchases television. He pays amount of ₹ 50,000 as consideration for 52 inches LED TV Purchased plus GST. Where MRP of the product ₹ 65,000. Discount offered to all buyers ₹ 15,000. As per section 15(1) of the CGST Act, 2017 the valuation will be as per transaction value basis. Assume applicable rate of CGST 14% and SGST 14%. Invoice will be prepared as follows:

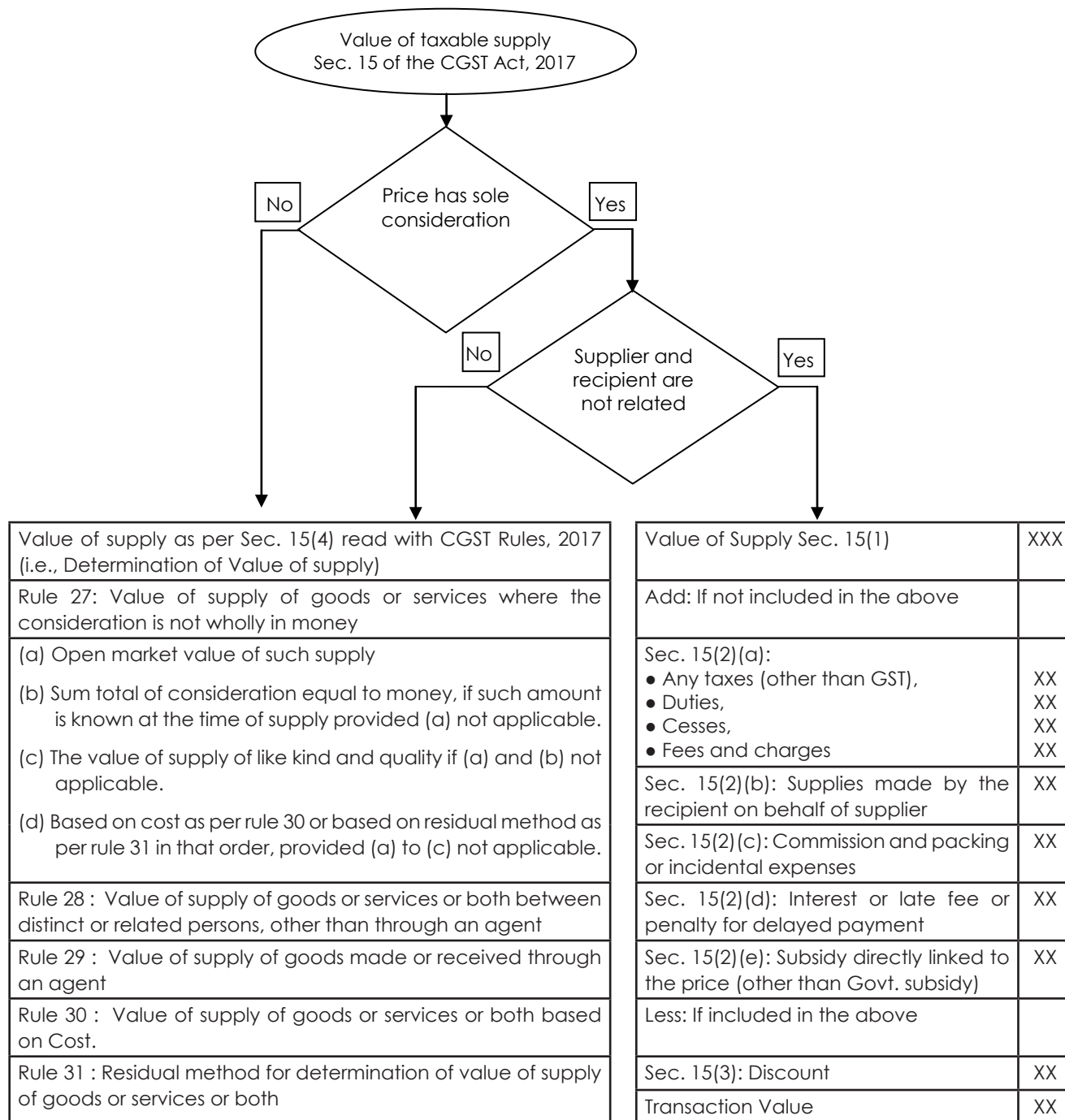
Invoice	
Particulars	Value in ₹
Transaction value	50,000
Add: CGST 14%	7,000
Add: SGST 14%	7,000
Invoice price	64,000

Note: Invoice price should not increase the Maximum Retail Price (MRP)

If Mr. A not maintained sole consideration for such sale or they are related persons then valuation will be based on determination of value of supply rules (i.e. CGST Rules, 2017).



The same concept explained in the following diagram:



Explanation: For the purpose of the CGST Act, 2017:

- (a) persons shall be deemed to be "related persons" if—
- such persons are officers or directors of one another's businesses;
 - such persons are legally recognized partners in business;
 - such persons are employer and employee;
 - any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them;



- (v) one of them directly or indirectly controls the other;
- (vi) both of them are directly or indirectly controlled by a third person;
- (vii) together they directly or indirectly control a third person; or
- (viii) they are members of the same family;
- (b) the term "person" also includes legal persons;
- (c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

Section 15(1): the price is sole consideration for sale:

Under GST, the valuation is done based on the transaction value only if price is a sole consideration where supplier and the recipient are not related.

Sole consideration means by paying GST on such consideration there is no revenue loss to the department.

Value of a supply of goods and/or services shall be:

"Transaction Value (TV), that is the price actually paid or payable for the said supply of goods and/or services"

Where:

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

Payment of taxes, duties, cesses, fees and charges [Sec. 15(2)(a) of CGST Act, 2017]:

Any taxes, duties cesses, fees and charges levied under any law for the time being in force other than CGST/ SGST/ UTGST/ IGST/ Compensation Cess shall be added to the value of supply.

Example : 2

Admission to True Theater is ₹ 90 per ticket for a Tamil Movie as well as for a Hindi Movie plus entertainment tax ₹ 10% on Tamil Movie and 20% on other languages. In the month of November, True Theater sold 2000 tickets of Tamil Movie and 1500 tickets of Hindi Movie. Find the value of taxable supply of service. Applicable rate of GST 18% & 28%. Find the GST liability if any?

Answer:

Statement showing value of taxable supply of service and GST liability:

Value of taxable services:

Tamil Movie	₹ 1,98,000	(₹ 99 x 2000 tickets)
Hindi Movie	₹ 1,62,000	(₹ 108 x 1500 tickets)

Particulars	9% CGST	9% SGST	14% CGST	14% SGST
GST liability (₹)	17,820	17,820	22,680	22,680

Working note:

Particulars	Tamil Movie (₹)	Hindi Movie (₹)
Rate per ticket	90	90
Add: Entertainment tax	9	18
Value of taxable supply	99	108
Applicable GST rate	18%	28%



Supplies made by recipient on behalf of supplier [Sec. 15(2)(b) of CGST Act, 2017]:

The transaction value will include the amount which the supplier is so liable to pay but it has been paid by the recipient of supply.

Example : 3

Mr. Ram sold goods to Mr. Lakshman for ₹ 2,50,000. As per the contract of sale, Mr. Ram is required to deliver the goods in the premises of Mr. Lakshman. Mr. Ram hires transporter for transportation for delivery of goods. However, the freight paid by Mr. Lakshman to transporter. Freight paid ₹ 2,500.

Find the transaction value of supply of goods.

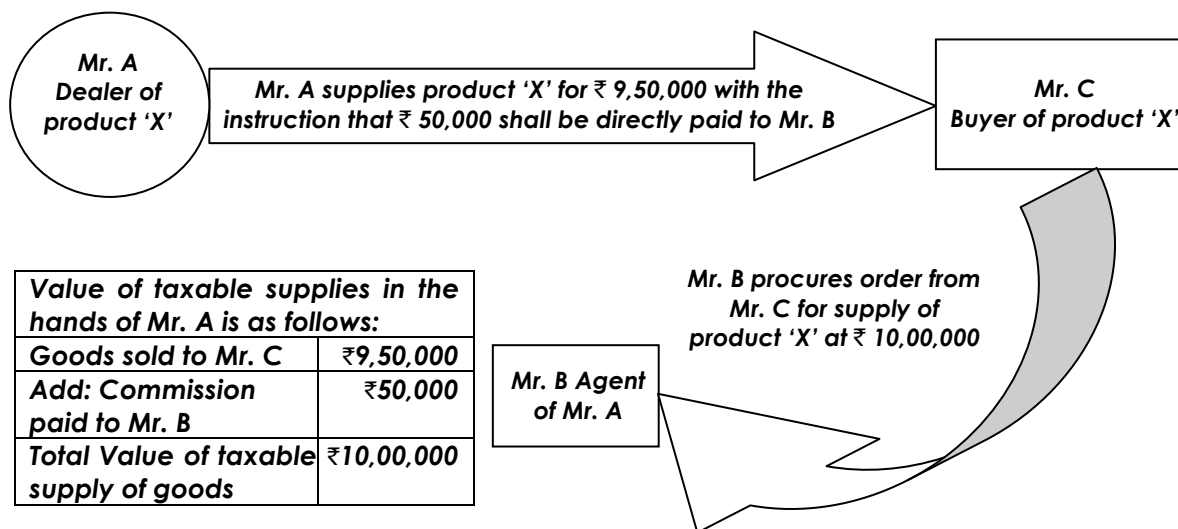
Answer:

Particulars	Value in ₹
Value of supply of goods	2,50,000
Add: Freight paid by recipient of supply (which the supplier is so liable to pay)	2,500
Taxable value of supply of goods	2,52,500

Commission and packing charges [Sec. 15(2)(c) of CGST Act]:

The transaction value will include commission and packing charges charged by the supplier to the recipient of supply and transaction value to include any amount charged by the supplier for anything done in respect of supply either at the time or before delivery of goods or services.

Example : 4



Example : 5

Mr. A is a seller of furniture. He supplied the furniture for ₹ 5,75,000 to Mr. B with the condition that to remove old furniture from the premises of Mr. B by charging ₹ 5,000. Find the value of taxable supply of goods in the hands of Mr. A.

Answer:

The value of taxable supply of goods is ₹ 5,80,000.

**Interest or late fee or penalty for delayed payment [Sec. 15(2)(d) of the CGST Act, 2017]:**

It is specifically provided that interest or late fee or penalty for delay in payment of any consideration for supply will form part of the value of supply.

Example : 6

Penal interest charged by the banker for delay in payment of dues is subject to GST.

Subsidy directly linked to the price (other than Govt. Subsidies) [Sec. 15(2)(e) of CGST Act, 2017]:

Subsidy provided in any form or manner linked to the supply will also be included in the transaction value.

Example : 7

Bharat Gas sells cooking gas cylinders. Subsidy directly transferred to the account of the customer. Selling price per cylinder is ₹ 800. Customer received subsidy ₹ 200 directly from Government to his bank account. Net outflow of the buyer is ₹ 600. Find the value of supply of goods (per cylinder) in the hands of Bharat Gas.

Answer:

Since, the amount of subsidy is directly credited to the account holder and not received by the Bharat Gas making the supply. Therefore, such subsidy will not be considered as part of transaction value as it is not received by the Bharat Gas making the supply.

Hence, transaction value is ₹ 800 per cylinder.

Example : 8

The Government provides subsidy, for the benefit of farmers but it is given to the manufacturer of fertilizers. Such subsidy will form part of value of supply?

Answer:

The buyer of goods does not provide subsidy, but the Government as per the scheme provides it.

Therefore, this will not form part of value of supply as it is specifically specified that such subsidy provided by the Government will not form part of the value of supply.

Discount under GST [Sec. 15(3) of the CGST Act, 2017]:

S. No.	Nature of Discount	Treatment in GST	
1	If the discount is given before or at the time of supply, and is recorded in the invoice	Value of goods	XXX
		Less: Discount	(XX)
		Transaction value	XXX
2	If the discount is given after supply, but agreed upon before or at the time of supply, and can be specifically linked to relevant invoices.	Can be claimed as deduction from transaction value	
3	If the discount is given after supply, and not known at the time of supply	Cannot be claimed as deduction from transaction value	

Example : 9

M/s Ashok Enterprise sells mineral water bottles, with MRP ₹ 20 per bottle. However, customers availing discount of ₹ 4 per bottle. In the month of Oct 2017, M/s Ashok Enterprise sold 2,000 bottles. Applicable rate of GST 18%. Find the tax liability.

Answer:



Particulars	₹
Transaction value	32,000
Add: CGST 9% on ₹ 32,000	2,880
Add: SGST 9% on ₹ 32,000	2,880
Invoice price	37,760
Working note:	
MRP value (₹ 20 x 2000 pcs)	40,000
Less: Discount (₹ 4 x 2000 pcs)	(8,000)
Transaction value	32,000

Example : 10

Best Cars Ltd. sells a car worth ₹ 5,00,000 to Sundar Automobiles. Best Cars Ltd. incurred packing charges of ₹ 6,000 on the car. Best Cars Ltd provided a discount of 1% on the car price, as part of Diwali scheme.

Best Cars Ltd agreed to provide a further discount of 0.5% if Sundar Automobiles makes payment by 31st of the month via net banking. Sundar Automobiles makes the payment by 31st of the month using net banking. Find the Net GST liability in the hands of Best Cars Ltd. Applicable rate of GST 18%.

Answer:

Particulars	Value in ₹
Value of the product	5,00,000
Add: packing charges	6,000
Sub-total	5,06,000
Less: Discount 1% on Rs 5 lakh	(5,000)
Transaction value	5,01,000
Add: CGST 9%	45,090
Add: SGST 9%	45,090
Invoice price	5,91,180

Note: Since, the discount was known at the time of supply, and can be linked to this specific invoice, the discount amount can be reduced from the transaction value.

For this, Best Cars Ltd will issue a credit note to Sundar Automobiles for ₹ 2,500 (0.5% of ₹ 5,00,000 = ₹ 2,500+ GST@ 18% on ₹ 2,500 = ₹ 450), and the same must be linked to the relevant tax invoice.

Discount given after supply but agreed upon before or at the time of supply and can be specifically linked to relevant invoices, can be deducted from the transaction value.

Example : 11

However, due to a severe cash crunch, Best Cars Ltd requests Sundar Automobiles to make the payment within 2 days, promising a discount of 2% on doing so. Sundar Automobiles makes the payment within 2 days.

Answer:

Since, the discount was not known at the time of supply, it couldn't be claimed as a deduction from the transaction value for GST calculation.

Example : 12

M/s Nambiar & Co., an Audit firm based in Cochin undertake an audit assignment of his client based in Chennai. The Contract mentioned about the audit fees of ₹ 5,00,000 and arrangement of taxi by the Client which may be worth ₹ 15,000.

Find the transaction value on which M/s Nambiar and Co., is liable to pay GST.



Answer:

Transaction value in the hands of M/s Nambiar & Co., is ₹ 5,15,000.

Note: Not only audit fees but also the expenditure incurred in connection with the taxi ₹15,000 constitute the sole consideration.

Example : 13

M/s X Ltd. is engaged in doing job work for M/s Y Ltd. M/s Y Ltd. supplies raw material for ₹ 2,00,000 and packing material for ₹ 22,500 to M/s X Ltd. for completion of job work. M/s X Ltd. has agreed to supply services for the purpose of performing the activities specified by M/s Y Ltd. for ₹ 1,00,000. Job worker profit of ₹ 70,000 and material consumed for ₹ 3,500. Find transaction value (i.e. sole consideration) to levy GST in the hands of M/s X Ltd.

Answer:

Particulars	Value in ₹
Service charges	1,00,000
Add: Material consumed	3,500
Add: Jobworker profit	70,000
Transaction value (i.e. taxable value of supply of service in the hands of M/s X Ltd.)	1,73,500

Note: "Although, it includes materials worth ₹ 3,500, still the entire supply including value of material would be treated as services.

Example : 14

Asha Ltd. supplies raw material to a job worker Kareena Ltd. After completing the job-work, the finished product of 5,000 packets are returned to Asha Ltd. putting the retail sale price as ₹ 20 on each packet. The product in the packet is covered under MRP provisions. Determine the transaction value in the hands of Kareena Ltd. under GST law from the following details:

Particulars	Value in ₹
Cost of raw material supplied	30,000
Job worker's charges including profit	10,000
Transportation charges for sending the raw material to the job worker	3,000
Transportation charges for returning the finished packets to Asha Ltd.	4,500
Asha Ltd. paid certain technology transfer fees to 'Reena Ltd', so that 'Kareena Ltd' can use the said technology in the given job-work operation.	22,500

Note: Kareena Ltd offered discount ₹ 2,000, provided full payment is made at the time of raising invoice and the same is mentioned in the invoice. Asha Ltd. made full payment at the time of issue of invoice.

Answer:

Statement showing transaction value of Kareena Ltd.

Particulars	Value in ₹
Cost of raw material supplied	Exempted supply
Job worker's charges including profit	10,000
Transportation charges for sending the raw material to the job worker	Exempted supply
Transportation charges for returning the finished packets to Asha Ltd. [Sec. 15(2)(b) of the CGST Act, 2017]	4,500
Technology fee [Sec. 15(2)(b) of the CGST Act, 2017]	22,500
Sub-total	37,000



Less: Discount [Sec. 15(3) of CGST Act, 2017]	(2,000)
Transaction value (i.e. sole consideration)	35,000
Note: It is very clear that principal to jobworker and jobworker to principal can not be treated as supply as per section 143 of the CGST Act, 2017.	

Example : 15

Mr. Bhanu makes supply of ₹ 2,00,000 to Mr. Renu. The contract provides that Mr. Renu will pay ₹ 50,000 to Mr. Bhanu and ₹ 1,50,000 to Mr. Venu to settle the debt of Mr. Bhanu. Find the transaction value and GST liability in the hands of Mr. Bhanu. Applicable rate of CGST and SGST 9% each.

Answer:

Statement showing transaction value and GST liability:

Particulars	Value in ₹
Payment from Renu to Bhanu	50,000
Payment from Renu to Venu for settling the debt of Bhanu	1,50,000
Transaction value (i.e. Sole consideration)	2,00,000
CGST 9%	18,000
SGST 9%	18,000

Transaction value not available [Sec. 15(4) read with CGST Rules, 2017 (i.e. Determination of value of supply)]:

Rule 27: Value of supply of goods or services where the consideration is not wholly in money

- Open market value of such supply
- Sum total of consideration equal to money, if such amount is known at the time of supply provided (a) not applicable.
- The value of supply of like kind and quality if (a) and (b) not applicable.
- Based on cost as per rule 30, if not as per residual method rule 31 in that order, provided (a) to (c) not applicable.

Rule 28: value of supply of goods or services or both between distinct or related persons, other than through an agent

Rule 29: value of supply of goods made or received through an agent

Rule 30: value of supply of goods or services or both based on Cost.

Rule 31: Residual method for determination of value of supply of goods or services or both

Rule 27: value of supply of goods or services where the consideration is not wholly in money:

Valuation based on open market value of such supply.

- "Open market value" of supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and price is the sole consideration, to obtain such supply at the same time when the supply being valued is made.

Example : 16

Where a new phone is supplied for ₹ 20,000/- along with the exchange of an old phone and if the price of the new phone without exchange is ₹ 24,000/-. the open market value of the new phone is ₹ 24000/-.

Example : 17

Mr. A being a registered person sells TVs to all customers at ₹ 45,000. He supplied new TV for ₹ 42,000 along with the exchange of an old TV. Find the open market value of TV.

Answer:

Open market value is ₹ 45,000.

**Example : 18**

M/s X Ltd is a manufacturer of car and sells the car in the open market at a price of ₹ 11,00,000. M/s X Ltd provided the car to his company auditor is only for ₹ 9,00,000. In return auditor provided auditing services to M/s X Ltd and charged ₹ 5,000 with the condition that company will be provided the car at the price of ₹ 9,00,000. Find the value as per Rule 27(a), Determination of value of supply.

Answer:

Open market value of the car is ₹ 11,00,000.

Therefore, M/s X Ltd transaction value should be ₹ 11,00,000 on which GST will be levied.

- (b) Sum total of consideration equal to money, if such amount is known at the time of supply provided open market value is not available.

The value of consideration which is non-monetary terms shall be determined in monetary terms. The said value shall be added to the value in monetary terms in determination of value of supply.

Example : 19

M/s X Ltd. is supplier of security services provided such services to M/s Y Ltd. As per the contract M/s Y Ltd is to pay monthly ₹ 1,00,000. In the month of November M/s Y Ltd. supplied uniforms to all employees of M/s X Ltd. by spending ₹ 20,000. As a result M/s X Ltd. raised the bill for ₹ 80,000 in the month of November. In the given case M/s X Ltd. received consideration for security service is partially in terms of money ₹ 80,000 and partially in kind (i.e uniforms). Find the taxable value of service on which GST will be levied.

Answer:

GST will be levied on the value of ₹ 1,00,000 (₹ 80,000 + uniforms equal to monetary value of ₹ 20,000) in the hands of M/s X Ltd.

Example : 20

Guidelines Academy normally charge ₹ 10,000 for teaching the commerce students. A merit student approaches the management of Guidelines Academy and narrates his financial position. Guidelines Academy management considered his financial position agrees to charge only ₹ 5,000 from such student. Find the value of taxable supply of service.

Answer:

Since, Guidelines Academy has not received any consideration from the student in any other form, ₹ 5,000 itself is a sole consideration. GST will be levied on ₹ 5,000.

- (c) The value of supply of like kind and quality if (a) and (b) not applicable:

If the value of supply is not determinable as per open market value and monetary value of non-monetary values, the values of supply shall be of like kind and quality.

Factors facilitate to determine value of supply:

- Goods or services of same kind and quality
- Identical or Similar nature
- Similar circumstances
- Comparison of various factors and so on...

Example : 21

Guidelines Academy teaching or coaching budding CMA's Tuition fee of Guidelines Academy can be compared with another academy of same kind and nature. It means we should not compare with home tuition of a faculty to 4th Standard students.

Example : 22

Feather light chairs price compare with identical or similar nature product. It means feather light product compare with Godrej chair products.

**Example : 23**

Value of product in Chennai will be on higher than the product in Sikkim or Assam. Therefore, the rule provides that the supply of goods or services shall be in similar circumstances. It means that if the supply of goods or services which value is required to be determined has been made in Chennai, supply of goods or services which is considered as base shall be made in Chennai.

Example : 24

Canon heavy duty machines can not be compared with ordinary laser Jet printer. Like wise interior decorator completed interior decoration of a residential house measuring 1000 sq. ft cannot be considered as similar service for doing interior decoration of 1000 sq. ft. of office area.

- (d) Based on cost as per rule 30 or based on residual method as per rule 31 in that order, provided (a) to (c) not applicable.

As per rule 30 of the CGST Rules, 2017 value of supply of goods or services or both on cost. The value shall be 110% of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

Example : 25

Raj & Co. furnish the following expenditure incurred by them to find the transaction value for the purpose of paying GST.

Particulars	₹
(i) Direct material cost per unit inclusive of IGST at 18%	944
(ii) Direct wages	250
(iii) Other direct expenses	100
(iv) Indirect materials	75
(v) Factory overheads	200
(vi) Administrative overhead (25% relating to production capacity)	100
(vii) Selling and distribution expense	150
(viii) Quality control	25
(ix) Sale of scrap realised	20
(x) Actual profit margin	15%

Find the value for the purpose of payment of GST as per Rule 30 of the CGST Rules, 2017.

Answer:

Statement showing value of supply of goods as per Rule 30 of the CGST Rules, 2017:

Particulars	Value in ₹
Direct material cost (944 x 100/118)	800
Direct wages	250
Other direct expenses	100
Indirect materials	75
Factory overheads	200
Administrative overhead (25% of Rs 100)	25
Quality control	25
Sub-total	1475



Less: Sale of scrap	(20)
Cost of production	1,455
Add: 10% profit margin as per Rule 30 of the CGST Rules, 2017	145.50
Value of taxable supply of goods	1,600.50

Cost Accounting Standard (CAS)-4 issued by the Institute of Cost Accountants of India enumerates various costs to be included in determining the cost of production of goods. CAS-4 principles are also applicable for determining the cost of supply of service.

Thus cost of acquisition will include cost of transportation, any local taxes, insurance, other expenditure like commission, fee and so on paid on procurement of goods.

However, GST element will not be considered for the purpose of determining the cost of acquisition.

As per Rule 31 of the CGST Rules, 2017 Residual method for determination of value of supply of goods or services or both

It is provided that where the value of supply of goods or services or both cannot be determined under rule 27 to rule 30 of the CGST Rules, 2017, value shall be determined by using reasonable means consistent with the principles and the general provisions of Sec. 15 and the provisions of this Chapter IV of the CGST Rules, 2017.

It means to say that efforts should be made by proper officer to determine the by using his best judgment assessment.

Case Law : 1

CCEx. Mumbai v. Fiat India Pvt. Ltd. 2012 (283) E.L.T. 161 (S.C.):

Assessee Claim: Fiat UNO model cars for the past five years consistently selling at below manufacturing cost to non-relative buyers for meeting demand in the market. Therefore, such selling price (i.e. transaction value) itself has sole consideration for the purpose of GST.

Department Contention: The extra commercial consideration was involved in this case an additional consideration should be added to the price for the purpose of duty. Therefore, Best Judgement Assessment has been invoked.

Decision: Full commercial cost of manufacturing and selling was not reflected in the price as it was deliberately kept below the cost of production. Thus, price could not be considered as the sole consideration for sale. No prudent businessperson would continuously suffer huge loss only to penetrate market. Therefore, Best Judgment Assessment of the department was proper said by the Hon'ble Supreme Court of India in the case of CCEx. Mumbai v. Fiat India Pvt. Ltd. 2012 (283) E.L.T. 161 (S.C.).

Note: if the assessee sales below manufacturing cost and profit but there is no additional consideration flowing directly or indirectly from buyer to assessee, the transaction value shall be the assessable value.

Rule 28 of the CGST Rules 2017 value of supply of goods or services or both between distinct or related persons other than through an agent:

The value of the supply of goods or services or both between distinct persons as specified in Sec. 25(4) or Sec 25(4) of the CGST Act, 2017 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

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

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to 90% of the price charged of the supply of goods of like kind and quality by the recipient to his customer not being a related person:



Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of goods or services.

Example : 26

M/s X Ltd. owned factory in Chennai (Tamil Nadu) and one depot in Cochin (Kerala). Depot in Cochin is required to obtain separate registration as they are considered as distinct person under Section 25(4) of the CGST Act, 2017. The goods manufactured in Chennai factory will be transferred to Cochin Depot where it will be sold as it is.

Particulars	No. of units	Price at Factory Per unit	Price at Depot Per unit	Rate of IGST Advalorem
(i) Goods transferred from factory to depot on 8th February	1,000	₹ 200	₹ 220	18%
(ii) Goods actually sold at depot on 18th February	750	₹ 220	₹ 250	12%

Find the value of taxable supply of goods and IGST liability in the hands of M/s X Ltd. of Chennai.

Note: Depot in Cochin is not availing input tax credit.

Answer:

Value of taxable supply of goods = ₹ 1,98,000

(₹ 220 x 1,000 units) x 90%

IGST = ₹ 35,640 (i.e. ₹ 1,98,000 x 18/100)

Note: It means at the time of transfer of goods from Chennai Factory to Cochin Depot, M/s X Ltd. will have to determine the price at which depot will sell the goods to his customers.

As per 1st proviso to Rule 28 of Chapter IV of the CGST Rules, 2017 provides that such price should be the price for sale of goods to unrelated person.

M/s X Ltd. has option to pay GST on 90% of such value (i.e. 90% of the price at which the goods are being sold from Cochin Depot).

Example : 27

M/s Y Ltd owned factory in Hyderabad (Telangana) and one depot in Vijayawada (Andhra Pradesh). Depot in Vijayawada is required to obtain separate registration as they are considered as distinct person under Section 25(4) of the CGST Act, 2017. The goods manufactured in Hyderabad factory will be transferred to Vijayawada Depot where it will be sold as it is. Depot in Vijayawada is availing Input Tax Credit.

Particulars	No. of units	Price at Factory Per unit	Price at Depot Per unit	Rate of IGST Advalorem
(i) Goods transferred from factory to depot on 8th February	1,000	₹ 200	₹ 220	18%
(ii) Goods actually sold at depot on 18th February	750	₹ 220	₹ 250	12%

Find the value of taxable supply of goods and IGST liability in the hands of M/s X Ltd. of Chennai.

Answer:

Value of taxable supply of services = ₹ 2,20,000/-

(1000 units x ₹ 220)

IGST = ₹ 39,600 (₹ 2,20,000 x 18/100)

Note:

- As per 2nd proviso to Rule 28 of Chapter IV of the CGST Rules, 2017 provides that where the recipient is eligible for input tax credit, value declared in the invoice shall be deemed to be open market value of goods or services.
- Integrated Tax Department has right to reject the valuation if the value is not full fill the open market value. It should meet the requirement of sole consideration.

Rule 29 of the CGST Rules 2017 value of supply of goods made or received from an agent:

As we are aware of that as per clause 3 of Schedule I of the CGST Act 2017:

Schedule - I

Activities to be Treated as Supply even if made without Consideration

3. Supply of goods—

- a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
- b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

As per Rule 29 of the CGST Rules, 2017 provides the manner in which value shall be determined in such cases.

- (a) be the open market value of the goods being supplied, or at the option of the supplier, be 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person, where the goods are intended for further supply by the said recipient;
- (b) where the value of a supply is not determinable under clause (a), the same shall be determined by application of Rule 30 or Rule 31 of Chapter IV of the CGST Rules 2017 in that order.

Example : 28

A principal supplies groundnut to his agent and the agent is supplying groundnuts of like kind and quality in subsequent supplies at a price of ₹ 5,000 per quintal on the day of the supply. Another independent supplier is supplying groundnuts of like kind and quality to the said agent at the price of ₹ 4,550 per quintal.

Find the value of taxable supply in the hands of principal as per Rule 29(a) of the CGST Rules, 2017.

Answer:

The value of taxable supply made by the principal shall be ₹ 4,550 or where he exercises the option, the value shall be ₹ 4,500 (i.e. 90% of ₹5,000) per quintal.

Example : 29

M/s P Ltd. being a principal supplies laptops to his agent and the agent is supplying laptops of like kind and quality in subsequent supplies. M/s P Ltd incorporated in Chennai (Tamil Nadu). Agent is located in Nagercoil (Tamil Nadu). Goods supplied on 15th November by the Principal to his Agent.

Particulars	No. of units	Price at which principal supplies to agent	Price at which agent supplies to his customer not being a related person	Rate of GST Advalorem
(i) Selling price on 15th November	1,000	₹ Nil	₹ 22,000	18%

(ii) Goods procured by agent from other independent supplier supplying laptops of like kind and quality at ₹20,000 per unit on 15th November.

Find the value of taxable supply of goods and GST liability in the hands of M/s P Ltd. of Chennai.

Answer:

Value of taxable supply made by principal shall be ₹ 20,000 per laptop or where the principal exercise the option the value shall be ₹ 19,800 per laptop (i.e. 90% of the ₹ 22,000).

It is economical to opt the 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being related person on the day of supply.

Total taxable value of supply = ₹ 198,00,000 (i.e. 19,800 x 1000 units).

GST liability in the hands of M/s P Ltd. of Chennai:

CGST 9% on Rs 198 lakh = ₹ 17,82,000

SGST 9% on Rs 198 lakh = ₹ 17,82,000



Determination of value in respect of certain supplies (Rule 32 of Chapter IV of the CGST Rules, 2017):

Rule 32(1): Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall, at the OPTION of the supplier, be determined in the manner provided hereinafter.

Rule 32(2): Money changing services	Already covered
Rule 32(3): Air travel agent of passenger transport	
Rule 32(4): Life insurance business	

Rule 32(5): Buying and Selling of second hand goods:

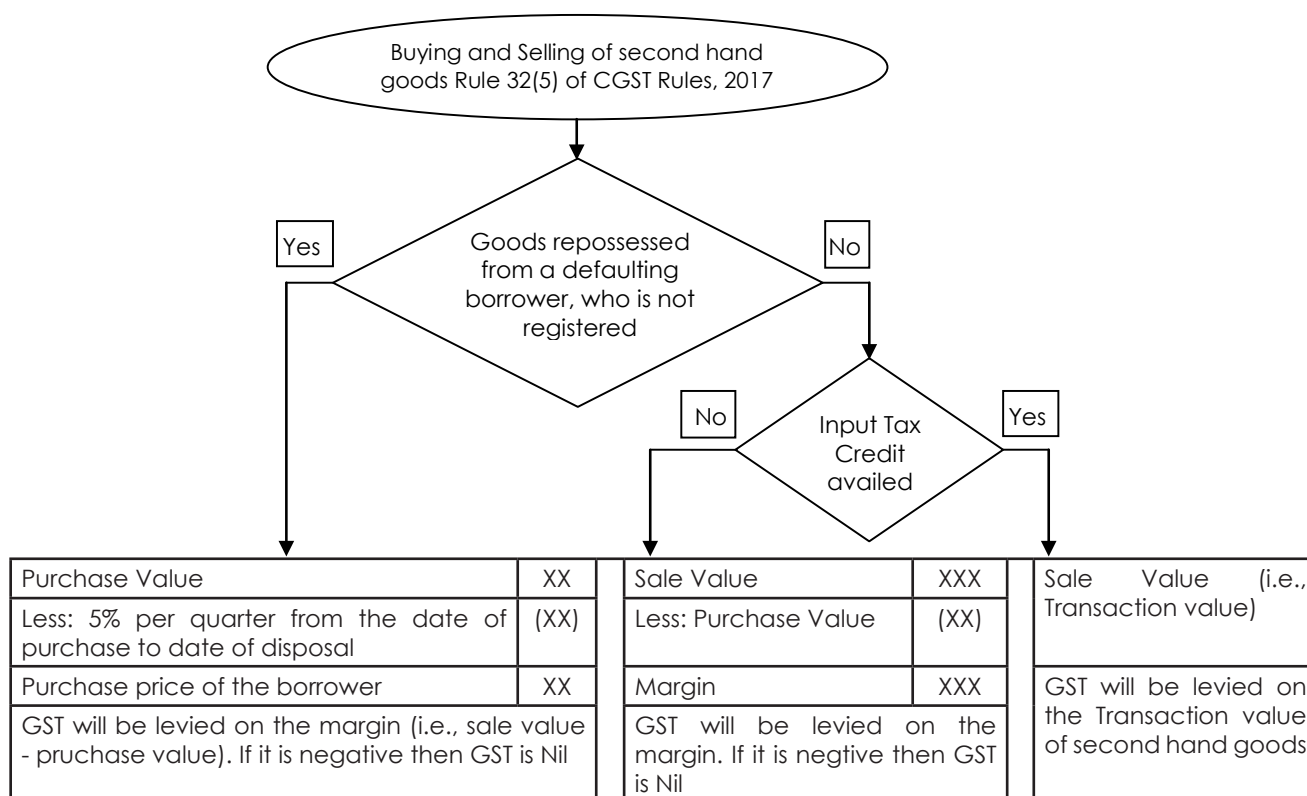
Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e. used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored (i.e. goods are sold at loss then tax will not be payable).

Provided that the purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by 5% points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.

When a registered second-hand goods dealer supplies second-hand goods, the dealer is liable to charge GST on the second-hand goods. For this, 2 options have been given to the dealers:

Charge GST on the full transaction value. Here, the dealer is eligible to claim input tax credit of the tax paid on purchase of the used goods.

Simplified approach:



**Example : 30**

Ram & Co., being a car dealer dealing in second hand cars. Ram & Co., purchases used car from Mr. Raja and sell the very same car to Miss. Rani after water wash and painting. The purchase price is ₹ 2,00,000 whereas the sale price is ₹ 2,50,000. Find the GST liability as per rule 32(5) of the CGST Rules, 2017 by following margin scheme in the hands of Ram & Co. Assume applicable rate of GST 28%.

Ram & Co., is not availing input tax credit on purchase of second hand cars.

Whether your answer is different if the sale of second hand car for ₹ 1,80,000.

Note: Ram & Co., and Miss. Rani are located within the State of Tamil Nadu.

Answer:

GST net liability is as follows:

Particulars	Value ₹	14% CGST ₹	14% SGST ₹	Remarks
Output supply	2,50,000			
Less: purchase price	2,00,000			
Difference known as margin	50,000	7,000	7,000	Charge GST on the margin or profit earned on the goods (₹ 50,000 x 28%)

Yes. Our answer different in case of sale price is ₹ 1,80,000:

Sale price	= ₹ 1,80,000
Less: purchase price	= ₹ (2,00,000)
Margin	= ₹ (20,000)
GST liability	= ₹ Nil

Note: For a dealer who has opted for the margin scheme, there can be a scenario where the second-hand goods are sold at zero margins or for a lesser price than the purchase price. In this case, no GST will be applicable on the supply.

Example : 31

Mr. D being a dealer in goods sells new brand cars at ₹ 11,00,000. He advertises that customers can sell their old car if they buy new car from him. One customer exchanged his old car for ₹ 2,00,000. Mr. D sold new car to that customer for ₹ 9,00,000. The Central Tax Department demanded to pay GST on ₹ 11,00,000 whereas Mr. D argues that he is eligible to pay GST on the difference namely margin of ₹ 9,00,000 as per Rule 32(5) of the CGST Rules, 2017. Discuss and decide the correct approach.

Answer:

Rule 32(5) of the CGST Rules, 2017 is applicable only when person is dealing in buying and selling of second hand goods.

In the given case Mr. D is not eligible for margin scheme as referred in rule 32(5). Since, dealer sold new car and therefore, provisions of rule 32(5) will not apply.

Therefore, from the above it is evident that the Central Tax Department view is correct.

Example : 32

M/s X Ltd, a registered person under GST, being a dealer dealing with second-hand goods. M/s X Ltd. supplies a used camera to a consumer in Chennai for selling price of ₹ 15,000. The used camera (i.e. second hand) was purchased for ₹ 10,000 from a registered dealer in Mumbai, on which CGST + SGST of ₹ 1,400 each was charged (i.e. GST rate applicable to cameras is 28%).

M/s X Ltd. charged IGST 28% on inter State supply.

Find the net GST liability in the following independent cases:

(a) if input tax credit availed.

(b) if input tax credit not availed.



Answer:

(i) Net GST liability in case of input tax credit availed:

Particulars	Value ₹	28% IGST ₹
Output supply	15,000	4,200
Less: ITC	10,000	
CGST 14%		(1,400)
SGST 14%		(1,400)
Net GST liability		1,400

(ii) Net GST liability in case of input tax credit not availed:

Particulars	Value ₹	28% IGST ₹	Remarks
Output supply	15,000		
Less: purchase price	12,800		ITC will form part of cost.
Difference known as margin	2,200	616	Charge GST on the margin or profit earned on the goods (₹ 2,200 x 28%)

Repossession of goods in case of default by the unregistered borrower:

Example : 33

Mr. C has taken a loan from the bank on 15th July 2017 worth ₹ 2 crore and purchased a machine. Subsequently Mr. C defaulted in paying the loan amount along with interest. At late date bank repossessed the machine from Mr. C on 1st Jan 2018. The banker sells the said goods on 26th April 2018.

Find the value of taxable supply of goods in the hands of banker in the following two independent cases:

Case 1: machine sold for ₹ 1,90,00,000.

Case 2: machine sold for ₹ 1,70,00,000.

Note: Applicable rate of IGST 18%.

Answer:

Determination of purchase value:

Particulars	Value in ₹	Working note	
Purchase value of the banker	2,00,00,000	Purchase value for the lending company will be the purchase price of the defaulter.	
Less: 5% per quarter for 2 quarters	(20,00,000)	From 1st Jan 2018 to 26th April 2018 = 2 quarters	
Purchase value at the time of disposal by the bank	1,80,00,000		

Value of taxable supply in the hands of banking company:

Particulars	Case 1	Case 2	Remarks
Sale price	1,90,00,000	1,70,00,000	
Less: purchase price	(1,80,00,000)	(1,80,00,000)	In case the sale price is below ₹ 1,80,00,000, banker will not be liable to pay GST as value is nil.
Taxable value or Margin	10,00,000	Nil	
IGST 18%	1,80,000	Nil	₹ 10 lacs x 18%

Redeemable voucher/coupons/stamp (other than postage stamp) [Rule 32(6) of the CGST Rules, 2017]:

There are many companies who issues vouchers, coupons, stamp and so on the basis of which goods or services can be procured by the holder of such vouchers/coupons/stamps etc.

**Valuation:**

The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods or services or both shall be equal to the money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.

Time of Supply of Vouchers for Goods & Services (Section 12(4) & 13(4) of CGST Act, 2017)

If the supplies is identifiable at that point:

- Time of supply = Date of issue of voucher.

If the supplies is not identifiable at that point:

- Time of supply = The date of redemption of voucher.

Example : 34

A voucher has face value of ₹ 5,000. The holder of voucher can purchase goods or services of equivalent value of ₹ 5,000. When the holder of voucher receives the goods or services against the voucher it is termed as redemption of voucher.

Example : 35

X Ltd. being a cloth merchant sold gift voucher to customer for ₹ 2,000 on 10th November to purchase specific cloth from its showroom. Goods actually purchased by customer on 15th November for ₹ 2,400. Find the time of supply and value of supply with regard to gift voucher in the hands of X Ltd.

Answer:

Time of supply is at the time issue of voucher i.e. 10th November.

Value of supply = ₹ 2,000 for gift voucher.

Example : 36

Ram & Co., being dealer in electronics and electrical items, issued gift voucher to its customer for ₹ 2,000 on 15th November. Customer can used gift voucher to purchase anything which is available. Customer purchased goods worth ₹ 1,400 on 20th Nov 2017. Applicable CGST and SGST 9% each.

Find the following

- time of supply*
- value of supply*
- GST liability in the hands of Ram & Co.*

Answer:

a) Time of supply is 20th November 2017.

b) Value of supply is ₹1,500.

c) GST liability:

- CGST is ₹ 126*
- SGST is ₹ 126*

Working Note: ₹ 1,400 x 9% = ₹126

Example : 37

Mr. & Ms. Kapoor purchase 10 gift vouchers for ₹ 500 each from Crossword, and 5 vouchers from a reputed Spa costing ₹ 1,000 each. The vouchers from a reputed Spa had a special offer for couples, where in services for both persons at the price chargeable to one. Find the value of supply in the hands of Crossword and reputed Spa.

**Answer:****Statement showing value of taxable supply:**

Particulars	Crossword Value in ₹	Reputed Spa value in ₹	Remarks
Value of taxable supply	5,000	10,000	10 gifts x 500 = ₹ 5,000. (5 vouchers x ₹ 1,000) x 2 = ₹ 10,000

Value of service provided by one distinct person to another distinct person [Rule 32(7) of the CGST Rules, 2017]:

The value of taxable services provided by such class of service providers as may be notified by the Government, on the recommendations of the Council, as referred to in paragraph 2 of Schedule I of the CGST Act, 2017 between distinct persons as referred to in section 25, where input tax credit is available, shall be deemed to be NIL.

SCHEDULE - I

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

Provided that gifts not exceeding ₹ 50,000/- in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

Value of supply of services in case of pure agent [Rule 33 of the CGST Rules, 2017]:

Pure Agent means a person who:

- enters into a contractual agreement with the recipient of supply to act on their behalf and incur expenditure or costs in the course of supply of goods or services or both;
- neither intends to hold nor holds any title to the goods or services (or both) procured on behalf of or provided to the recipient of supply;
- does not use the goods or services so procured for his own interest; and
- receives only the actual amount incurred to procure such goods or services.

The expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied namely:-

- the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorization by such recipient;
- the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Example : 38

Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies (ROC). The fees charged by the Registrar of Companies for the registration and approvals of the name are compulsorily levied on B. A is merely acting as pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

**Example : 39**

Mr. Ram is a registered dealer under GST Law. He sold furniture to a customer for ₹ 51,000 with free delivery. In such case Mr. Ram availing the service of the transporter for his own interest and therefore, transport charges is included in selling price of ₹ 51,000 and he would be not considered as pure agent in this case.

Example : 40

Mr. X is a Customs Broker issues an invoice for reimbursement of a few expenses and for consideration towards agency service rendered to an importer. The amounts charged by the Customs Broker are as below:

S. No.	Component charges in invoice	Amount in ₹
1	Agency income	10,000
2	Travelling expenses	5,500
3	Hotel expenses	9,500
4	Customs duty	55,000
5	Dock dues	2,500

Find the value of taxable supply of service in the hands of Customs Broker.

Answer:

Statement showing taxable value of supply of service:

S.No.	Particulars	Amount in ₹	Remarks
1	Agency income	10,000	Addable into the value
2	Travelling expenses	5,500	-do-
3	Hotel expenses	9,500	-do-
4	Customs duty	Not addable	Pure agent reimbursement
5	Dock dues	Not addable	Pure agent reimbursement
	Total	25,000	

Rate of exchange of currency for determination of value [Rule 34 of the CGST Rules, 2017]:

The rate of exchange for the determination of the value of taxable goods or services or both shall be the applicable reference rate for that currency as determined by the Reserve Bank of India (RBI) on the date of time of supply in respect of such supply in terms of section 12 or as the case may be, section 13 of the Act.

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for rule 34, the following shall be substituted, namely:

“34. Rate of exchange of currency, other than Indian rupees, for determination of value.—(1) The rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 for the date of time of supply of such goods in terms of section 12 of the Act.

(2) The rate of exchange for determination of value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of section 13 of the Act”;

**Example : 41**

Compute the duty payable under the Customs Act, 1962 for imported equipment based on the following information:

- (i) Assessable value of the imported equipment US \$10,100.
- (ii) Date of Bill of Entry 25.10.2017 exchange rate notified by the Central Board of Excise and Customs US \$ 1 = ₹ 65.
- (iii) Date of Entry inwards 01.11.2017 exchange rate notified by the Central Board of Excise and Customs US \$ 1 = ₹ 60.

Find the taxable value of imported goods.

Answer:

Statement showing taxable value of imported goods:

Particulars	Value in ₹	Remarks
Assessable value of imported goods	6,56,500	10,100 USD x ₹ 65 Exchange rate as on the date of submission of bill of entry is relevant as per section 14 of the Customs Act, 1961.

Value of supply inclusive of integrated tax, State tax, Union territory tax [Rule 35 of the CGST Rules, 2017]:

Where the value of supply is inclusive of integrated tax or, as the case may be, central tax, State tax, Union territory tax, the tax amount shall be determined in the following manner, namely:-

$$\text{Tax Amount} = \left(\frac{\text{Value inclusive of tax}}{100 + \text{GST}} \right) \times \text{Rate of GST}$$

This formula is very useful in case where supplier may treat the particular supply as exempted from GST and therefore will not indicate the tax amount separately in the bill of supply prepared by him. In fact it is taxable supply with GST. In such case transaction value will be determined with help of rule 35.

Example : 42

An assessee was under impression that his product is exempt from GST and hence sold the goods @ ₹100 per piece without charging GST. Later, it was found that actually, the product was chargeable with IGST 18%. Department claimed that since goods were removed without GST, transaction value should be ₹100 and GST is payable accordingly. Assessee contended that price of ₹ 100 should be taken as inclusive of GST and actual GST payable should be calculated by back calculations. Determine the correct GST payable per piece.

Answer:

As per rule 35 of the CGST Rules, 2017 transaction value and GST liability is as follows:

The Transaction value should be taken, as cum-tax-price and tax payable should be calculated by making back calculations. Hence, the transaction value is as follows:

The transaction value = ₹ 100 x 100/118 = ₹ 84.75

IGST = ₹ 100 x 18/118 = ₹ 15.25

Total invoice price = ₹100.00

[CCE v Maruti Udyog Ltd. (2002) 141 ELT 3 (SC)]

Study Note - 6

PLACE OF SUPPLY UNDER GST



This Study Note includes

- 6.1 Need for Determination of Place of Supply
- 6.2 Place of Supply in Case of Goods
- 6.3 Place of Supply in Case of Services
- 6.4 Place of Supply in case of Online Information Database Access and Retrieval (OIDAR) Services

6.1 NEED FOR DETERMINATION OF PLACE OF SUPPLY

GST is destination based tax i.e., consumption tax, which means tax will be levied where goods and services are consumed and will accrue to that state. So, the state where they are consumed will have the right to collect GST.

This, in turn, makes the concept of place of supply crucial under GST as all the provisions of GST revolves around it.

The reasons why an accurate determination of place of Supply is important for business are listed below :

- Wrong classification of supply between interstate or intra-state and vice-versa may lead to hardship to the taxpayer as per section 19 of IGST Act and section 70 of CGST Act.
- Where wrong taxes have been paid on the basis of the wrong classification, refund will have to be claimed by the taxpayer
- The taxpayer will have to pay the correct tax along with interest for delay on the basis of revised/correct classification
- Also, correct determination of place of supply will help us in knowing the incidence of tax. As if place of supply is determined as a place outside India, then tax will not have to be paid on that transaction

Place of Supply in GST:

While determining the levy of taxes based on Place of Supply, two things are considered namely:

1. **Location of Supplier:** It is the registered place of business of the supplier.
2. **Place of Supply:** It is the registered place of business of the recipient

Example : 1

X Ltd., is a supplier of craft products, having the registered office in Chennai, Tamil Nadu. It supplies goods to schools in Madurai, Tamil Nadu. Here since the supplier as well as the recipient is located in the same State i.e Tamil Nadu, it will be counted as 'Intra-State Supply of Goods' and hence SGST & CGST will be levied.

Example : 2

X Ltd., located in Mumbai, Maharashtra receives order from M/s Y Ltd. located in Ahmedabad, Gujarat for supply of one machine.

Find the place of supply and applicable GST?

Answer:

1. **Location of Supplier:** Mumbai (Maharashtra).
 2. **Place of Supply:** Ahmedabad (Gujarat)
- Since, the movement of goods terminate at Ahmedabad.*
- Applicable GST = IGST**

6.2 PLACE OF SUPPLY IN CASE OF GOODS

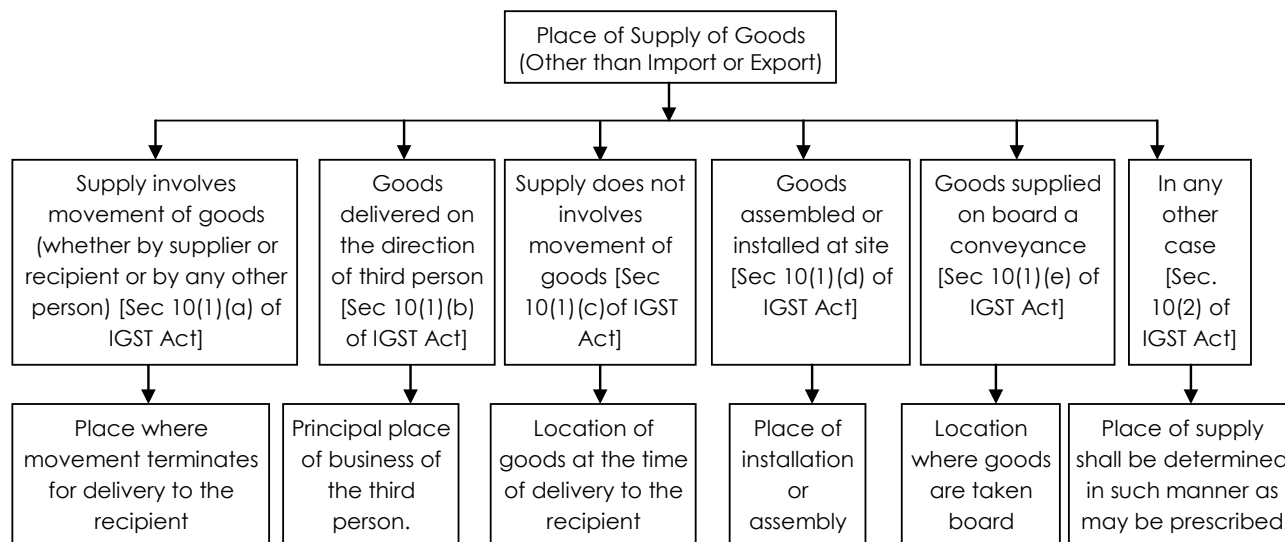
Place of supply of Goods:

Place of supply of goods under GST defines whether the transaction will be counted as intra-state or inter-state, and accordingly levy of SGST, CGST & IGST will be determined.

Following topics under it are as follows:

1. Movement of Goods
2. No movement of Goods
3. Goods are assembled or installed at Site
4. Goods supplied on a vessel/ conveyance
5. Place of Supply of goods cannot be determined
6. Imports and exports

As per section 10 of the CGST Act, 2017 Place of Supply of goods other than supply of goods imported into, or exported from India, shall be as under:

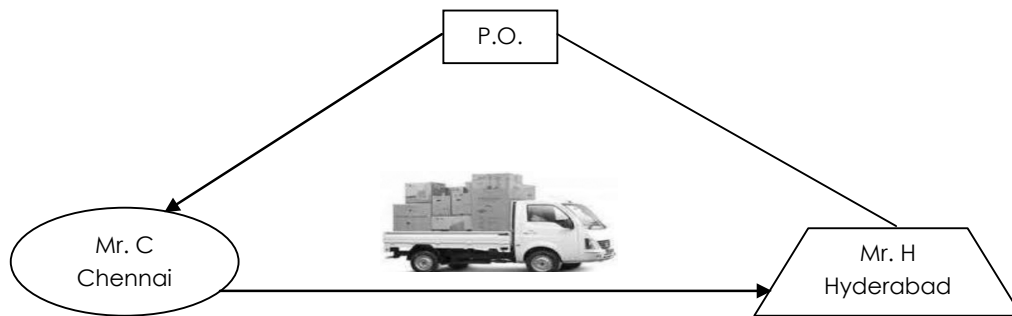


1. Supply involves movement of goods [Section 10(1)(a) of the IGST Act, 2017]:

Nature of supply	Place of supply of goods
Supply involves movement of goods whether by supplier or recipient or by any other person.	Location of the goods at the time at which the movement of goods terminates for delivery to the recipient.

Example : 3

Mr. C of Chennai received purchase order from Mr. H of Hyderabad for want of commercial goods. Now supply involves movement of goods by supplier from Chennai to Hyderabad in a truck by road.



Place of supply of goods = Hyderabad.

IGST will be levied.

Declared outward supply of goods in Table 5 of GSTR - 1, supplier should indicate place of supply where location of supplier and recipient are different.

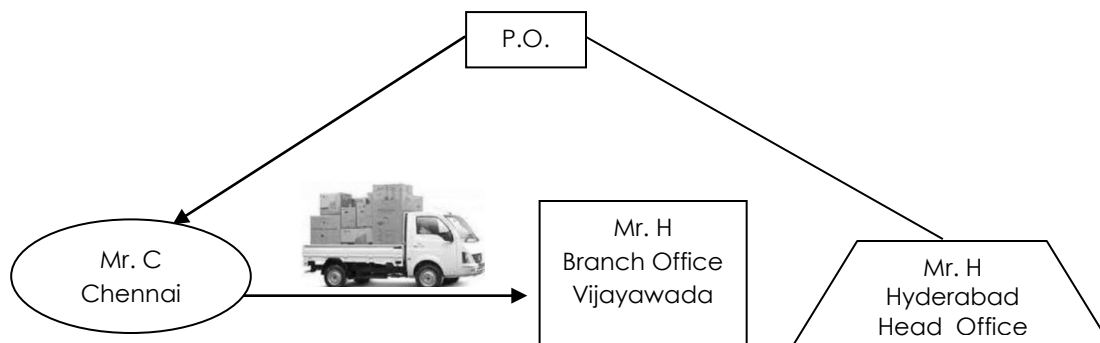
The supplier delivers goods to a recipient or any other person on the direction of a third person by way of transfer of documents of title to the goods or otherwise [Section 10(1)(b) of the IGST Act 2017]:

Nature of supply	Place of supply of goods
Goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods by way of transfer of documents of title to the goods or otherwise.	It shall be deemed that the said third person has received the goods and the Place of Supply of such goods shall be the principal place of business of such person.

Example : 4

Mr. C of Chennai received purchase order from Mr. H of Hyderabad for want of commercial goods. Now supply involves movement of goods by supplier from Chennai to Hyderabad by road in a truck.

Upon the direction of Mr. H of Hyderabad these goods are redirect to Branch office of Mr. H located in Vijayawada by way of transfer of documents of title to the goods (i.e. Lorry Receipt or LR copy).



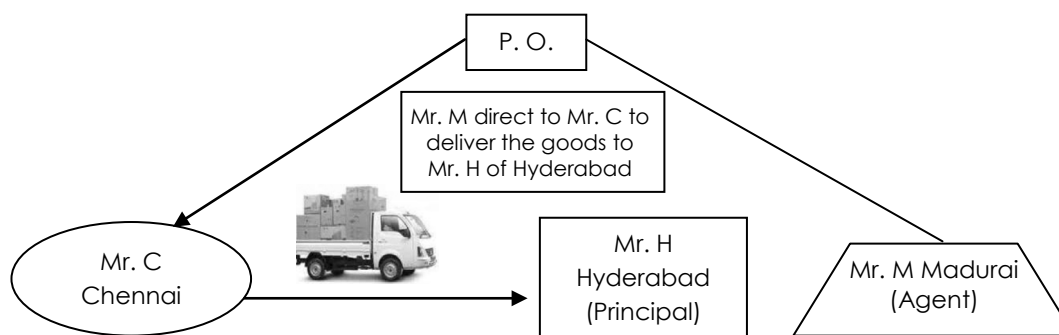
Place of supply goods = Hyderabad.

IGST will be levied.

It shall be deemed that the said third person has received the goods and the Place of Supply of such goods shall be the principal place of business of such person.

Example : 5

Supplier delivers goods to a Principal on the direction of an Agent.



Place of supply goods = Madurai.

CGST & SGST will be levied

It shall be deemed that the said third person has received the goods and the Place of Supply of such goods shall be the principal place of business of such person as per Sec 10(1)(b) of IGST Act, 2017, even if Mr. M acts as agent of Mr. H (namely Principal)

2. Supply does not involve movement of goods [Section 10(1)(c) of the IGST Act, 2017]:

Nature of supply	Place of supply of goods
Where the supply does not involve movement of goods, whether by the supplier or the recipient.	Location of such goods at the time of the delivery to the recipient (This place of supply is irrespective of the location of the buyer and seller)

Example : 6

A and B both located in Kerala. B comes to shop of A. A delivered goods to B. What is the place of supply of goods. Which levy will attract?

Answer:

Place of supply goods = Kerala.

CGST & SGST will be levied

Location of such goods at the time of the delivery to the recipient.

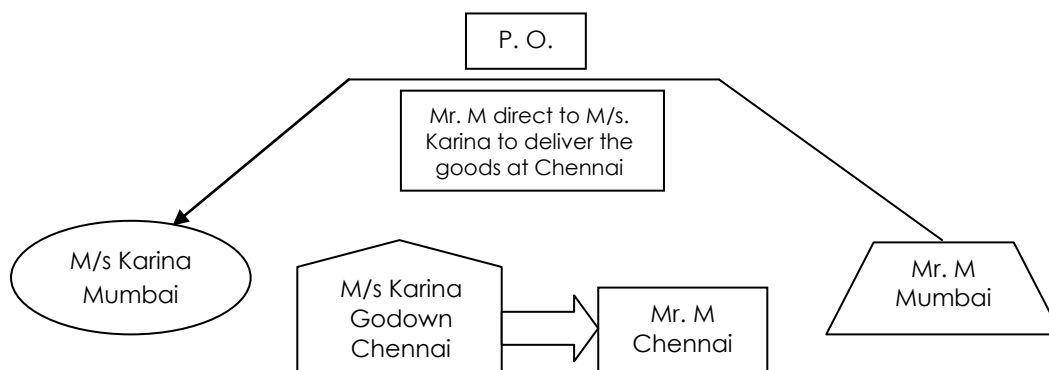
This is irrespective of the location of the buyer and seller.

Example : 7

M/s Karina Ltd. incorporated in Mumbai and own a godown in Chennai. Mr. M of Mumbai approached M/s Karina Ltd. of Mumbai for purchase of goods lying in godown at Chennai. Mr M further informs that he does not want delivery of goods in Mumbai. M/s Karina Ltd. issues invoice for sale of goods in Mumbai.

Find the place of supply of goods and levy of tax?

Answer:



Place of supply goods = Chennai

IGST will be levied

Location of such goods at the time of the delivery to the recipient where Supply does not involve movement of goods.

This place of supply is irrespective of the location of the buyer and seller.

Example : 8

M/s X Ltd has place of business in Chennai, being an NBFC given an asset under financial lease to M/s ABC Ltd. of Chennai. The said asset so far used by M/s ABC Ltd in their factory located at Hyderabad. At the end of lease period the said asset acquired by M/s ABC Ltd. at a nominal amount. Find the place of supply of goods and levy of GST.

Answer:

Place of supply of goods = Hyderabad.

IGST will be levied.

Since, there is no movement of goods from one place to another, provisions of Sec. 10(1)(c) of IGST applicable.

3. Goods are assembled or installed at Site [Sec 10(1)(d) of IGST, 2017]:

Nature of supply	Place of supply of goods
Where the goods are assembled or installed at site.	Place of such installation or assembly

Example : 9

Mr. D located in New Delhi, place order on Mr. Delhi of New Delhi for installation of Air-condition machine in his factory located in Chennai. Mr. D procures the Indoor and out-door units, set of plugs, electrical cables, distribution boards and other items from different States in India and arranges for delivery in Chennai. The said machine assembled by Mr. Delhi in Chennai. Find the Place of supply of goods and levy tax?

Answer:

Place of supply of goods = Chennai

Mr. Delhi is liable to pay IGST.

4. Goods supplied on a vessel/conveyance [Section 10(1)(e) of IGST Act, 2017]:

Nature of supply	Place of supply of goods
Where the goods are supplied on board a conveyance including a vessel, an aircraft, a train or a motor vehicle.	Location at which such goods are taken on board.

Example : 10

Chennai express train going from Chennai to Cochin, M/s X Ltd. located in Cochin has supplied the food which are given to passengers during night time. The food packets are loaded at Chennai Central Station, Chennai.

Find the place of supply of goods and levy of GST?

Answer:

Place of supply of goods = Chennai

M/s X Ltd. is liable to pay IGST.

Example : 11

Mr. C of Chennai supplied goods to M/s Spice Jet Airlines of Chennai flying between Delhi-Mumbai. The goods are loaded in the aircraft in Delhi. Find the place of supply of goods and levy of tax?

Answer:

Place of supply of goods = Delhi

Mr. C of Chennai is liable to pay IGST.

5. Place of Supply of goods cannot be determined [Section 10(2) of the IGST Act, 2017]:

Nature of supply	Place of supply of goods
Any thing not covered under sub-section (a) to (e) of Section 10(1) of the IGST Act, 2017	Determined in such manner as may be prescribed (i.e. as recommended by GST Council)

6. Place of supply of goods imported into or exported from India [Sec. 11 of the IGST Act, 2017]:

Nature of supply	Place of supply of goods
Import into India	Location of the importer
Export from India	Location of outside India

Conclusion: IGST – Levy
IGST – Levy on supply of good:

Supply of goods in the course of inter-State trade or commerce means any supply where:

- the location of the supplier
and
- the place of supply are in different States

Deemed Inter State Supply:

- A supply of goods and/or services in the course of import
- An export of goods and/or services

6.3 PLACE OF SUPPLY IN CASE OF SERVICES
The Place of Supply of Services where location of supplier and recipient is in India [Sec. 12 of IGST Act, 2017]:

To know the Place of Supply for Services the following two concepts are very important (Section 12(1) of the IGST Act, 2017):

- Location of the recipient of services.
- Location of the supplier of services

Location of the recipient of services:

Sec 2(14) of IGST Act, the definition of location of recipient of service divided into 4 sub clauses:

Recipient of service	Location of the recipient of service
(a) Services received at place of business where registration is obtained.	Location of such place of business
(b) Services received at fixed establishment	Location of such fixed establishment
(c) Services received at more than one establishment	The location of establishment most directly concerned with the receipt of the supply
(d) Services received at other than above.	The location of the usual place of residence of the recipient.

Location of the supplier of service:

Sec 2(15) of IGST Act, the definition of location of supplier of service divided into 4 sub clauses:

Supplier of service	Location of the supplier of service
(a) Supply is made from a place of business where registration is obtained.	Location of such place of business
(b) Supply is made from a fixed establishment	Location of such fixed establishment
(c) Supply is made from more than one establishment	The location of establishment most directly concerned with the provision of the supply
(d) Services received at other than above.	The location of the usual place of residence of the supplier.

Example : 12

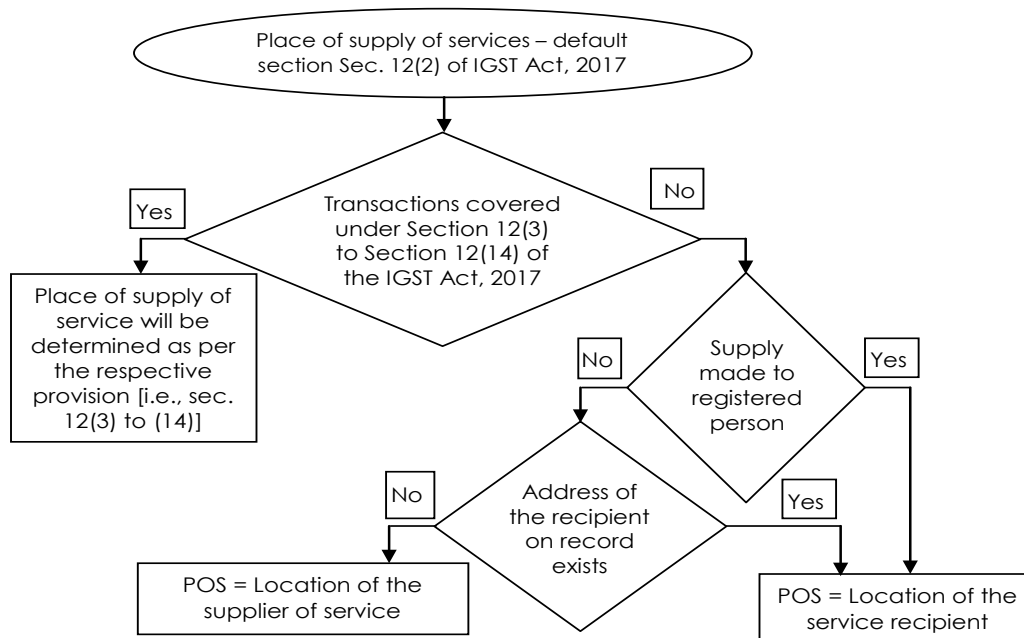
M/s X Ltd. has entered into agreement with M/s Y Ltd to maintain air conditioners. M/s. X Ltd has air conditioners located in Telangana, Andhra Pradesh and Tamil Nadu. M/s Y Ltd. has appointed sub-contractors for the purpose of providing the services of maintenance of air conditioners installed in Telangana, Andhra Pradesh and Tamil Nadu. The maintenance and repair work undertaken by the sub-contractor, who is a supplier of service in the given case.

Answer:

Supplier of service is M/s Y Ltd., even though the services are actually provided by the sub-contractors on behalf of M/s Y Ltd.

Place of supply of services – Default Section.

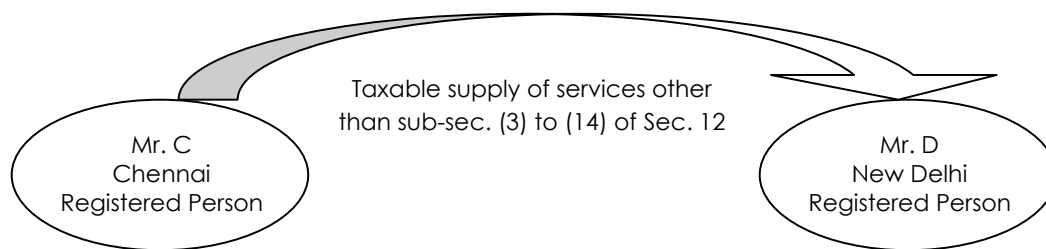
It means, Section 12(2) is applicable only when Section 12(3) to Section 12(14) is not applicable.





Here POS = Place of supply.

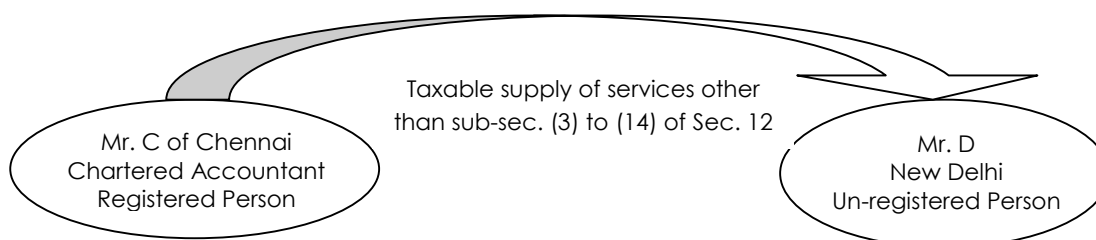
Supply of service to a registered person [Sec. 12(2)(a) of IGST Act]:



Place of supply of service = Location of recipient of service (i.e., New Delhi).

Levy of Tax = IGST will be levied.

Supply of service to a unregistered person [Sec. 12(2)(b)(i) of IGST Act] (where the address on records exists):

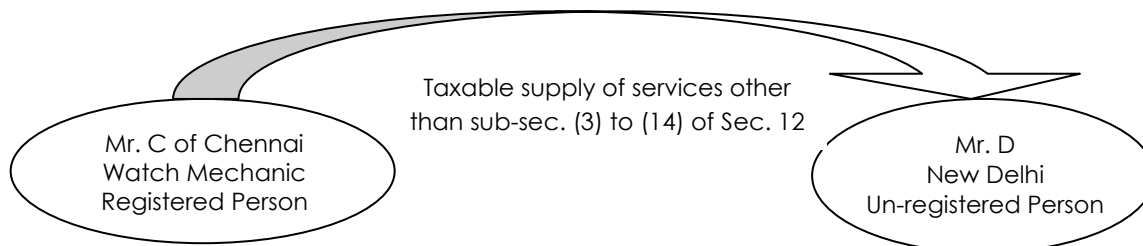


Place of supply of service = Location of the recipient where the address on records exists.

IGST will be levied.

Address on records means the address of the recipient as available in the records of the supplier.

Supply of service to a unregistered person [Sec. 12(2)(b)(ii) of IGST Act] (where the address on records NOT exists):



Place of supply of service = Chennai

CGST & SGST will be levied.

Place of supply of services directly in relation to an immovable property [Sec. 12(3)(a) of IGST Act, 2017]:

S. No.	Nature of service		Place of supply of service
1	Architects	Any services ancillary to these services Sec. 12(3)(d)	Immovable property located or intended to be located India: • Location of Immovable property Outside India: • Location of the recipient.
2	Interior decorator		
3	Surveyors		
4	Engineers and other related exports or estate agents		
5	Any service provided by way of grant of rights to use immovable property		
6	for carrying out or co-ordination of construction work		

**Example : 13**

Mr. X located in Chennai engaged the services of Mr. Y an Architect in Chennai. Mr. X requests him to make design of residential complex to be constructed in Cochin, Kerala. Mr. Y provided drawing and design services in relation to immovable property located at Cochin.

Find the place of supply of service and levy of tax?

Answer:

Place of supply of service = location or intended to be locate the property (i.e. Cochin)

IGST is liable to pay by Mr. Y

Place of supply of services by way of lodging accommodation by a [Sec. 12(3)(b) of IGST Act, 2017]:

S. No.	Nature of service		Place of supply of service
1	Hotel	any services ancillary to these services Sec. 12(3)(d)	Property located or intended to be located in India: • Location of Immovable property or boat or vessel. Outside India: • Location of the recipient.
2	Inn		
3	Guest house		
4	Home stay		
5	Club or campsite by whatever name called and including a house boat or any other vessel		

Example : 14

Mr. Rohit registered person in Jaipur. He went to Kolkata and stays in a Taj hotel at Kolkata. He also availed Beauty treatment services at hotel.

Find the place of supply of service and tax liability in the hands of Taj hotel.

Answer:

Place of supply of service = Kolkata place of supply of service is same for accommodation service by hotel as well as Beauty treatment as it is an ancillary service to the accommodation.

Place of supply of services by way of accommodation in any immovable property for organizing [Sec. 12(3)(c) of IGST Act, 2017]:

S. No.	Nature of service		Place of supply of service
1	Any marriage or reception or matters related thereto,	any services ancillary to these services Sec. 12(3)(d)	Property located or intended to be located in India: • Location of immovable property. Outside India: • Location of the recipient.
2	Official, social, cultural, religious or business function including services provided in relation to such function at such property		

Explanation to Sec 12(3)(a) to (d) of IGST Act:

If the immovable property or boat or vessel is located in more than one State or Union Territory, the supply of service shall be treated as made in each of the respective States or Union Territories in proportion to value of services separately collected or determined in terms of the contract or agreement.

If there is no such contract or agreement, the value of service between two States or Union Territories shall be determined on reasonable basis as may be provided.

Place of supply of services in relation to [Sec. 12(4) of IGST Act, 2017]:

S. No.	Nature of service	Place of supply of service
1	Restaurant	Location where the services are actually performed.
2	Catering services	
3	Personal grooming	
4	Fitness services	
5	Beauty treatment services	
6	Health services including cosmetic and plastic surgery	

As per 23rd GST Council Meet
GST Rate Changes w.e.f. 15th November 2017:

- Restaurants within hotels (room tariff <7,500) @5% without ITC
- Restaurants within hotels (room tariff >7,500) still 18% with ITC
- Outdoor catering 18% with ITC

Example : 15

Mr. Navab a person staying at Dubai, trained for the purpose of grooming of horse in Chennai. Find the place of supply of service?

Answer:

Place of supply of service = Chennai

As the horses are groomed in Chennai.

Example : 16

M/s Cut Ltd., provider of hair cutting saloon services, located in Mumbai. Mr. M.S. Dhoni came from Jharkhand to Mumbai after appointment for haircut. The services are provided in Mumbai. Find the place of supply of service and tax liability in the hands of M/s Cut Ltd.

Answer:

Place of supply of service = Mumbai

M/s Cut Ltd is liable to pay CGST and SGST.

Place of supply of services in relation to training and performance appraisal [Sec. 12(5) of IGST Act, 2017]:

S. No.	Nature of service	Place of supply of service
1	Services in relation to training and performance appraisal.	Provided to a registered person: • Location of recipient of Service Provided to a un-registered person: • Location where the services are actually performed.

Example : 17

Mr. A located at Kolkata provides training at Kolkata to employees of M/s Infosys Ltd, which is registered at Mumbai.

Find the place of supply of service and GST liability in the following two cases?

Case 1: Infosys is registered person under GST

Case 2: Infosys is not registered person under GST



Answer:

Case 1: If Infosys Ltd is a registered person

POS will be Mumbai.

Mr. A. is liable to pay IGST.

Case 2: If Infosys Ltd is not a registered than POS will be Kolkata.

Mr. A. liable to pay CGST and SGST.

Example : 18

Guidelines Academy registered person provides commercial training and coaching services to budding CMA's at Chennai. Many students (who are unregistered persons) from Telangana, Andhra Pradesh, Tamil Nadu, Karnata and Kerala came and stay in Chennai for the purpose of undergoing training in the Guidelines Academy. Find the Place of supply of service?

Answer:

Place of supply of service = Chennai

As the training is performed in Chennai.

Guidelines Academy is liable to pay CGST and SGST.

Example : 19

X Ltd. being a registered person located in Hyderabad hires Mr. Y who is located in Chennai for appraisal performance of senior employees of their company. Mr. Y visits Hyderabad to evaluate the performance of the senior employees.

(a) Find the Place of supply of service?

(b) What would be the place of supply of service if some of the selected employees and relevant papers are sent to Chennai for evaluation where X Ltd. is un-registered person.

Answer:

(a) POS = Hyderabad (i.e. Location of recipient of Service, since, provided to a registered person)

Mr. Y is liable to pay IGST.

(b) POS = Chennai (i.e. Location where the services are actually performed, since, provided to un-registered person)

Mr. Y is liable to pay CGST and SGST.

Example : 20

Mr. Remo (located in Mumbai) a best Choreographer, being a judge appraise the performance of the participants in Dance + additions. He gone to Bengaluru for appraise the performance of dance show competition of various participants.

Find the place of supply of service.

Answer:

POS = Bengaluru

(i.e. where the appraisal of performance has been made, since, recipients are un-registered persons)

Place of supply of services provided by way of admission to a [Sec. 12(6) of IGST Act, 2017]:

S. No.	Nature of service		Place of supply of service
1	Cultural	Services ancillary thereto	Where the event is actually held or where the park or such other place is located.
2	Artistic		
3	Sporting		
4	Scientific		
5	Educational		
6	Entertainment event or Amusement park or any other place.		

Example : 21

Board of Control for Cricket in India located at Mumbai, sold tickets on-line for IPL match, is going to conduct at Chepauk Stadium, Chennai. However, finally match conduct at Mumbai. Find the place of supply of service of admission to sporting event?

Answer:

POS = Mumbai

BCCI is liable to pay CGST and SGST.

Place of supply of services provided by way of organization of a [Sec. 12(7) of IGST Act, 2017]:

S. No.	Nature of service		Place of supply of service
1	Cultural	Services ancillary thereto or assigning of sponsorship to such events.	Provided to a registered person: • Location of recipient of Service Provided to an un-registered person: • Location where the event is actually held and • if the event is held outside India, the place of supply shall be the location of the recipient.
2	Artistic		
3	Sporting		
4	Scientific		
5	Educational		
6	Entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events		

Explanation to Sec 12(7)(a)&(b) of IGST Act:

Where the event is held in more than one State or Union Territory and a consolidated amount is charged for supply of services relating to such event, the place of supply of services shall be taken as being in each of the respective States or Union Territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

Example : 22

Mr. X an event organiser, located in Chennai received an order from M/s Taxman publications, Mumbai to conduct a book fair at Chennai. Find the Place of supply of service and GST in the following two cases:

Case 1: Taxman publications is a registered person.

Case 2: Taxman publications is a un-registered person.

Answer:

Case 1: Mumbai (i.e. location of recipient of service)

Mr. X of Chennai is liable to pay IGST.

Case 2: Chennai (i.e. location where the event is actually held)

Mr. X of Chennai is liable to pay CGST & SGST.

**Example : 23**

Mr. Kapil Sharma a Jalandhar based comedian hosted a comedy show at Singapore on birth day occasion of Mumbai based actor Mr. Shah Rukh Khan's son AbRam.

Answer:

POS = Mumbai (i.e. location of service recipient).

GST = IGST is liable to pay by Mr. Kapil Sharma

Example : 24

Mr. D of Delhi being an event organizer hosted an exhibition at Mumbai to exhibit the products of exhibitor namely, Chennai Silks, Chennai, is a registered person.

Answer:

POS = Chennai (i.e. location of service recipient)

IGST is liable to pay by Mr. D of Dehli

Example : 25

Mr. C of Chennai being an event organizer hosted an exhibition at Dhaka to exhibit the products of exhibitor (namely Chennai Silks) located Chennai.

Answer:

POS = Chennai (i.e. location of service recipient)

GST = CGST and SGST is not liable to pay by Mr. C

Note: Services by an organiser to any person in respect of a business exhibition held outside India is exempted from GST (Entry No. 52).

Example : 26

M/s Kalyan Pvt. Ltd. is an event management company is located in Chennai. Mr. Raj located in Jaipur hires the services of M/s Kalyan Pvt. Ltd., for organizing marriage function of his son in Taj Coromandel, Chennai. Mr. Raj is not a registered person. Find the place of supply of service and GST liability?

Answer:

POS = Chennai

(i.e. where the event is actually held).

M/s Kalyan Pvt. Ltd. of Chennai is liable to pay CSGT & SGST.

Example : 27

The Times Group being an event organizer located at New Delhi organized Miss India 2017 beauty pageant in India in the following Cities for M/s Femina Miss India a registered person located in Mumbai:

City	No. of Days	Fee in ₹
New Delhi	12	12 crores
Chennai	18	18 crores
Mumbai	20	20 crores
Total	50	50 crores

Find the place of supply of service if contract specifies clear details.

Find the place of supply of service if contract specifies lump sum amount of ₹ 48 crores.

Answer:

The place of supply of service if contract specifies clear details:

City	No. of Days	₹ in crore	Location of supplier of service	Place of supply of service = where the respective event is held.	GST
New Delhi	12	12	New Delhi	New Delhi	CGST & SGST
Chennai	18	18	New Delhi	Chennai	IGST
Mumbai	20	20	New Delhi	Mumbai	IGST
Total	50	50			

The place of supply of service if contract specifies lump sum amount:

City	No. of Days	₹ in crore	Location of supplier of service	Place of supply of service = where the respective event is held.	GST
New Delhi	12	11.52	New Delhi	New Delhi	CGST & SGST
Chennai	18	17.28	New Delhi	Chennai	IGST
Mumbai	20	19.20	New Delhi	Mumbai	IGST
Total	50	48.00			

Place of supply of services by way of Transportation of goods including by mail or courier [Sec. 12(8) of IGST Act, 2017]:

S. No.	Nature of service	Place of supply of service
1	Services by way of Transportation of goods including by mail or courier	Provided to a registered person: • Location of recipient of Service. Provided to a un-registered person: • Location at which such goods are handed over for their transportation.

Amendment:

New proviso inserted in Sec. 12 (8) Integrated Goods and Service Amendment Act ,2018 which provides that if the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.

Sec 2(52) of CGST Act, Goods means:

Every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be served before supply or under a contract of supply.

Example : 28

M/s Navatha a transporter registered under GST, located in Vijayawada. M/s C Ltd. of Chennai registered under GST, received services from M/s Navatha for transport of goods from its warehouse in Vijayawada to Guntur. M/s Navatha delivered goods at Guntur.

Find the place of supply of service and GST?

Whether your answer is different, if M/s C Ltd. of Chennai is not a registered person under GST?

Answer:

If the recipient is registered person:

POS = Chennai (i.e. location of recipient).

M/s Navatha of Vijayawada is liable to pay IGST.

If the recipient is not a registered person:

POS = Vijayawada (i.e. Location at which such goods are handed over for their transportation).

M/s Navatha of Vijayawada is liable to pay CGST & SGST.

**Example : 29**

M/s DHL courier registered under GST and located in Mumbai, provided transportation of documents like Cheques, promisory notes, pay orders (which cannot be considered as goods) belonging to Mr. C of Chennai, from Mumbai to Chennai.

Find the place of supply of services in the following independent cases:

- (a) Mr. C of Chennai is a registered person under GST.*
- (b) Mr. C of Chennai is a un-registered person under GST, however his address is available in the books of M/s Navatha.*
- (c) Mr. C of Chennai is a un-registered person under GST, however his address is not available in the books of M/s Navatha.*

Answer:

Place of supply of services is as per Sec 12(2) but not under Sec 12(8) of IGST.

- (a) POS = Chennai (i.e. location of recipient of service)*
- (b) POS = Chennai (i.e. location of recipient of service)*
- (c) POS = Mumbai (i.e. location of supplier of service)*

Note: Cheques, promisory notes, pay orders cannot be considered as goods.

Place of Supply of passenger transportation service to [Sec 12(9) of IGST Act]:

S. No.	Nature of service	Place of supply of service
1	Passenger transportation service. Including: Rail, Mono Rail, Metro Rail, Road, Air, Vessel, boat, Cycle rickshaw, Bullock cart, Camel etc.	Provided to a registered person: • Location of recipient of Service. Provided to a un-registered person: • Place where the passenger embarks on the continuous journey.

S. No.	Nature of service	Place of supply of service [refer to Sec 12(2) of IGST]
2	Right to passage is given for future use and point of embarkation is not known at the time of issue of such right	Provided to a registered person: • Location of recipient of Service. Provided to a un-registered person: • Location of recipient when address on record is available. • Location of supplier in other cases

Sec 2(3) of IGST Act, 2017 defines Continuous journey:

Means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued.

Explanation: For the purpose of this clause, the term 'stopover' means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time.

Example : 30

Mr. Ram working in Infosys Company having office in Bengaluru is registered under GST. Mr. Ram purchased the ticket from Hyderabad for transportation passenger by Air from Hyderabad to Chennai. Mr. Ram discloses the name of the organization and its registration number and the place where the organization is registered. Supplier of service is located at Hyderabad.

Find the following

- (a) Place of supply of service and GST liability?*
- (b) Whether your answer is different if Mr. Ram is not disclosed the name of the organization and its registration number?*

Answer:

(a) POS = Bengaluru (i.e. location of recipient of service)

GST = IGST is liable to pay by Air Travel Operator

(b) POS = Hyderabad (i.e. Place where the passenger embarks on the continuous journey)

GST = CGST & SGST is liable to pay by Air Travel Operator

Example : 31

Jet Air registered under GST and located in Mumbai operates flight from Delhi-Dubai-London-Dubai-Delhi. Mr. TYN who is unregistered person, purchase air ticket for Delhi-London. Two tickets are issued to him showing Delhi-Dubai with a halt at Dubai for 5 hours and Dubai-London.

Find the Place of supply of service and GST liability?

Answer:

POS = Delhi (i.e. place of embark)

GST = Jet Air is liable to pay IGST for the entire value of air fair.

Note: since, it is continuous journey, place of embarking of passenger who is unregistered person is relevant.

Example : 32

Jet Airways registered under GST and located in Mumbai operates flight from Mumbai-Delhi-Mumbai. Mr. TYN who is unregistered person, purchase air ticket for Mumbai-Delhi-Mumbai. Only one ticket is issued to him showing both the route.

Find the Place of supply of service and GST liability?

Answer:

POS = Mumbai (i.e. Mumbai-Delhi, place of embark is relevant)

GST = Jet Airways is liable to pay CGST & SGST.

POS = Delhi (i.e. Delhi-Mumbai, place of embark is relevant)

GST = Jet Airways is liable to pay IGST.

Note:

(i) As per explanation, Mumbai-Delhi and Delhi-Mumbai journey will be considered two separate journeys.

(ii) If there is stopover during the journey, the journey will not be considered as continuous journey.

Place of Supply of service on board a conveyance [Sec 12(10) of IGST Act]:

S. No.	Nature of service	Place of supply of service
1	Vessel	Location of the first scheduled point of departure of that conveyance for the journey.
2	Air craft	
3	Train	
4	Motor vehicle	

Example : 33

A movie on demand is provided as onboard entertainment during the Delhi-Chennai leg of a Dubai-Delhi-Chennai flight.

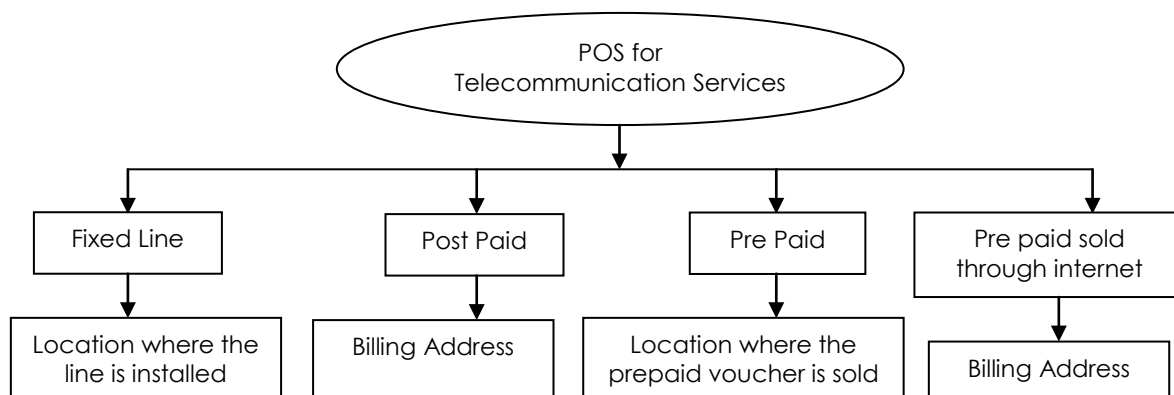
Find the place of supply of service?

Answer:

POS = Dubai (outside the taxable territory, hence not liable to GST).

Place of supply of telecommunication services [Sec 12(11) of IGST Act]:

S. No.	Nature of service	Place of supply of service
1	including • data transfer, broadcasting, • cable and • direct to home television services.	



Where the address of the recipient as per the records of the supplier of services is not available, the place of supply shall be location of the supplier of service.

Example : 34

M/s Air Call registered under GST and located in Chennai. M/s Air Call have appointed Mr. C as a selling agent for supplying pre-payment voucher to the subscriber. Find the Place of supply of service and GST liability?

Answer:

POS = Chennai (i.e. Address of the selling agent on the record of M/s Air Call).

GST = CGST & SGST is liable to pay by M/s Air Call.

Place of Supply of banking and NBFC service including Stock broking services [Sec 12(12) of IGST Act]:

S. No.	Nature of service	Place of supply of service
1	Banking and NBFC service including Stock broking services	• Location of recipient of Service on the records of the supplier of service. Otherwise: • Location of supplier of service.

Example : 35

Mr. Harsha being a registered stock broker at BSE, located in Mumbai. He has clients in Chennai, Kolkata, Bengaluru. He purchase and sells shares of clients located in Chennai, Kolkata, Bengaluru. Find the place of supply of service and GST liability?

Answer:

POS = Chennai, Kolkata & Bengaluru.

GST = IGST is liable to pay by Mr. Harsha.

Example : 36

M/s X Ltd. has factory in Cochin, Chennai, Vijayawada and Hyderabad and office in Bengaluru. M/s X Ltd obtains insurance for the assets located in Cochin, Chennai, Vijayawada, Hyderabad and Bengaluru from insurance company located at Delhi. Premium receipt issued by the insurance company to the Bengaluru office.

Find the place of supply of service and GST liability?

Answer:

POS = Bengaluru

GST = IGST is liable to pay by the insurance company.

Place of supply of insurance services [Sec 12(13) of IGST Act]:

S. No.	Nature of service	Place of supply of service
1	Insurance services	To a registered person • Location of recipient of Service. To a person other than registered person • Location of the recipient of services on the records of the supplier of service.

Place of supply of advertisement services to specified persons [Sec 12(14) of IGST Act, 2017]

S. No.	Nature of service	Place of supply of service
1	Advertisement services to • Central Government • State Government • Statutory Body • Local Authority	Located in each of such states and the value of such supplies specific to each state shall be in proportion to amount attributable to service provided by way of dissemination in the respective states.

Example : 37

The Government has hired 200 hoardings in Lakshadweep and 175 hoardings in Chennai for providing advertisement of Gas subsidy and contract contains the consideration for these hoardings separately. Hoarding services supplied by M/s X Ltd. located in Hyderabad.

Find the place of supply of service and GST

Answer:

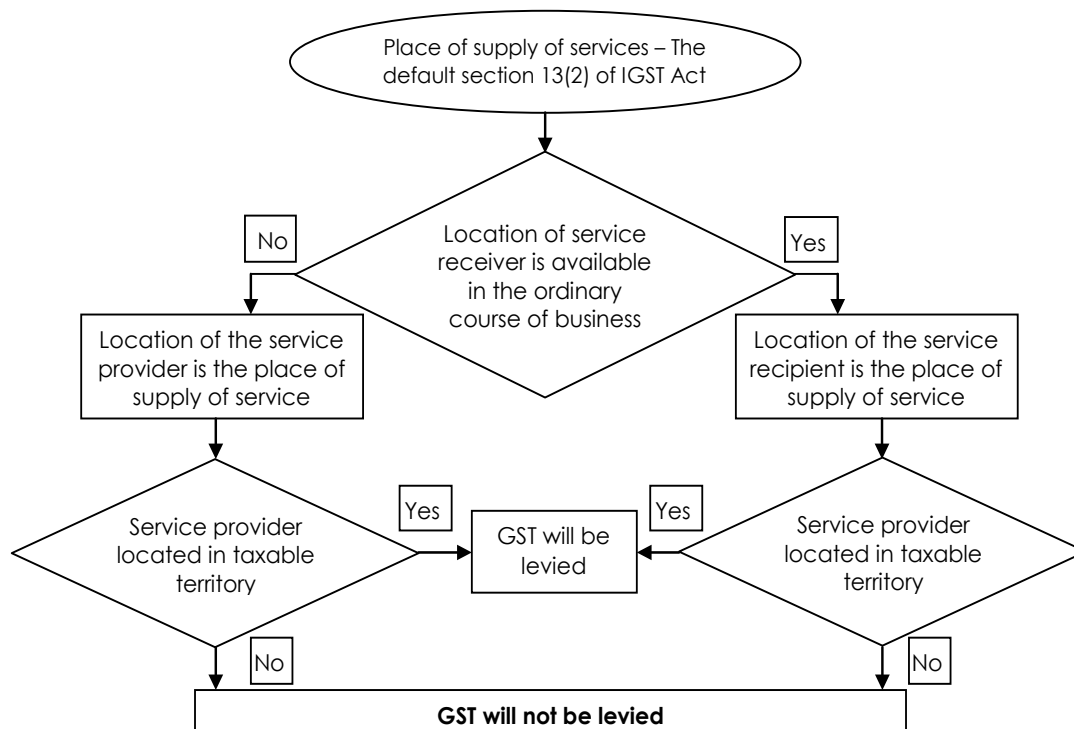
POS = Lakshadweep & Chennai

GST = IGST is liable to pay by M/s X Ltd.

Place of supply of service where location of Supplier of Service or Location of Recipient of Service is outside India [Sec. 13 (1) of the IGST Act, 2017]

Services are grouped into

- Default Section 13(2): It is applicable only when sub-sec (3) to (13) of Sec 13 are not applicable.
- Specific Section 13(3) to 13(13)

Default Section 13(2):**Place of supply services on Goods [Sec. 13(3)(a) of IGST Act]:**

S. No.	Nature of service	Place of supply of service
1	"in respect of goods that are made physically available, by the receiver to the service provider in order to provide the service"	location where the services are actually performed.
2	services provided by way of electronic means in relation to tangible goods,	the actual location of goods.

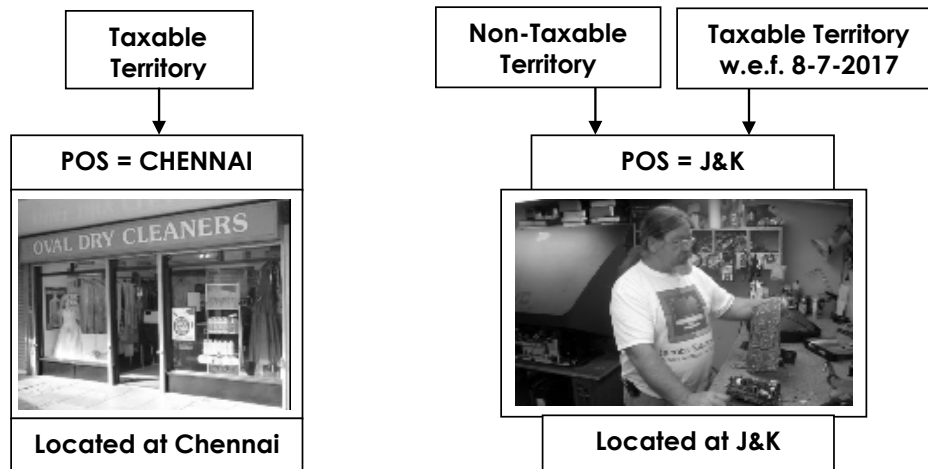
Sec 13(3)(a) of IGST Act, 2017 is not applicable:

If the following two conditions are satisfied then Sec 13(2) of IGST Act, 2017 is applicable:

- If goods are to be temporarily imported into India for repairs only as against repairs and are exported after repairs
- without being put to any other use in India, than that which is required for such repairs.

Amendment:

Amendment vide THE INTEGRATED GOODS AND SERVICES TAX (AMENDMENT) ACT, 2018 of Sec 13 (3)(a) of IGST Act, 2017 which shall be applicable in case of any treatment or process (which may not come within the four corners of the definition of job work) done on goods temporarily imported into India and then exported without putting them to any other use in India. Hence in the instant case the place of Supply is to be Outside India.



Spice Jet company in India gets its aircraft repaired at Chennai Airport, by engineers deputed by Airbus, France an overseas firm who travel from France to Chennai for the purpose.

- The place of supply of this service is in the taxable territory (i.e., Chennai).
- This service is taxable in the hands of Spice Jet (i.e., Reverse charge)



Example : 38

ABC Fabricators has its factory located in Gujarat. It has temporarily imported certain goods from its customer located in China and re-exported them to China after carrying out the necessary repairs without putting them to any use in Gujarat.

Examine what would be the place of provision of service in the given case with reference to the Place of Provision of Service Rules, 2012.

Will your answer be different if the repaired goods are re-exported after being put to use in Gujarat for some time?

**Answer:**

In the given case, since goods have been temporarily imported by ABC Fabricators and have been re-exported after the repairs without being put to any use in Gujarat (taxable territory), place of provision of repair services carried out by ABC Fabricators will be determined by Sec 13(2) of IGST Act, 2017. Consequently, the place of supply of service will be the location of service receiver, viz. China (non-taxable territory).

However, if repaired goods are re-exported after being put to use, the place of provision of service will be determined according to Sec 13(3)(a) of IGST Act, 2017, if the use to which such goods are put to is not required for such repair.

Therefore in such a case, the place of supply of service will be the location where the service is actually performed, which in the given case is Gujarat.

However, if the use is of such nature, which is necessary for carrying out the repairs, the place of supply of service will again be determined as per Sec 13(2) of IGST Act, 2017.

Place of supply services on Goods [Sec. 13(3)(b) of IGST Act]:

S. No.	Nature of service	Place of supply of service
1	Services supplied to an Individual, represented either as the service receiver or a person acting on behalf of the receiver, which require physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.	location where the services are actually performed.

Example : 39

Famous actress Aishwarya Rai went to London, and avail cosmetic or plastic surgery services for her nose. Find the place of supply of service. GST is liable to pay?

Answer:

POS = London (Non-taxable territory)

GST is not liable to pay.

Place of supply of services supplied directly in relation to an immovable property [Sec 13(4) of IGST Act]

Place of supply of services supplied directly in relation to an immovable property [Sec 13(4) of IGST]:

Nature of Service	Place of Supply of Service
- Lease or a right to use, occupation enjoyment or provision of hotel accommodation by a hotel, guest house, club - Construction service - Architects - Interior decorators - Renting of immovable property - Real estate agents, - Auctioneers, engineers and similar experts or professional people, relating to land, buildings or civil engineering works etc.	Where immovable property is located or intended to be located

Example : 40

Mrs. Neelam Goel, an Interior Designer based in Delhi provides her service to an Indian Hotel Chain (which has business establishment in Mumbai) for its newly acquired property in London. Find the place of supply of service and the person liable to pay GST if any?

Answer:

As per section 12(3)(a) of IGST Act, 2017, Location of service recipient is the place of supply of service.

PoS = Mumbai. Taxable territory. Hence, attract IGST in the hands of Mrs. Neelam Goel.

**Place of supply of services supplied by way of admission to or organization of [Sec 13(5) of IGST Act]:**

Nature of Service	Place of Supply of Service
• Cultural • Artistic • Sporting • Scientific • Educational • Entertainment event • Celebration • Conference • Fair • Exhibition • Similar events and • Services ancillary to such admission or organisation	Where event is actually held.

Example : 41

Mr. Kapil Sharma a Jalandhar based comedian hosted a comedy show at Singapore with help of event organizer located in Dubai.

POS = Singapore.

Example : 42

Mr. Kapil Sharma a Jalandhar based comedian hosted a comedy show at Singapore on birth day occasion of Mumbai based actor Mr. Shah Rukh Khan's son AbRam an un-registered person. Find the GST liability if any?

POS = Mumbai (i.e., location of the recipient Sec. 12(7) of IGST Act, 2017)

GST = IGST is liable to pay by Mr. Kapil Sharma.

Example : 43

Mr. D of Delhi being an event organizer hosted an exhibition at Mumbai to exhibit the products of exhibitor (namely M/s S Silks Ltd. of Singapore).

PPS = Mumbai

GST = IGST is liable to pay by Mr. D of Delhi.

Example : 44

Mr. D of Dhaka being an event organizer hosted an exhibition in Mumbai to exhibit the products of exhibitor (namely M/s S Silks Ltd. of Shimla).

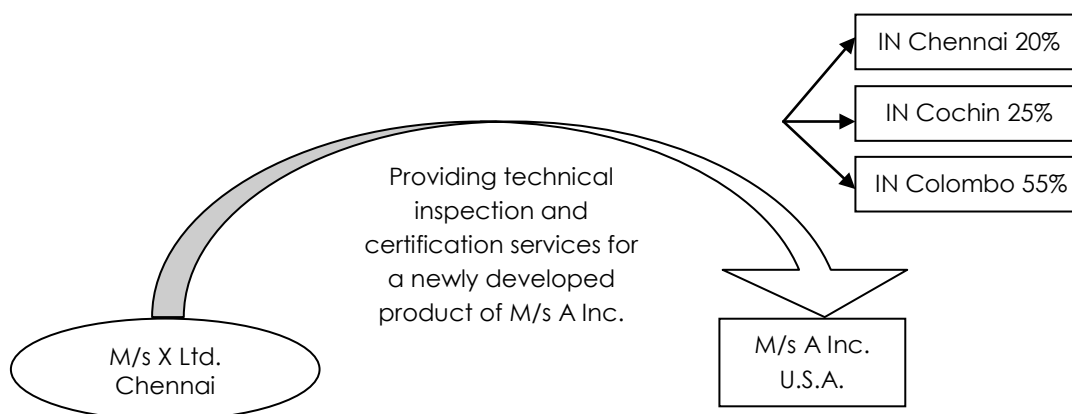
Answer:

PPS = Mumbai

GST = IGST is liable to pay by M/s S Silks Ltd. of Shimla (RCM)

Services referred u/s 13(3) or (4) or (5) is supplied at more than one location [Sec. 13(6) of IGST Act]:

Where any service stated in sub-sec 3, 4, or 5 of Sec 13 is provided at more than one location, including a location of taxable territory, its place of supply shall be the location in the taxable territory.


Sec 13(3) or (4) or (5) Services performed in more than one State [Sec. 13(7) of IGST Act]:

Sec 13(3) or (4) or (5) Services performed in more than one State or Union Territory, the Place of supply of such services shall be taken as deemed in each of the State or Union Territories in proportion to the value of services so provided.

The value of services is required to be determined in terms of the agreement or any reasonable means.

Example : 45

Mr. Harsha a event organiser located in Malaysia under taken to organize comedy shows of Mr. Bhrami of Hyderabad and Mr. Vadivelu of Chennai in India. The comedy shows are hosted in Telangana, Andhra Pradesh, Tamil Nadu and Pondicherry.

Gross value of contract is ₹ 60 crores.

State	No. of Days	Recipient of Service
Telangana	20	Mr Bhrami
Andhra Pradesh	15	Mr. Bhram
Tamil Nadu	14	Mr. Vadivelu
Pondicherry	01	Mr. Vadivelu
Total	50	

Find the place of supply of services and value of service.

Answer:

Place of Supply of service	Value ₹ in crores	Who is liable to pay GST	GST
Telangana	24	Recipient of Service	IGST
Andhra Pradesh	18	Recipient of service	IGST
Tamil Nadu	16.80	Recipient of service	IGST
Pondicherry	1.20	Recipient of service	IGST
Total	60		

Specified Services [Sec. 13(8) of IGST Act]

Place of Supply of Services = Location of the Service Provider

Specified Services Includes:

- Services provided by a banking company, or financial company, or a NBFC to account holders
- Intermediary services
- Services consisting of hiring of means of transport, other than, -



- (i) aircrafts, and
 - (ii) vessels except yachts
- upto a period of one month

Services provided by a banking company or financial company or a NBFC to account holders:

Example : 46

Mr. S has a permanent residence at Chennai. He has a savings bank account with Chennai Mound Road Branch of State Bank of India. On Aug 1, 2015, Mr. S opened a safe deposit locker with the Chennai Mound Road Branch of State Bank of India. Mr. S went to Singapore for official work in Sep, 2015 and has been residing there since then. Mr. S contends that since he is a non-resident during the year 2017-18 in terms of the Income-tax Act, GST cannot be levied on the locker fee charged by State Bank of India for the year 2017-18.

Examine the correctness of the contention of Mr. S.

Answer:

POS = Chennai

GST = CGST and SGST is liable to pay by State Bank of India Chennai Mount Road Branch.

Intermediary services

Includes the following:

- Travel agent (any mode of travel)
- Tour operator
- Commission agent for a service (including an agent for buying or selling of goods)
- Recovery agent etc.,

Remittances from abroad, GST will be levied.

Intermediary:

As per Section 2(13) of the Integrated Goods and Services Tax Act, 2017 intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both securities on his own account.

Example : 47

Freight Forward Services:

Freight Forwarder

Also known as forwarding agent or Non-Vessel Operation common Carrier or NVOCC.

A person or company that organizes shipments for individuals, organizations or businesses to get goods from the manufacturer or producer to a final point of distribution.

S.No.	Service provider	Nature of Service	Place of supply of service	Remarks
1.	Freight forwarder acts as an agent of airline/carrier/ocean liner	Transportation of goods outside India	Intermediary service. Section 13(8)(c) of the IGST Act, 2017.	Location of service provider is the place of supply of service.
2.	Freight forwarders act as a principal. The invoice is raised by the freight forwarder on the exporter. He is bearing all the risks and liability for transportation.	Transportation of goods outside India	Transportation of goods Section 13(9) of the IGST Act, 2017.	Destination of the goods is the place of supply of service.

Example : 48

Write a brief note on the applicability of GST in the following cases.

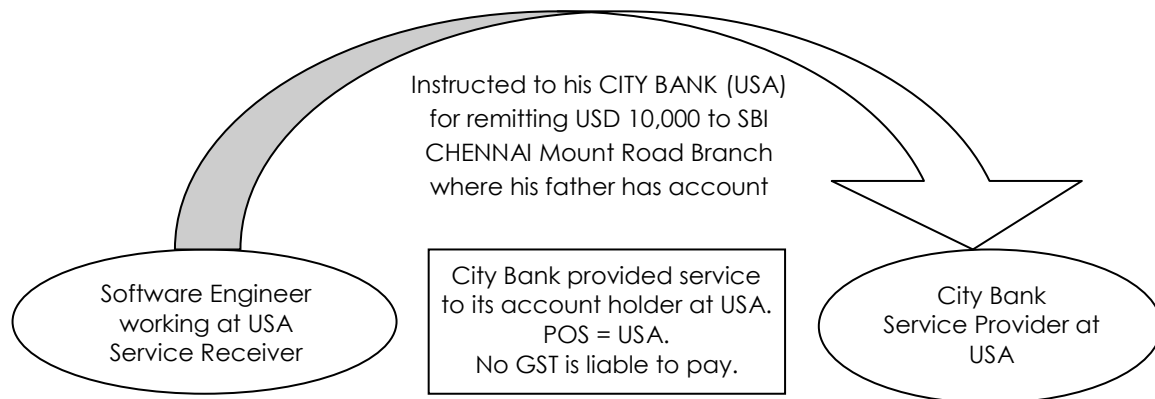
- (i) Whether the representation service provided by State Bank of India Chennai to a foreign MTSO (Money Transfer Service Operator) in relation to money transfer to a beneficiary in India falls in the category of intermediary service.
- (ii) Whether GST is leviable on the services provided as mentioned in (i) above by an intermediary / agent located in India (in taxable territory) to MTSO's located outside in India.

Answer:

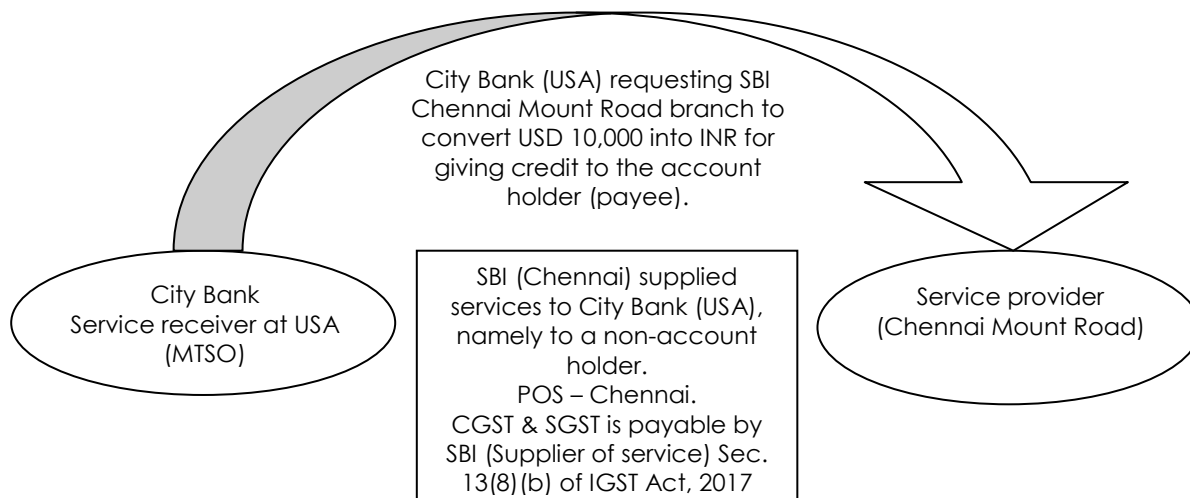
- (i) Yes, the given service falls under intermediary service under section 13(8)(b) of the IGST Act, 2017.
- (ii) Place of supply of service is location of the supplier of service (i.e. taxable territory namely Chennai) and hence, GST is liable to pay by intermediary/agent.

Example : 48(a)

MTSO (namely City Bank USA) provided services to account holder:

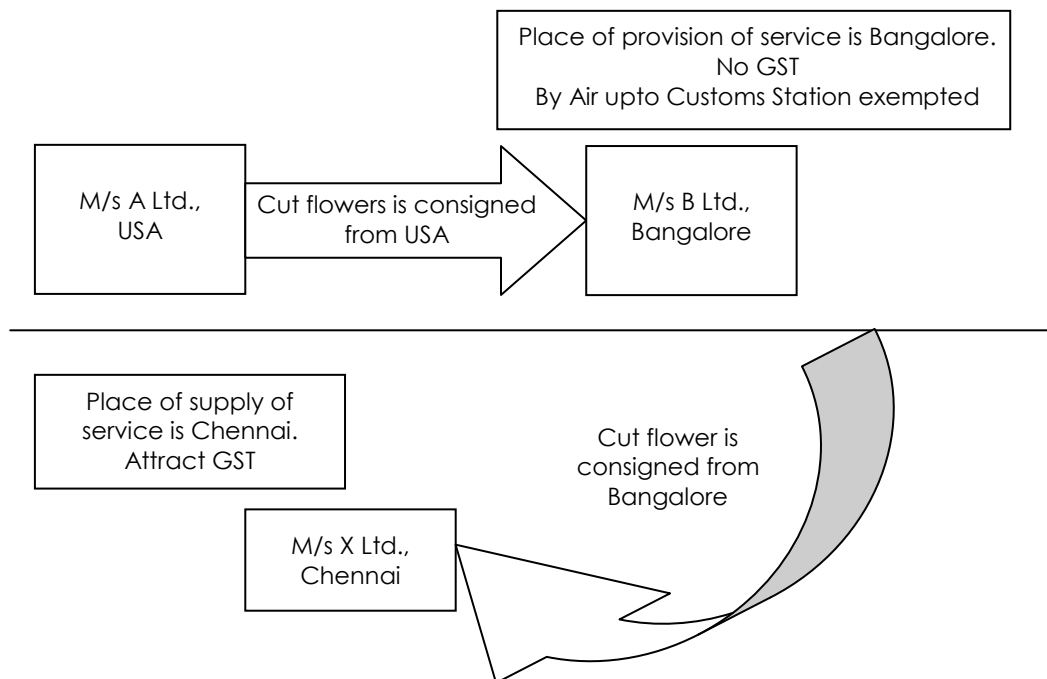
**Example : 48(b)**

State Bank of India Mount Road Branch Chennai provided services to MTSO (namely City Bank USA) by crediting beneficiary account in India by acting as intermediary:



Place of provision of a service of transportation of goods other than by way of mail or courier [Sec. 13(9) of IGST Act]

Place of supply of Service = Destination of such Goods



In case of transshipment of goods:

Example : 49

A vessel *Bhishma*, sailing from U.S.A to Australia via,, India carries various types of capital goods namely 'A, B, C & D'. 'A & B' are destined to Mumbai Port. On account of submission of bill of transshipment product 'A' transshipped to Chennai port as ultimate destination in India and product 'B' transhipped to Srilanka.

Find the place of supply of service and person liable to pay GST.

Answer:

Place of supply of services is destination of goods and person liable to pay GST is the importer.

In the given case

Place of supply = Chennai (i.e. product 'A' ultimate destination in India)

Person liable to pay GST is importer on the ocean freight.

Passenger Transportation Services [Sec 13(10) of IGST Act]:

The place of supply of service = where the passenger embarks on the conveyance for a continuous journey.



Passengers Embarks from New Delhi.

Place of supply is New Delhi. Hence, Taxable

Services Provided on Board Conveyances [Sec. 13(11) of IGST Act]:

Any service provided on board a conveyance (air craft, vessel, rail, or roadways bus) will be covered here.

POS = The first scheduled point of departure of that conveyance for the journey.

6.4 PLACE OF SUPPLY IN CASE OF ONLINE INFORMATION DATABASE ACCESS AND RETRIEVAL (OIDAR) SERVICES**Online information and database access or retrieval services [Sec 13(12) of IGST Act]:**

POS = Location of the recipient of service

Recipient of service deemed to be located in the taxable territory, if any two of the following conditions are satisfied:

- (a) the location of address presented by the recipient of services through internet is in the taxable territory;
- (b) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;
- (c) the billing address of the recipient of services is in the taxable territory;
- (d) the internet protocol address of the device used by the recipient of services is in the taxable territory;
- (e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;
- (f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory;
- (g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory.

OIDAR services includes:

Online information and database access or retrieval [OIDAR] services means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology and includes electronic services:

OIDAR Services includes	OIDAR Services excludes
(i) advertising on the internet; (ii) providing cloud services; (iii) provision of e-books, movie, music, software and other intangibles via telecommunication networks or internet; (iv) providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network; (v) online supplies of digital content (movies, television shows, music, etc.); (vi) digital data storage; and (vii) online gaming.	(i) Supplies of goods, where the order and processing is done electronically (ii) Supplies of physical books, newsletters, newspapers or journals (iii) Services of lawyers and financial consultants who advise clients through email (iv) Booking services or tickets to entertainment events, hotel accommodation or car hire (v) Educational or professional courses, where the content is delivered by a teacher over the internet or an electronic network (in other words, using a remote link) (vi) Offline physical repair services of computer equipment (vii) Advertising services in newspapers, on posters and on television

Examples of services whether or not OIDAR services:

Nature of service	Whether Provision of service mediated by information technology over the internet or an electronic network	Whether it is Automated and impossible to ensure in absence information technology	OIDAR service
Pdf document manually emailed by provider. Example : 50 Guidelines Academy sent soft of work book solutions.	Yes	No	No
Pdf document automatically emailed by provider's system Example : 51 Airtel receipt for post paid connections, acknowledgements for submission of documents through MCA website and so on.	Yes	Yes	Yes
Pdf document automatically downloaded from site Example : 52 downloading software like anti-virus software, software to block banner adverts showing and so on.	Yes	Yes	Yes
Stock photographs available for automatic download Example : 53 desktop themes, screen savers	Yes	Yes	Yes
Online course consisting of pre-recorded videos and downloadable pdfs. Example : 54 on account of pressing buy button pre-recorded video classes automatically available on screen.	Yes	Yes	Yes
Online course consisting of pre-recorded videos and downloadable pdfs plus support from a live tutor. Example : 55 recorded classes are available for those students who miss live classes.	Yes	No	No
Individually commissioned content sent in digital form Example : 56 photographs, reports, medical results.	Yes	No	No

Summary:

Type of service	Nature of service (Cross-border)	Taxable/Exempted	Liable to pay tax
B2C	OIDAR service	Taxable	Forward charge
B2C	Other than OIDAR service	Exempt	Exempted supply
B2B	OIDAR service	Taxable	Reverse charge
B2B	Other than OIDAR service	Taxable	Reverse charge

Power to notify supply of a services or circumstances [Sec 13(13) of IGST Act]:

In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

**Practical problems:****Example : 57**

Determine the place of supply of service as well as their taxability in each of the following cases with brief reasons:

- (a) XY Ltd. of Delhi, agrees to provide 'technical inspection and certification service' in respect of a newly developed product of an overseas firm (for a newly launched motorbike which has to meet emission standards in different states or countries). The overseas firm has provided its newly developed product to XY Ltd. for the purpose of testing. The testing is carried out in Delhi (15%), Assam (35%) and Sweden (50%).
- (b) A movie on demand is provided as on board entertainment during the Kolkata-Delhi leg of a Bangkok-Kolkata-Delhi Flight.

Answer:

- (a) As per Section 13(6) of IGST Act, 2017, Place of supply of service will be the place in the taxable territory (i.e. Delhi and Assam).

X Ltd is liable to pay CGST and SGST for the part of Delhi

X Ltd is liable to pay IGST for the part of Assam.

X Ltd is also liable to pay CGST and SGST as well as IGST for the services rendered in Sweden in ratio 3:7.

It means tax will be payable on the entire value.

- (b) As per section 13(11) of the IGST Act, 2017, PoS is Bangkok which is non taxable territory, not subject to GST.

Example : 58

Swamy Ltd. of Chennai acquires the business of SA Ltd. at Johansberg, South Africa. Swamy Ltd. entered into a contract with M/s Krish & Krish Architects, Chennai to do the interiors of the building of new business at South Africa. The Central Tax department issued a notice demanding GST based on the Place of supply of service provisions. Discuss briefly the applicability of the Place of supply of service to M/s Krish & Krish as the work to be done is outside the taxable territory.

Answer:

Place of supply of services supplied directly in relation to an Immovable Property as per Sec 13(4) of IGST is where immovable property is located or intended to be located.

However, location of supplier and location of recipient is in India we should refer section 12(3)(a) of IGST Act, 2017, accordingly place of supply of service is where immovable property located or intended to be located in India. If location of Immovable property is outside India then place of supply is location of the recipient.

In the given case place of supply of service is Chennai. Location of supplier of service is in Chennai. CGST and SGST will be levied.

Example : 59

With reference to the GST provisions briefly explain:

- (i) time of supply under reverse charge with respect to payment date.
- (ii) Place of supply of service of hiring of all means of transport (except vessel and air craft) upto a period of one month, where location of supplier or location of recipient is from outside India.

Answer:

- (i) The phrase "the date on which payment received by the recipient" or "the date of payment" means

- the date on which payment is entered in his books of accounts

or

- the date on which the payment is debited to his bank account, whichever is earlier.

- (ii) Specified Services Sec. 13(8) (c) of the IGST Act, 2017:

Place of Supply of Services = Location of the Service Provider



Example : 60

With reference to the position of Goods and Service Tax law as applicable on or after 01.07.2017, what would be the place of supply of service in the following independent cases?

- (i) *MN Trade Links of New Delhi are appointed as commission agent by a foreign company for sale of its goods to Indian customers. In lieu of their services, MN Trade Links receive a fixed percentage of commission from the concerned foreign company.*
- (ii) *OP Fabricators of Mumbai has temporarily imported certain goods from its customer located in Hongkong for repairs. The said goods have been re-exported to Hongkong after carrying out the necessary repairs without being put to any use in Mumbai.*
- (iii) *UV Airlines, an airlines located in New Delhi, has hired aircrafts from a foreign Airlines for a period of 15 days.*

Answer:

- (i) *Place of supply of service = New Delhi (i.e. location of supplier of service section 13(8)(b) of the IGST Act, 2017). GST will be levied.*
- (ii) *Place of supply of service = Hongkong (i.e. location of recipient of service as per Section 13(2) of the IGST Act, 2017). No GST will be levied.*
- (iii) *Place of supply of service = New Delhi (i.e. location of recipient of service as per Section 13(2) of the IGST Act, 2017). IGST will be levied.*

Example : 61

Determine the place of supply of service in each of the following independent cases and state whether GST is payable in each of these cases:

- (a) *Mr. A travelled on a Bagdogra-Dibrugarh-Singapore-Dibrugarh-Bagdogra flight where a single ticket with no stopover has been issued by Parkinson Airlines located in Dubai.*
- (b) *Mr. B, a well-known comedian from Delhi, organises a stage-show in Japan. For organising the stage-show, he takes the services from a Mumbai based event organiser.*

Answer:

- a. *Place of supply of services = Bagdogra of West Bengal (As per Section 13(10) of the IGST). However, it is specifically exempted from GST under Entry No. 15 of the Notification No. 12/2017 of the Central Tax (Rate) dt. 28.06.2017).*
- b. *Place of supply of service = Delhi (i.e. location of recipient of service). GST is payable by supplier of service (Section 13(2) of the IGST).*

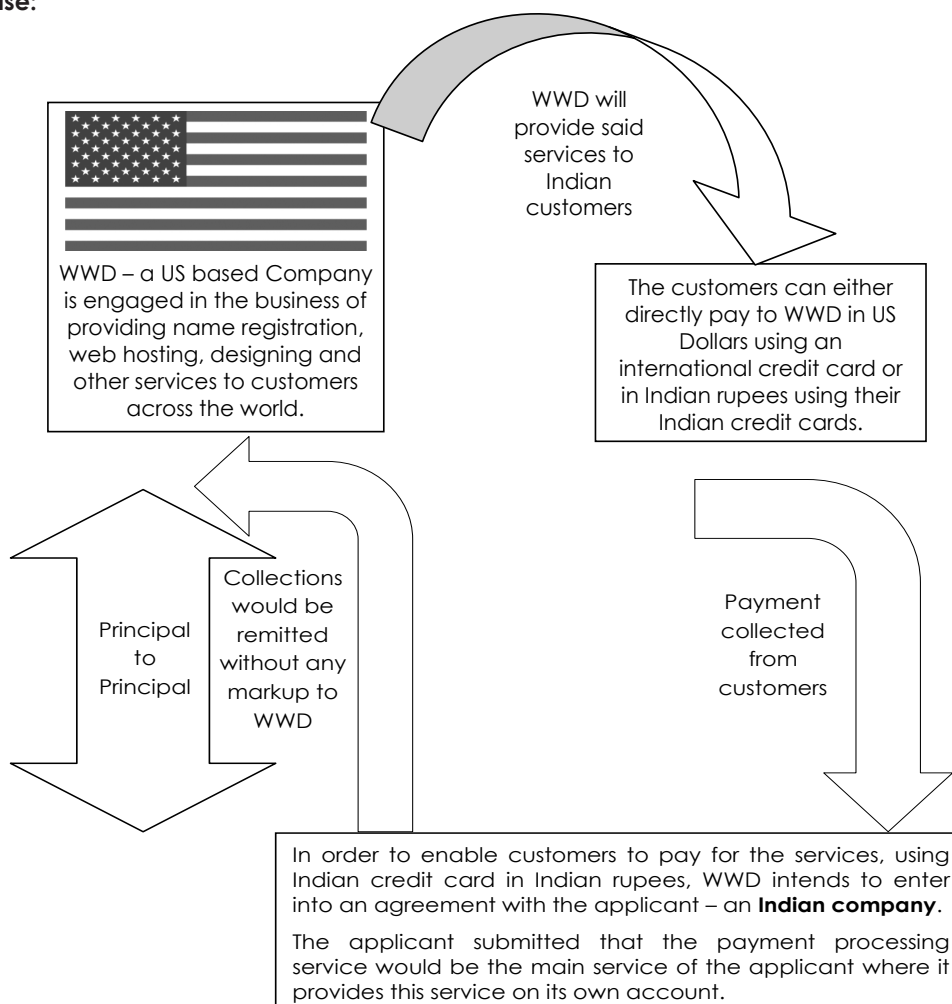
Example : 62

M/s. X Ltd. of Chennai, engaged in various businesses has provided the following services, whose values are listed below. Compute its GST liability:

- (1) *Service of interior decoration in respect of immovable property located in Jammu: ₹ 5 lakh;*
- (2) *Service of renting of commercial buildings in Delhi: ₹ 15 lakh;*
- (3) *Architectural services to an Indian Hotel Chain which has business establishment in Mumbai for its newly acquired property in Sydney: ₹ 25 lakhs;*
- (4) *Services provided as an Indian agent undertaking marketing in India of goods of a foreign seller: ₹ 51 lakhs;*
- (5) *Services provided as travel agent undertaking marketing in India of services of a foreign seller: ₹ 1 lakhs.*

Applicable rate of GST 18%.

Answer:			
Particulars	Value ₹ (in lakhs)	Working note	
Interior decoration services	5	PoS = J & K (Sec 12(3)(a) of IGST) taxable territory. IGST will be levied	
Renting of commercial buildings	15	PoS = Delhi (Sec 12(3)(b) of IGST) Taxable territory IGST will be levied	
Architectural services	25	PoS = Mumbai (Sec 12(3)(a) of IGST). Taxable territory IGST will be levied	
Marketing of Goods	51	PoS = Chennai (sec 13(8) of IGST) Taxable territory CGST & SGST will be levied.	
Travel agent	1	PoS = Chennai (sec 13(8) of IGST) Taxable territory CGST & SGST will be levied.	
Taxable supply of services	97		
Particulars	CGST	SGST	IGST
GST liability	4.68	4.68	8.10

Case law : 1**Universal Services India (P) Ltd., In re 2016 (42) STR 585 (AAR)****Facts of the case:**



Point of dispute for which Advance Ruling is sought:

- (i) Whether the place of provision of payment processing service proposed to be provided by the applicant, is outside India in terms of Section 13(2) of the IGST Act, 2017?
- (ii) Whether services proposed to be provided by applicant would qualify as 'export of service'?

Ruling of Authority for Advance Ruling:

The definition of "intermediary" as envisaged under rule 2(f) of PoPS (now as per Section 2(13) of the IGST Act, 2017) does not include a person who provides the main service on his own account. In the present case, applicant provides main service, i.e., "business support services" to WWD on his own account. Therefore, applicant is not an "intermediary" and thus, the service provided by it is not intermediary service.

Thus, AAR ruled that the place of provision of payment processing service to be provided by the applicant, is outside India in terms of Section 13(2) of the IGST Act, 2017.

Further, while deciding the questions as to whether services provided by applicant qualify as export of service, AAR observed that all conditions mentioned under Rule 6A of STR, 1994 (now as per Section 2(6) of the IGST Act, 2017) are satisfied, and hence the said service will qualify as export of taxable service.

Section 2(6) of the IGST Act, 2017, Export of service:

Means the supply of any service when:-

- (i) the supplier of service is located outside India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8 of the IGST Act, 2017.

CLARIFICATION ON CERTAIN ISSUES UNDER GST – REGARDING PLACE OF SUPPLY

Whether services of short-term accommodation, conferencing, banqueting etc. provided to a Special Economic Zone (SEZ) developer or a SEZ unit should be treated as an inter-State supply (under section 7(5)(b) of the IGST Act, 2017) or an intra-State supply (under section 12(3)(c) of the IGST Act, 2017)?

The above mentioned issue is clarified vide Circular No. 48/22/2018-GST dt 14.06.2018-

As per section 7(5) (b) of the Integrated Goods and Services Tax Act, 2017 (IGST Act in short), the supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce. Whereas, as per section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply is in the same State/ Union territory, it would be treated as an intra-State supply.

In the instant case, section 7(5)(b) of the IGST Act is a specific provision relating to supplies of goods or services or both made to a SEZ developer or a SEZ unit, which states that such supplies shall be treated as inter-State supplies. Hence, services of short term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.

Study Note - 7

INPUT TAX CREDIT (ITC)



This Study Note includes

- 7.1 Introduction
- 7.2 Eligibility for taking Input Tax Credit (ITC)
- 7.3 Blocked Credit
- 7.4 Method of Reversal of Credit
- 7.5 Input Tax Credit in Special Circumstances
- 7.6 Input Tax Credit in respect of goods sent for Job-Work
- 7.7 Distribution of Credit by Input Service Distributor (ISD)
- 7.8 Recovery of Input Tax Credit

7.1 INTRODUCTION

The basic concept of Input Tax Credit (ITC) is to avoid the cascading effect of duty. Cascading effect of duty (i.e. duty on duty) happens where tax is levied at every stage of supply.

The following examples will help us understand this.

If the duty is based on the manufacture of a product, the tax burden keeps increasing as raw material and final product passes from one stage to another.

Cascading effect

Assessee	A	B	
	₹	₹	
Purchases	100	224	
Value added	100	76	
Assessable Value	200	300	
Add: Excise Duty @ 12%	24	36	$200 \times 12\% = 24$ $24 \times 12\% = 2.88$ $76 \times 12\% = 9.12$
Sale prices	224	336	Duty paid on duty

GST eliminates cascading effect of tax

	No Cascading effect	
Assessee	A	B
	₹	₹
Purchases	100	200.00
Value added	100	76.00
Assessable Value	200	276.00
Add: Excise Duty @ 12%	24	33.12
Sale prices	224	309.12

(₹ 224 – ₹ 24)

Output tax 33.12

Input tax (24.0)

net payable 9.12

i.e. $76 \times 12\% = 9.12$



Uninterrupted and seamless chain of input tax credit (hereinafter referred to as, "ITC") is one of the key features of Goods and Services Tax. As the tax charged by the Central or the State Governments would be part of the same tax regime, the credit of tax paid at every stage would be available as set-off for payment of tax at every subsequent stage.

Input [Sec. 2(59) of the CGST Act, 2017]: It means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business.

Capital Goods [Sec. 2(19) of the CGST Act, 2017]: It means goods, the value of which is capitalized in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business.

Input Service [Sec 2(60) of the CGST Act, 2017]: It means any service used or intended to be used by a supplier in the course or furtherance of business.

Input Tax [Sec. 2(62) of the CGST Act, 2017]: It in relation to a registered person, it means the Central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes:-

- (a) the integrated goods and services tax charged on import of goods;
- (b) the tax payable under the provisions of Sec 9(3) and Sec. 9(4) of the CGST Act, 2017;
- (c) the tax payable under Sec 5(3) and Sec. 5(4) of the IGST Act, 2017;
- (d) the tax payable under SGST Act (i.e. person liable to pay GST under RCM);
- (e) The tax payable under UTGST Act (i.e. person liable to pay GST under RCM),

But does not include the tax paid under the composition levy.

Input Tax Credit [Sec 2(63) of the CGST Act, 2017]: It means the credit of input tax.

Electronic cash ledger [Sec 2(43) of the CGST Act 2017]: It means the electronic cash ledger referred to in sub-section (1) of section 49.

Electronic credit ledger [Sec 2(46) of the CGST Act, 2017]: It means the electronic credit ledger referred to in sub-section (2) of section 49;

Exempted supply [Sec. 2(47) of the CGST Act, 2017]: It means supply of any goods or services or both which attracts

- nil rate of tax or
- which may be wholly exempt from tax under section 11, or
- under section 6 of the Integrated Goods and Services Tax Act, and
- includes non-taxable supply;

Invoice or tax invoice [Sec 2(66) of the CGST Act, 2017]: It means the tax invoice referred to in section 31;

Inward supply [Sec. 2(67) of the CGST Act, 2017]: "inward supply" in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without consideration;

Job work [Sec 2(68) of the CGST Act, 2017]: It means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly;

Non-taxable supply [Sec 2(78) of the CGST Act, 2017]: It means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;

Output tax [Sec 2(82) of the CGST Act, 2017]: "output tax" in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;

Outward supply [Sec 2(83) of the CGST Act, 2017]: "outward supply" in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business;

Quarter [Sec 2(92) of the CGST Act, 2017]: "quarter" shall mean a period comprising three consecutive calendar months, ending on the last day of March, June, September and December of a calendar year;

Works contract [Sec 2(119) of the CGST Act, 2017]: It means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation,

alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

Zero rated supply means any of the following supplies of goods or services or both, namely:-

- (a) export of goods or services or both; or
- (b) supply of goods or services or both to a Special Economic Zone (SEZ), developer of SEZ unit (As referred under Section 16(1) of the IGST Act, 2017.

Export of goods [Sec 2(5) of the IGST Act, 2017]: with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;

Export of service [Sec. 2(6) of the IGST Act, 2017]: It means the supply of any service when,—

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

7.2 ELIGIBILITY FOR TAKING INPUT TAX CREDIT (ITC)

As per Section 16(1) of the CGST Act, 2017 Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

Example 1:

Mr. K of Kolkata sold taxable goods to Mr. C of Chennai. Mr. B being a buyer of goods is eligible to claim the IGST as credit on purchases based on the tax invoice issued by Mr. K of Kolkata.

Step by step approach:

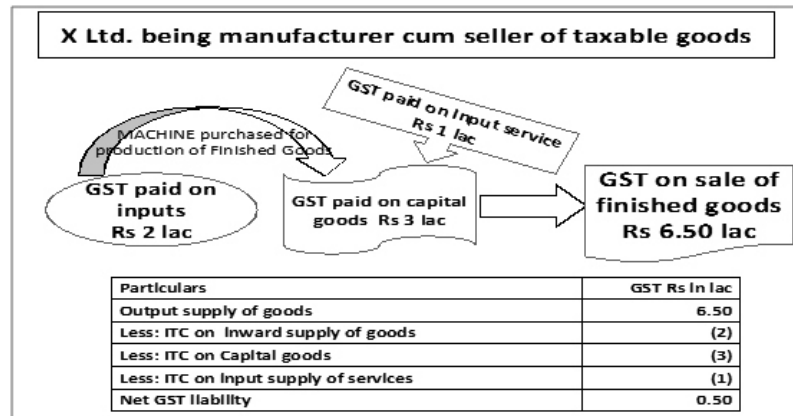
1. Mr K will upload the details of all tax invoices issued in GSTR 1.
2. The details with respect to sales to Mr C will auto populate/ get reflected in GSTR 2A, the same data will be pulled when Mr C will file GSTR 2 (i.e details of inward supply).
3. Mr C will then accept the details that the purchase has been made and reported by the seller correctly and subsequently the tax on purchases will be credited to 'Electronic Credit Ledger' of Mr C and he can adjust it against future output tax liability.

Utilization of ITC:

Inward supply	Outward supply			Remarks
	CGST	SGST	IGST	
ITC of CGST	Allowed	Not allowed	Allowed	1st CGST next IGST in that order
ITC of SGST	Not allowed	Allowed	Allowed	1st SGST next IGST in that order
ITC of IGST	Allowed	Allowed	Allowed	1st IGST next CGST and next SGST in that order

ITC is an integration of Goods and Services:

Since GST is charged on both goods and services, input tax credit can be availed on both goods and services (except those which are on the exempted/negative list). Input tax credit is allowed on capital goods.

Example 2:


Note: Goods or services or both which are used or intended to be used in the course or furtherance of business and the said amount shall be credited to the electronic credit ledger of such person.

Conditions for taking ITC:

Section 16(2) of the CGST Act, 2017: Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

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

Explanation. — For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

Note: Further explanation has been provided for Sec 16(2)(b) explanation vide CGST Amendment Act, 2018 that:

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

- where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;
 - where the services are provided by the supplier to any person on the direction of and on account of such registered person.
- subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and
 - he has furnished the return under section 39:

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

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

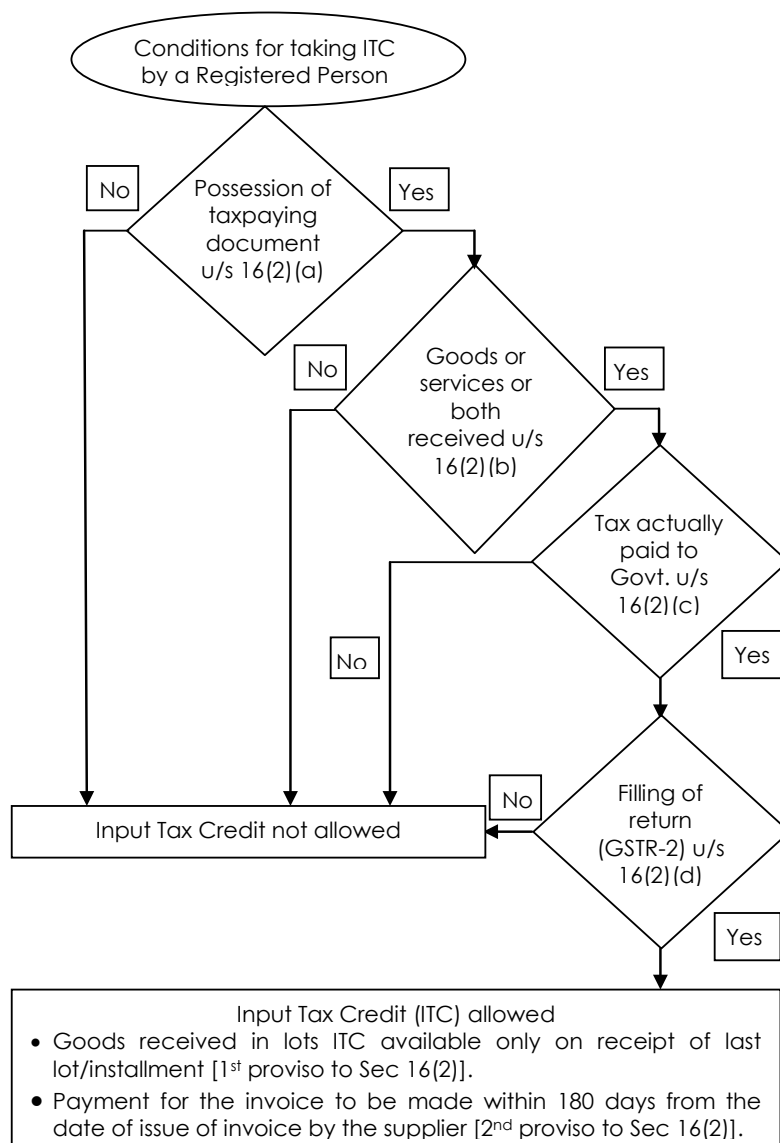
Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

Note: Even if all specified particulars stipulated by Invoice rules is not satisfied, yet the invoice contains the amount of tax charged, description of supplies, total value of supply, GSTIN of the supplier & recipient and place of supply in case of inter-state supply, then the ITC can be availed by registered taxpayers. This is a very important amendment and hence ITC cannot be denied due to certain clerical mistakes in the invoice by the supplier.

Section 16(3) of the CGST Act, 2017: Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

Section 16(4) of the CGST Act, 2017: A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Simplified Approach:



**Quantum of credit [Section 16(1) of the CGST Act, 2017]:**

The entire credit on the input and capital goods allowed can be availed at the time of receipt of input and capital goods. Thus, to this extent there is no difference between input and capital goods under GST Law.

Tax Invoice or Debit Note [Section 16(2)(a) of the CGST Act, 2017]:

The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents (Rule 36(1) of the CGST Rules, 2017), namely,-

- (a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;
- (b) an invoice issued under reverse charge;
- (c) a debit note;
- (d) a bill of entry
- (e) an Input Service Distributor invoice or Input Service Distributor credit note.

Case Law: 1

CCEx. v. Stelko Strips Ltd. 2010 (255) ELT 397 (P&H)

Decision: The Cenvat Credit could be taken on the strength of private challans as the same were not found fake and there was proper certification that duty has been paid.

All these documents are to be furnished at the time of filing form GSTR-2, in accordance with Rule 36(2) of the CGST Rules, 2017.

As per Rule 36(3) of the CGST Rules, 2017, No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts.

Example 3:

M/s. X Ltd. supplied taxable goods from the factory after manufacture in the month of Oct 2017 for sale to a distributor for ₹ 8,00,000. M/s X Ltd has suppressed this transaction. However, he deposited the GST @12% on these goods on 10-1-2018 against show cause notice issued under Section 74 (when there is fraud) of the CGST Act, 2017 by the Central Tax Officer and passed the order accordingly.

Whether distributor namely recipient of these goods is eligible to take input tax credit.

Answer:

As per rule 36(3) of the CGST Rules, 2017, No credit on payment of tax due to fraud, willful-misstatement or suppression of fact etc. shall be allowed.

In the given case no input tax credit was available to registered person if the supplier has paid tax in pursuance of order where any demand has been confirmed on account of any fraud, willful-misstatement or suppression of facts and so on under Sec. 74 of the CGST Act, 2017.

Hence, input tax credit is not allowed to recipient of these goods (i.e. distributor in the given case).

ITC on receipt of goods or services [Section 16(2)(b) of the CGST Act, 2017]:**(a) No credit when tax paid on advance receipt:**

As we are aware of that time of supply of goods (Sec 12 of the CGST Act, 2017) or time of supply of service (Sec 13 of the CGST Act, 2017) where time of supply is the date on which the supplier receives the payment if the payment is received prior to raising of invoice/supply of goods or services (except where supply of goods turnover does not exceed ₹ 150 lacs. In such case date of invoice namely supply of goods is the time of supply).

GST paid by supplier on advance is not auto populated to the account of receipt of goods or services. The recipient of goods or services is not entitled for credit of tax paid on advances by the supplier. Section 16(2)(b) provides that the receiver should have received the goods or services for availment of credit. When the payments are made on advance receipt of supplier, the recipient has not received the goods or services. Therefore, he is not entitled for credit on input tax paid.

(b) Receipt of goods and services:

Registered person shall receive the goods or services and used or intended to be used in the course or furtherance of business. In case of input or input services are not received, by the registered person, the question of its use in the course or furtherance of business does not arise and hence, ITC not allowed.

In case goods received in installment:

Example 4:

M/s C Ltd Chennai procured goods 10,000 Kgs @ ₹ 100 per Kg. From M/s D Ltd of Delhi. These goods came to M/s C Ltd of Chennai in the following manner:

Date of dispatch	No. Kgs dispatched	Date of receipt	Normal loss in transit kgs	Abnormal loss in transit Kgs	No. Kgs received
10 th Oct	2,000	15 th Nov	2	Nil	1,998
2 nd Nov	5,000	20 th Nov	5	Nil	4,995
3 rd Dec	3,000	1 st Jan	1	20	2,979

Invoice shows 10,000 Kgs. and GST @18%.

You are required to answer:

- M/s C Ltd can avail the proportionate credit on 15th Nov and 20th Nov.
- M/s C Ltd is eligible for input tax credit if so when.
- How much credit is allowed to M/s C Ltd.

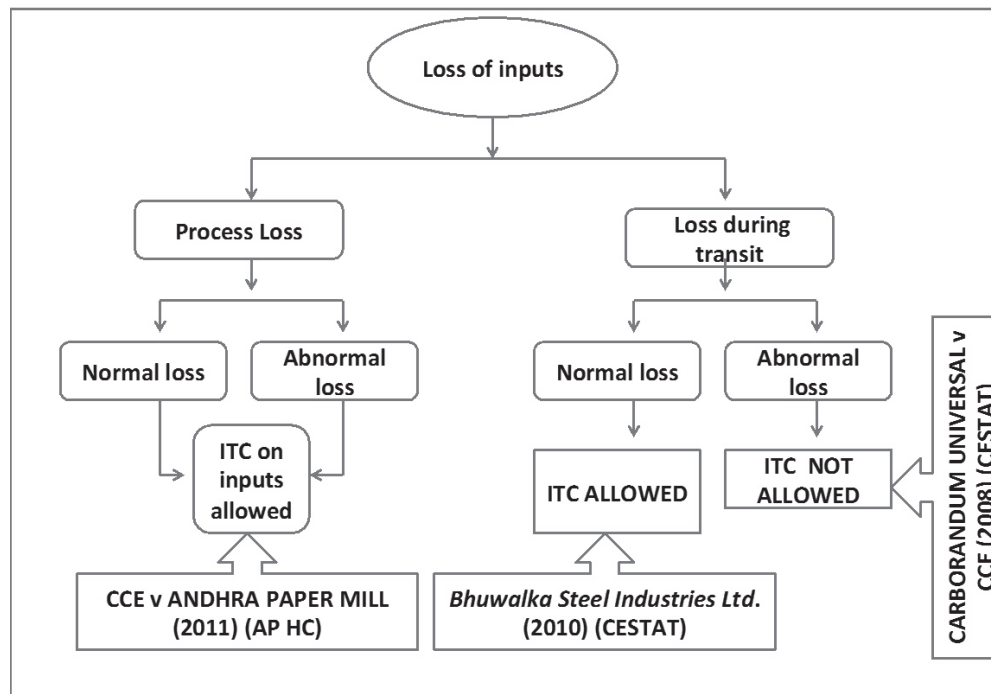
Answer:

- M/s C Ltd. cannot take proportionate credit on the quantity received on 15th Nov and 20th Nov.
- M/s C Ltd is eligible to avail the input tax credit on 1st Jan.
- Input tax credit allowed = ₹ 1,79,640/- [(10,000 Kgs x ₹ 100) x 18% x 9980 kgs/10,000 kgs.]

Note:

- Goods received in lots ITC available only on receipt of last lot/installment [1st proviso to Sec 16(2)]
- Entire input tax credit is allowed in case of transit loss (i.e. normal loss). Whereas input tax credit is not allowed to the extent of transit loss (i.e. abnormal loss).

Loss of Inputs:

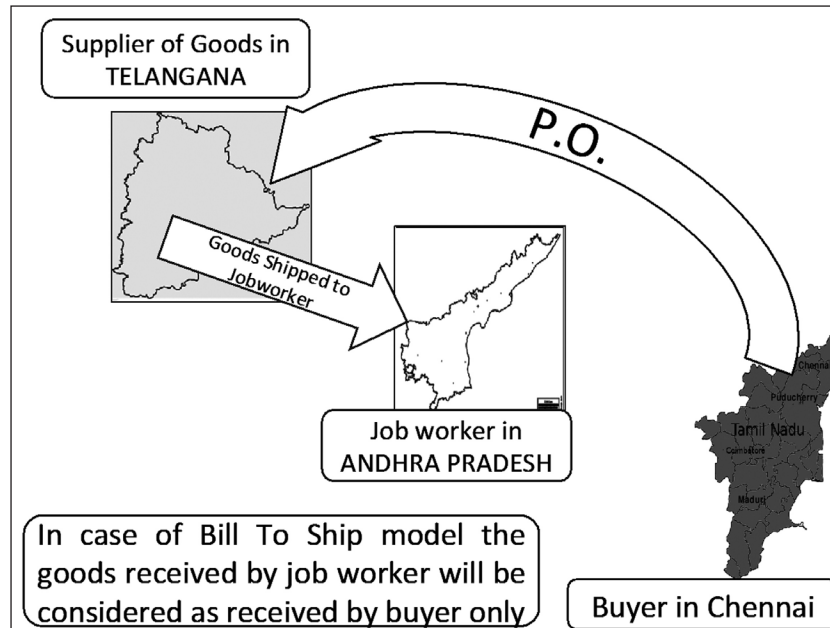


Deemed receipt of goods [Explanation to Sec 16(2)(b) of the CGST Act, 2017]:

The explanation expands the meaning of receipt of goods to provide that it is not necessary that the goods are physically received by the recipient. The recipient can issue directions to deliver the goods to third person.

Example 5:

Goods sent to job worker from supplier on the directions of buyer (i.e. Bill To Ship).



Tax charged in respect of such supply has been actually paid to the Government (Sec 16(2)(c) of the CGST Act, 2017 subject to the provisions of Sec 41 of the CGST Act, 2017:

It is now specially provided that the supplier has actually paid to the credit of appropriate Govt. the tax amount on the supply made by him.

The liability of payment of tax will be computed by the common portal based on the information of outward supply declared by the supplier goods or services or by recipient himself. The liability so computed as per GSTR-3 will automatically reflected in common portal in tax liability register of taxpayer in Part 1 of the GST-PMT-1.

The taxpayer can make the payment of such liability either by using the balance available in the credit ledger or cash ledger. The payment is required to be made by 20th of following month.

It means supplier will give the credit to recipient only when tax paid to the Govt.

Example 6:

M/s. X Ltd. supplied taxable goods from the factory after manufacture in the month of Oct 2017 for sale to a distributor for ₹ 8,00,000. However, he deposited the GST @12% on these goods on 10-1-2018 against show cause notice issued under Section 74 (when there is fraud) of the CGST Act, 2017 by the Central Tax Officer and passed the order accordingly.

During the month of December 2017, M/s X Ltd received goods worth ₹ 5,00,000 by paying GST 12%.

- Find the Net GST deposited by M/s X Ltd. into the Government Account on 10th January 2018.**
- Your answer is different if M/s X Ltd. paid GST 12% against show cause notice issued under section 73 (when there is no fraud).**
- Rework, M/s X Ltd. paid output tax by following self-assessment (i.e. when there is no show cause notice issued)**

Note: Ignore penalty and interest

Answer:**(a) Statement showing Net GST deposited by M/s X Ltd. (where there is fraud Sec. 74 of the CGST Act):**

Particulars	CGST 6%	SGST 6%	Remarks
Output tax	48,000	48,000	(₹ 8 lac x 6%)
Less: ITC (Since, it is paid against the order where there is fraud)	Not allowed	Not allowed	GST @12% paid on ₹ 5 lac is not allowed as ITC.
Net GST liability	48,000	48,000	

(b) Our answer remain same as stated in (a) above.**(c) Statement showing Net GST deposited by M/s X Ltd. (where there is no show cause notice issued):**

Particulars	CGST 6%	SGST 6%	Remarks
Output tax	48,000	48,000	(₹ 8 lac x 6%)
Less: ITC	(30,000)	(30,000)	GST @12% paid on ₹ 5 lac is allowed as ITC.
Net GST deposited	18,000	18,000	

Return under Section 39 of the CGST Act, 2017 must submit to avail the credit Sec. 16(2)(d) of the CGST Act, 2017:**Example 7:**

M/s X Ltd supplied goods in the month of December 2017; the entry for debit must be made by 20th January 2018. In the absence of making payment of tax, the return cannot be filed under section 39 of the CGST Act, 2017. In such case credit to the recipient of goods or services will be denied.

It means the credit will be denied even when the recipient has paid tax to the supplier and supplier has failed to pay the tax to the Government.

Payment to supplier of goods or services or both [2nd Proviso to Section 16(2) of the CGST Act, 2017]:

The recipient shall pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the value along with the tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier.

It means recipient of goods/services should pay to the supplier (Including Taxes), within 180 days from the date of issue of invoice, else the Input Credit shall be reversed

Reversal of input tax credit in the case of non payment of consideration [Rule 37(1A) of the CGST Rules, 2017]

A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of section 16 (i.e. 180 days from the date of invoice), shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

It means, if 180 days expires on 15th December 2017, the details are required to be declared in GSTR-2 for the month of January 2018.

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

It means, where supply is made without consideration in respect of activities specified in **Schedule I** then in such case proviso to sub-rule (1) to Rule 37 makes the deeming fiction that value against such supplies has deemed to be paid within 180 days from the date of issue of invoice.



The following paragraph has been inserted vide **Notification No. 26/2018 – Central Tax, dated 13.6.2018 to amend Rule 37 sub rule (1)**:

“Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.”

This proviso has been inserted so that any amount that the supplier is liable to pay in relation to supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both shall be deemed to have been paid and no reversal of input tax credit on such amount is required to be made in case recipient fails to pay to the supplier the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice.

The following paragraph has been inserted vide **Notification No. 39/2018 – Central Tax, dated 04.9.2018 to amend Rule 36 sub rule (2)**:

“Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.”.

Even if all specified particulars stipulated by Invoice rules is not satisfied, yet the invoice contains the amount of tax charged, description of supplies, total value of supply, GSTIN of the supplier & recipient and place of supply in case of inter-state supply, then the ITC can be availed by registered taxpayers. This is a very important amendment and hence ITC cannot be denied due to certain clerical mistakes in the invoice by the supplier.

Example 8:

M/s A Ltd of Aluva (Kerala) receives the input service from M/s B Ltd of Bengaluru who raises the invoice for supply of service on 17th Dec 2017 and availed the credit on the same date.

Find the time limit within which M/s A Ltd is required to pay the bill amount inclusive of tax to supplier of service.

Also explain consequence if payment is not made within the stipulated time period as mentioned in 2nd proviso to section 16(2) of the CGST Act, 2017.

Re-credit is allowed if the payment is made to the supplier of service after expiry of time period as mentioned in 2nd proviso to section 16(2) of the CGST Act, 2017.

Answer:

In the given case M/s A Ltd must pay to M/s B Ltd the value of services and GST payable thereon by 15th June 2018.

Working note:

From	To	No. of days
18 th Dec 2017	15 th June 2018	180

In case M/s A Ltd does not pay by 15th June 2018, the credit availed by it will be added to his output liability. The amount will be added to their output tax liability with interest.

The 3rd proviso to Section 16(2) of the CGST Act, 2017, provides that the amount so reversed can be again taken as a credit when the payment for receipt goods or services has been made to the supplier of goods or services.

As per Rule 37(4) of the CGST Rules, 2017, the time limit specified in sub-section (4) of section 16 shall not apply to a claim for re- availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter that had been reversed earlier.

**Example 9:**

M/s X Ltd. has establishment in Chennai, and establishment in Hyderabad. Supply of goods (open market value of ₹ 5,00,000) made by M/s X Ltd. Chennai to M/s X Ltd. Hyderabad. M/s X Ltd. Chennai paid IGST of ₹ 60,000. Accordingly M/s X Ltd. Hyderabad availed the input tax credit of ₹ 60,000. 2nd Proviso to Section 16(2) of CGST Act, 2017 is applicable in the given case (i.e to reverse the credit where payment is not made within 180 days from the date of invoice). Advise.

Answer:

As per proviso to rule 37(1) of the CGST Rules, 2017, the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

In the given case M/s X Ltd. Hyderabad is not required to reverse the input tax credit. Since, as per Section 25(4) of the CGST Act, 2017 two establishments are considered as establishment of distinct person and accordingly, supply made by one establishment to another establishment will be covered under Schedule I without consideration.

Depreciation on GST component of the Capital Goods under Income Tax Act, 1961 [u/s 16(3) of the CGST Act, 2017]:

Taxable person shall not claim depreciation on tax component of the cost of capital goods under the provisions of the Income Tax Act, 1961. If the depreciation under section 32 of the Income Tax Act, 1961 is claimed on the tax component by capitalizing with the cost of capital goods, input tax credit shall not be allowed.

Example 10:

M/s Jay Ltd. being a manufacturer purchased machinery worth ₹ 10,00,000 on which GST ₹ 1,80,000 is paid. The manufacturer has following two options:

Option 1: claim depreciation on the entire value of machinery inclusive of GST (i.e ₹ 11,80,000) by forgoing ITC on capital goods.

Option 2: claim depreciation on the cost of machine (i.e. ₹ 10,00,000) and avail the ITC of GST portion (i.e. 1,80,000).

Time limit to avail the input tax credit [Section 16(4) of the CGST Act, 2017]:

Time limit for availment of credit by registered taxable person is prescribed in the following manner.

- | |
|--|
| <p>(a) Filing of return under section 39 for the month of September following end of financial year to which such invoice pertains</p> <p>Or</p> <p>(b) Filing of annual return</p> <p>Whichever is earlier.</p> |
|--|

ITC on invoices pertaining to a financial year or debit notes relating to invoices pertaining to a financial year can be availed any time till the due date of filing of the return for the month of September of the succeeding financial year or the date of filing of the relevant annual return, whichever is earlier.

Exception: the time limit u/s 16(4) does not apply to claim for re-availing of credit that had been reversed earlier.

It is worthy to that the return for the month of September is to be filed by 20th October and annual return of a financial year is to be filed by 31st December of the succeeding financial year.

Return for month of September:

As per section 39 of the CGST Act, 2017, every registered taxable person is required to file return in the prescribed



form by 20th of the following month. Thus, return for the month of September is required to file by 20th of October. The credit thereof shall be availed by 30th September and declare in return.

Example 11:

Financial year 2017-18, the registered taxable person files the return on 18th Oct 2018. It is provided that after filing of return, the input tax credit for the supply of goods or services pertaining to the period 2017-18 cannot be claimed by the registered taxable person.

Annual Return of the succeeding financial year:

As per Section 44 of the CGST Act, 2017, every registered taxable person is required to file annual return by 31st December following end of financial year. Thus, for the financial year 2017-18, the annual return is required to be filed by 31st December 2018.

Example 12:

M/s X Ltd. purchased input for ₹ 2,00,000 vide Tax Invoice No. 12 dated 1st December 2017. M/s X Ltd. has submitted annual return for the financial year 2017-18 on 15th September 2018 and return for September 2018 has been filed 19th Oct 2018. Find the time limit within which input tax credit can be availed on input by X Ltd.

M/s X Ltd. wants to take input tax credit on such input on 30th September 2018, advise.

Answer:

Time limit to avail the credit is earlier of the following:

(a) 19th October 2018

or

(b) 15th September 2018

Therefore, M/s X Ltd has to avail the input tax credit on or before 15th September 2018.

Advise:

After 15th September 2018, the registered taxable person cannot take credit based on invoice pertaining to supply of goods or services for the period 1st April 2017 to 31 March 2018. Hence, in the given case M/s X Ltd is NOT eligible to avail the input tax credit on 30th September 2018.

Example 13:

M/s X Ltd. delivered a machine to M/s Y Ltd. in January 2018 under Invoice No. 180 dated 21st January for ₹ 5,00,000 plus GST, and undertook trial runs and calibration of the same machine as per the requirements of M/s Y Ltd. The amount chargeable for the past delivery activities were covered in a debit note raised in May 2018 for ₹ 1,25,000 plus GST. M/s Y Ltd did not file its annual return till October 2018.

Find the time limit u/s 16(4) of the CGST Act, 2017 within which input tax credit can be availed by M/s Y Ltd.

Answer:

Time limit to avail the ITC on machine (vide Invoice No. 180 dt. 21.01.2018) is 30th September 2018.

Time limit to avail the ITC on debit note is also 30th September 2018.

Note: though the debit note was received in the next financial year (2018-19), it relates to an invoice received in the financial year ending 31st March 2018 (i.e. 2017-18).

Therefore, the time limit for taking ITC available on ₹ 5,00,000 as well as on ₹ 1,25,000 is 30th September 2018; earlier of the date of filing the annual return for 2017-18 or the due date for filing return for September 2018.

7.3 BLOCKED CREDIT

Common inputs and input services for taxable and exempted supplies [Section 17 of the CGST Act, 2017]:

Section 17(1) of the CGST Act, 2017 where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

Section 17(2) of the CGST Act, 2017 where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

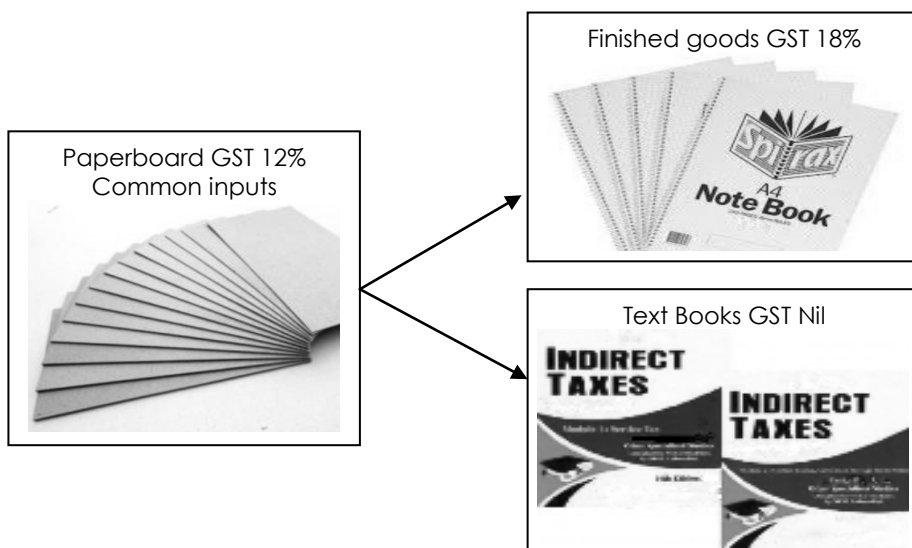
Section 17(3) of the CGST Act, 2017 the value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

The following explanation was inserted for Sec 17(3) vide CGST Amendment Act, 2018, namely:

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

Note: The objective to amend Sec 17(3) vide CGST Amendment Act, 2018 is to specify the scope of input tax credit.

Section 17(2) of the CGST Act, 2017 where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.



Manner of determination of input tax credit in respect of inputs or input services and reversal thereof (Rule 42 (1) of the CGST Rules, 2017:

The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

Step 1: Calculate common input tax credit on inputs and input services which are used to supply taxable as well as exempted output supplies:

Particulars	Value in ₹	CGST Rules, 2017
Total ITC on inputs and input services	xxx	As per rule 42(1)(a)
Less: ITC on supplies exclusively used for the purpose other than business	(xx)	As per rule 42(1)(b)
Less: ITC on supplies exclusively used for providing exempted supplies	(xx)	As per rule 42(1)(c)
Less: ITC not available u/s 17(5) of the CGST Act, 2017	(xx)	As per rule 42(1)(d)
Input tax credit which are used to supply taxable as well as exempted output supplies	xxx	As per rule 42(1)(e)
Less: ITC on supplies used exclusively for taxable supply including Zero rated supply (i.e. ITC on normal supplies)	(xx)	As per rule 42(1)(f)
Common ITC, which are used to supply taxable as well as exempted output supplies (denoted as "C2")	xx	As per rule 42(1)(h)

Note: As per Rule 42(1)(g) of the CGST Rules, 2017, information relating to Rule 42(1)(b), (c), (d) and (f) shall be determined and declared by the registered person at the invoice level in FORM GSTR-2;

Step 2: Amount of reversal of input tax credit attributable towards Exempt supplies rule 42(1)(i) of the CGST Rules, 2017 (denoted as "D1"):

$$= \left[\frac{\text{Exempted Supplies during the Tax Period ('E')}}{\text{Total turnover in the State of the registered person during the tax period ('F')}} \right] \times \text{Common ITC which are used to supply taxable as well as exempted, output supplies}$$

Provided that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

Explanation: For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

Tax period:

As per section 2(106) of the CGST Act, 2017 tax period means for the purpose for which return is required to be furnished. As per section 39 return is required to be furnished on monthly basis by the registered person except the person opting for composition scheme or persons eligible to file return quarterly based on their aggregate turnover not exceeds ₹ 150 lacs.

This rule is not applicable to persons opting for composition scheme.

Computing proportionate amount attributable to use for non-business purposes (i.e. Personal purpose) [Rule 42(1)(j) of the CGST Act, 2017]:

The amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as 'D2', and shall be equal to **five per cent.** of C2; and

Common ITC, which are used to supply taxable as well as exempted output supplies (denoted as "C2")	xx	As per rule 42(1)(h)

Thus, if input or input services have been used for the purpose of non-business, as per rule 42(1)(j) of the CGST Rules, 2017 credit of 5% of "C2" will be required to be reversed. It means the same should be deducting from input tax credit on input or input services exclusively used for taxable supply in the electronic credit ledger.

Quantum of eligible ITC [Rule 42(1)(k) of the CGST Act, 2017]:

The remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as 'C3', where,-

$$C3 = C2 - (D1 + D2)$$

Eligible ITC to be separately computed for different taxes [Rule 42(1)(l) of the CGST Rules, 2017]:

That "C3" shall be computed separately for CGST, SGST, UTGST and IGST.

Added to the output tax liability [Rule 42(1)(m) of the CGST Rules, 2017]:

Person shall compute D1 and D2 (i.e. ineligible credit in addition to ineligible credit at invoice level and add that amount to the output tax liability. This will be added on monthly basis and the registered person should pay the amount.

Adjustment at the year end [Rule 42(2) of the CGST Rules, 2017]:

The input tax credit determined under sub-rule (1) shall be calculated finally for the financial year before the due date for furnishing of the return for the month of September following the end of the financial year to which such credit relates, in the manner specified in the said sub-rule and-

- (a) where the aggregate of the amounts calculated finally in respect of 'D1' and 'D2' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2', such excess shall be added to the output tax liability of the registered person in the month not later than the month of September following the end of the financial year to which such credit relates and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or
- (b) where the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2' exceeds the aggregate of the amounts calculated finally in respect of 'D1' and 'D2', such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year to which such credit relates.

Example 14:

M/s. Vipin Ltd. purchased raw material 'A' 10,000 kg @ ₹ 80 per Kg. plus GST. The said raw material was used to manufacture product 'P'. The other information's are as under:

- (i) Processing loss : 2% on inputs 'A'.
- (ii) Transaction value of 'P' : ₹ 100 per kg.
- (iii) Other material 'M' used in the manufacture of 'P' : ₹ 2 lac plus GST.
- (iv) GST on capital goods imported during the period and used in the manufacture of 'P':
 - Basic customs duty ₹ 20,000
 - IGST under customs under section 3(1) of the Customs Tariff Act, 1975 ₹ 10,000;
- (v) Rate of GST on 'A', 'M' and 'P' : 12%.

M/s. Vipin Ltd. is not eligible for composition scheme under Section 10 of CGST Act, 2017

Compute: (a) Amount of input tax credit available and
 (b) Net GST payable by M/s. Vipin Ltd.

Answer:

(a) Statement showing eligible input tax credit of M/s Vipin

Particulars	Value in ₹	Working note
Raw material 'P'	96,000	(10,000 kg x ₹ 80) x 12%
Other material 'M'	24,000	2,00,000 x 12%
Capital goods (imported)	10,000	IGST allowed as ITC.
Total ITC	1,30,000	

(b) Net GST liability of M/s Vipin

Input 'A' 10,000 kg → Out put 'P' 9,800 kg

	₹
GST payable on value of supply 'P'	= 1,17,600
(9,800 kg x ₹ 100) x 12%	
less: ITC allowed	= (1,30,000)
Excess ITC c/f	= (12,400)

Example 15:

M/s X Ltd manufacturer of textile products. Company received order from Government to supply goods to defense (exempted supply). The turnover of the other taxable goods and exempted goods ₹ 4 crore and ₹ 1 crore respectively. Common inputs on which GST paid ₹ 20,000.

Calculate the eligible ITC on common inputs?

Answer:

Common inputs credit	= ₹ 20,000
Total turnover	= ₹ 5 crores
Credit attributable to exempted supplies	= ₹ 4,000
(₹ 20,000 x ₹ 1 crore/₹ 5 crore)	
Eligible ITC is ₹ 16,000 (i.e 20,000 – 4,000)	

Example 16:

M/s Lips Ltd., manufactures four types of 'Nail Polishes', namely Sweety, Pretty, Beauty, Tweety.

The Company has taken input tax credit of ₹ 3,00,000 on the common inputs used in the manufacture of 'Nail Polishes'. Common inputs also used partly for non-business purposes. During the financial year 2017-18 (w.e.f 1-7-2017) the company manufactured 1000 liters of each type of 'Nail Polishes'. The Company was not in a position to maintain separate set of records with regards to inputs used for final products. GST payable on final goods @12%.

You are required to calculate the net GST payable by M/s Lips Ltd. for the year 2017-18 from the following data:

Product Name	Description	Sale price (Exclusive of GST)
Sweety	Sale to Domestic Tariff Area	₹ 30 per 20ml. bottle
Pretty	Sale to a Special Economic Zone (SEZ)	₹ 40 per 20ml. bottle
Beauty	Sale to A Ltd. of USA	₹ 50 per 20ml. bottle
Tweety	Sale to Defence Canteen (Exempted from GST)	₹ 60 per 20ml. bottle



Answer:

Statement showing GST on outward supplies:

Product Name	Description	Sale price (Exclusive of GST)	Transaction Value ₹	GST liable to pay ₹	Remarks
Sweety	Sale to Domestic Tariff Area	₹ 30 per 20ml. bottle	15,00,000	1,80,000	₹ 15,00,000 (1000 liters × 1000ml./ 20ml × ₹ 30) GST = ₹ 1,80,000 (₹ 15,00,000 × 12%)
Pretty	Sale to a unit of SEZ (treated as exports)	₹ 40 per 20ml. bottle	20,00,000	Zero rated supplies	₹ 20,00,000 (1000 liters × 1000ml./ 20ml × ₹ 40)
Beauty	Sale to A Ltd. of USA (export sales)	₹ 50 per 20ml. bottle	25,00,000	Zero rated supplies	₹ 25,00,000 (1000 liters × 1000ml./ 20ml × ₹ 50)
Tweety	Sale to Defence Canteen (Exempted from GST)	₹ 60 per 20ml. bottle	30,00,000	Exempted	₹ 30,00,000 (1000 liters × 1000ml./ 20ml × ₹ 60)
	Total		90,00,000	1,80,000	

As per Section 17(3) of the CGST Act, 2017 read with rule 42(1)(i) and rule 42(1)(j) of the CGST Rules, 2017 proportionate reversal of credit is as follows:

Particulars	ITC reversal ₹	Working note
Input tax credit proportionate reversal on common inputs [rule 42(1)(i)]	1,00,000	(₹ 30,00,000 / ₹ 90,00,000) × ₹ 3,00,000
Credit attributable to non-business purposes on common inputs [rule 42(1)(j)]	15,000	₹ 3,00,000 × 5%
Total	1,15,000	

Quantum of eligible ITC (Rule 42(1)(k) of the CGST Rules, 2017) is ₹ 1,85,000/-

[₹ 3,00,000 – (1,00,000 + 15,000)]

Statement showing net GST liability or excess credit:

Therefore, the GST payable on taxable supply of goods = ₹ 1,80,000

Less: ITC credit allowed = ₹ 1,85,000

Excess ITC can be carried forward into next month = ₹ (5,000)

Example 17:

Assume in Example 3 above, M/s Lips Ltd., utilized the credit ₹ 2,25,000. Excess credit paid on 15th April 2018. Find the interest if any payable by M/s Lips Ltd.

Answer:

As per Rule 42(2) of the CGST Rules, 2017 where the aggregate of the amount calculated finally in respect of ineligible credit exceeds the aggregate of the amounts determined under rule 42(1)(i) and (j), such excess shall be added to the output tax liability of the registered person in the month not later than the month of September following the end of the financial year to which such credit relates and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of Section 50 for the period starting from the 1st day of April of the succeeding financial year till the date of payment.

Interest = ₹ 296/-

[(2,25,000 – 1,85,000) × 18% × 15/365]

Example 18:

Y Ltd. manufactures taxable and exempted goods. Y Ltd. also simultaneously provides taxable as well as exempted output services. Raw material 10,000 units were purchased @ ₹ 100 per unit used commonly during the month of January 2018 to produce all final products. GST paid on inputs 12%. Input services commonly used for all goods and services in the month of January 2018. Total ITC on inputs and input services taken into books of account in the relevant tax period is ₹ 1,74,000.

Turnover for the month of January 2018 (excluding all taxes)

Particulars	Value of finished goods (₹)
Taxable supply of goods	2,00,000
Exempted supply of goods (₹ 80 per unit)	1,00,000
Taxable supply of services	1,00,000
Exempted supply of services	50,000
Total	4,50,000

You are required to compute the amount of reversal of input tax credit as per rule 42(1)(i) of the CGST Rules, 2017 of the month of January 2018.

Note: Each unit of exempted final product needs 2 units of raw materials. Assumed that there is no process loss.

Answer:

Step 1: Calculate common input tax credit on inputs and input services which are used to supply taxable as well as exempted output supplies:

Particulars	Value in ₹	Working note
Total ITC on inputs and input services	1,74,000	rule 42(1)(a)
Less: ITC on supplies exclusively used for the purpose other than business	Nil	rule 42(1)(b)
Less: ITC on supplies exclusively used for providing exempted supplies	(30,000)	2,500u x ₹100 x 12% [rule 42(1)(c)]
Less: ITC not available u/s 17(5) of the CGST Act, 2017	Nil	rule 42(1)(d)
Input tax credit which are used to supply taxable as well as exempted output supplies	1,44,000	rule 42(1)(e).
Less: ITC on supplies used exclusively for taxable supply including Zero rated supply (i.e. ITC on normal supplies)	(90,000)	(10,000u – 2,500u) x 12% As per rule 42(1)(f)
Common ITC, which are used to supply taxable as well as exempted output supplies (denoted as "C2")	54,000	As per rule 42(1)(h)

Step 2: Amount of reversal of input tax credit attributable towards exempted supplies rule 42(1)(i) of the CGST Rules, 2017 is as follows:

$$(\text{₹ } 1,50,000 / 4,50,000) \times \text{₹ } 54,000 = \text{₹ } 18,000/-$$

Working Note:

- Number of units of exempted final products 1,250 units (i.e. ₹ 1,00,000/₹ 80 per unit = 1,250 units)
- Since, each unit of exempted final product needs 2 units of raw materials. Raw material used exclusively for exempted final product 2,500 units (i.e. 1,250 units x 2 units = 2,500 units).


Banking Company or NBFC Section 17(4) of the CGST Act, 2017

A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to 50% of the eligible input tax credit on **inputs, capital goods and input services** in that month and the rest shall lapse:

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

Provided further that the restriction of 50% shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

Example 19:

X Bank of India has corporate office in Mumbai and branches in Chennai, Delhi and Kolkata. Mumbai office provided services to Chennai office accordingly IGST paid. Office of Chennai will avail the credit of IGST. Chennai office is required to reverse such credit? Explain.

Answer:

As per Section 17(4) of the CGST Act, 2017 that reversal of 50% shall not be made for the credit availed by Chennai office on services provided by corporate office. Thus, no credit reversal shall be made for the credit availed on input services provided by one registered person to another registered person holding same PAN.

Example 20:

OK Bank has availed credit of ₹ 25,00,000 lacs in the month of December 2017. Total credit, out of which ₹ 5,00,000 pertains to non-business purpose and ₹ 7,00,000 pertains to credit availed under 2nd proviso of section 17(4). Find the total input tax credit eligible to OK Bank.

Note: OK Bank opted to avail ITC an amount equal to 50% of eligible credit.

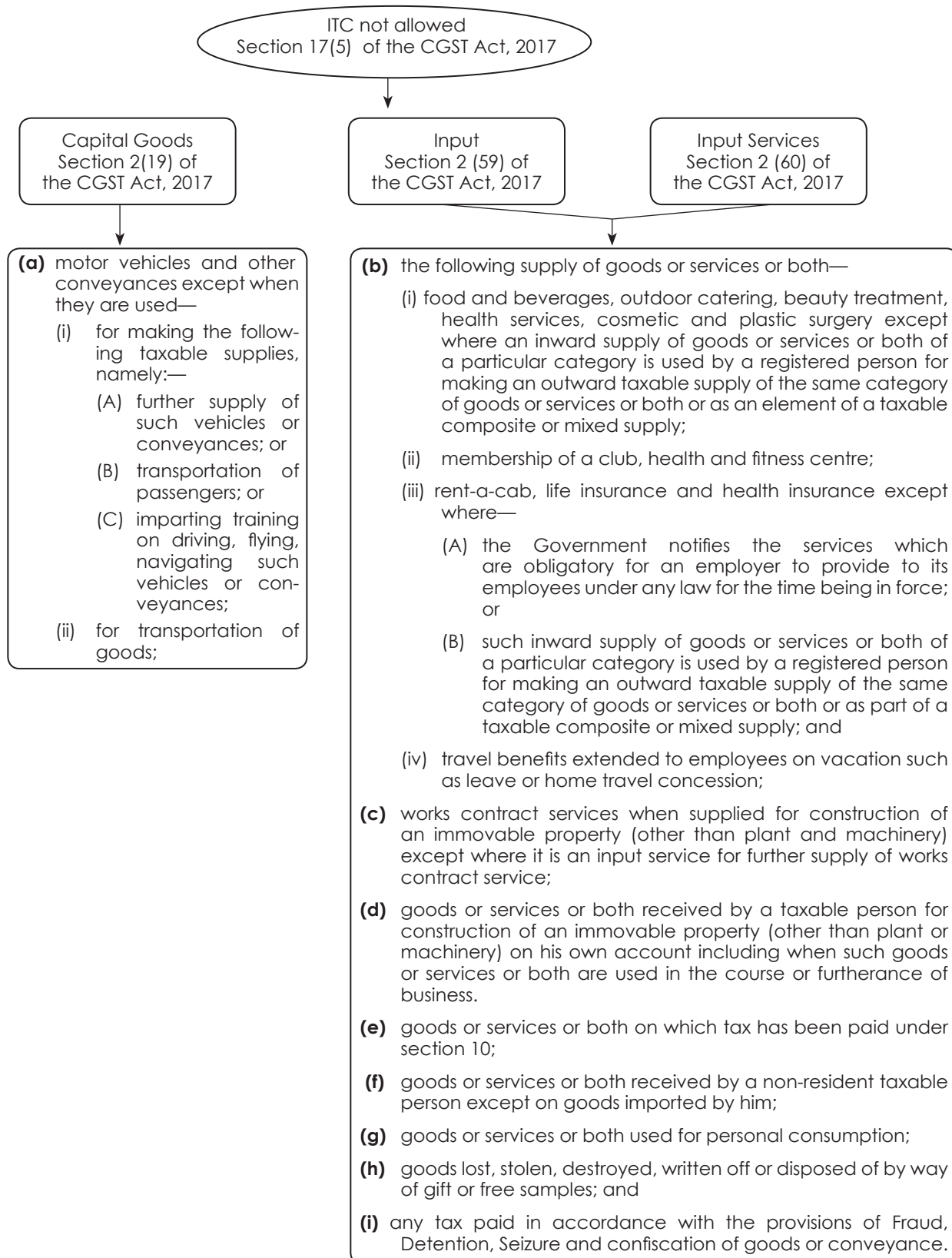
Answer:

Statement showing eligible ITC to OK Bank for the month of December 2017:

Particulars	ITC Amount in ₹	Remarks
Input tax credit attributable to non-business purpose	Nil	ITC fully not allowed
ITC from its other establishment	7,00,000	ITC fully allowed.
Other ITC	6,50,000	$(25,00,000 - 5,00,000 - 7,00,000) \times 50\%$
Total ITC allowed in Form GSTR-2	13,50,000	

Input Tax Credit (ITC) not applicable goods and services [Section 17(5) of the CGST Act, 2017]:

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



Explanation.— For the purposes of clauses (c) and (d) of Section 17(5) of the CGST Act, 2017, the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;

Section 2(76) of the CGST Act, 2017 “motor vehicle” shall have the same meaning as assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988;

Section 2(34) “conveyance” includes a vessel, an aircraft and a vehicle;

Section 17(5)(a)(ii) of the CGST Act, 2017 further provides that credit on any motor vehicle or other conveyance used for transportation of goods by the company himself or for making taxable supply will be available to avail credit on motor vehicles.

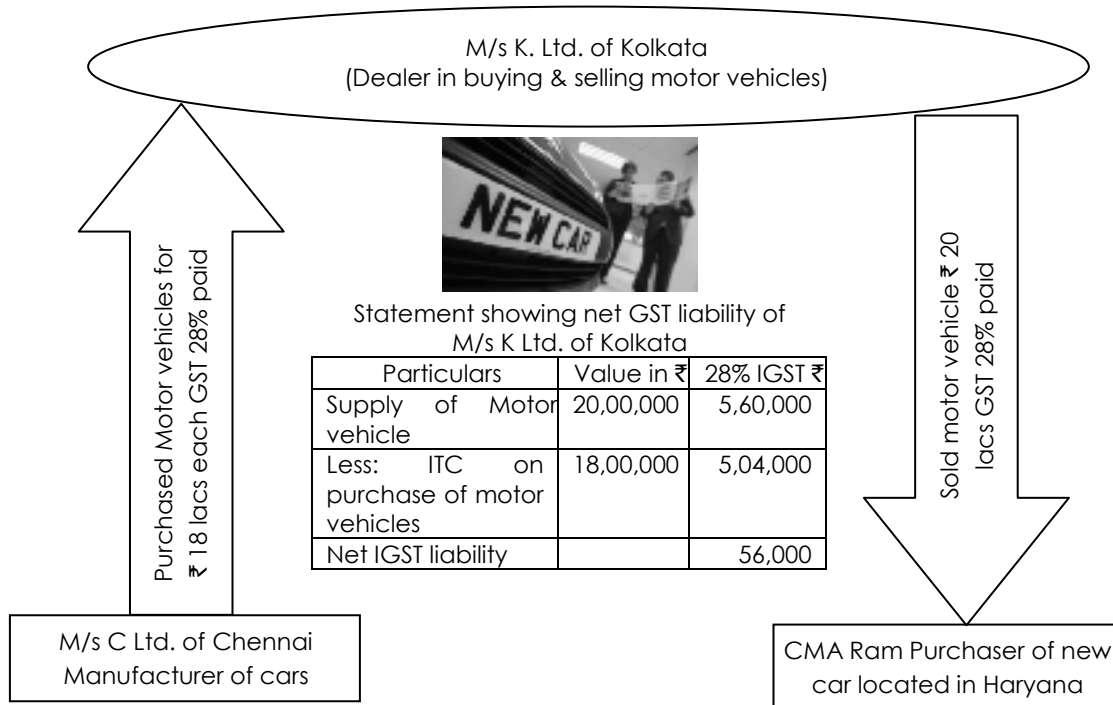
Section 17(5)(a) motor vehicles and other conveyances except when they are used—

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

Section 17(5)(a) motor vehicles and other conveyances ITC Not allowed except when they are used—

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

(A) Motor vehicles or conveyances are used for further supply of such vehicles or conveyances:



There are many taxable persons who are engaged in purchase and sale of used cars. These dealers purchase used cars from others by paying GST then the credit of GST paid will be available to such dealers (i.e. while selling they are liable to pay GST).

Example 21:

M/s A Ltd. a registered person under GST law and purchased 10 cars for ₹ 45 lakh plus 28% GST. M/s A Ltd sold 8 cars for ₹ 55 Lakh plus 28% GST.

Find the GST liability in the following two independent cases:

(a) M/s A Ltd is a dealer of motor vehicles

(b) M/s A Ltd is not a dealer of motor vehicles

Answer:

Statement showing net GST liability of M/s A Ltd.

Particulars	M/s A Ltd. is a dealer in motor vehicles ₹ in lacs	M/s A Ltd. is not a dealer in motor vehicles ₹ in lacs	Remarks
GST on Supply of goods	15.40	15.40	₹ 55 lacs x 28%
Less: ITC	(12.60)	Not allowed	₹ 45 lacs x 28%
Net GST liability	2.80	15.40	

Section 17(5)(a) motor vehicles and other conveyances ITC not allowed except when they are used—

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

(B) Motor vehicles or conveyances are used for transportation of passengers:

The person boarding in the motor vehicle for performing the journey can be considered as passenger under GST. As a result transportation of passengers from one place to another in any motor vehicle can be considered as transportation of passenger.

Example 22:

M/s Parveen Travels transporting passengers from Chennai-Mumbai-Chennai. For this purpose M/s Parveen Travels purchased Volvo Bus (air-conditioned) for ₹ 55 lakhs plus GST 28%. M/s Parveen Travels is eligible for ITC on Volvo Bus in the following two cases:

1. M/s Parveen Travels paying GST 12% on supply of output supplies.
2. M/s Parveen Travels paying GST 5% on supply of output supplies.

Answer:

Case (1). Yes. M/s Parveen Travels is eligible to avail the ITC on purchase of Volvo Bus.

Case (2). No. M/s Parveen Travels is not eligible to avail the ITC on capital goods and input goods (except input services).

Note: AC contract/stage carriage other than motor cab GST @ 5% – with ITC of input services only from similar line of business (vide Notification No. 31/2017-Central Tax (Rate) Dt.13th October 2017)

Example 23:

M/s MR Ltd. manufacturer of motor vehicles. Company purchased passenger motor vehicle for ₹ 20 lacs plus GST 28% for transportation of their employees from their residence to factory and from factory to their residence. M/s MR Ltd. is eligible to avail the credit on purchase motor vehicle?

Answer:

No. M/s MR Ltd. is not in the business of transporting passengers and hence credit on purchase of motor vehicle is not allowed.

Note: If the taxable person transports its own employees free of cost it will not be covered by the aforesaid clause and hence he will not be able to claim benefit of input tax credit in respect of the same.

Example 24:

Sukhee Bhava Hospital is a clinical establishment purchased four ambulances for ₹ 32 lakhs plus GST 28%. Find the input tax credit available to Sukhee Bhava Hospital.

Answer:

Input tax credit = nil

Note: Since, supply of services of Sukhee Bhava is exempted from GST under health care services.

**Example 25:**

Ferrari Company for conducting Formulae One car races purchased 20 Racing Cars for ₹ 80 lakhs plus GST 28%. Ferrari company is eligible for availing ITC on purchase of Racing Cars.

Answer:

No. Ferrai Company can not avail the ITC on purchase of Racing Cars which are not treated as passenger vehicles.

Example 26:

Mr. Ram a school van driver and also registered person under GST law. He purchased Omni vehicle for ₹ 8 lacs plus GST 28%. Mr. Ram is eligible for ITC on this vehicle. Explain.

Answer:

Since, Mr. Ram is a registered person supplying taxable services in the nature of transportation of passengers, he is eligible to avail the ITC on motor vehicle.

Section 17(5)(a) motor vehicles and other conveyances ITC not allowed except when they are used—

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

(C) Motor vehicles or conveyances are used for imparting training on driving, flying, navigating such vehicles or conveyances;

Example 27:

M/s Maruti Driving School Pvt. Ltd. supplied taxable services in the month of October 2017 for ₹ 15 lacs (plus GST 18%) to provide training on driving. Company purchased two vehicles for this purpose namely passenger vehicle for ₹ 20 lacs plus GST 28% and goods vehicle for ₹ 33 lacs plus GST 28%. Find the net GST liability of M/s Maruti Driving School Pvt. Ltd.

Answer:

GST on output supply = ₹ 2,70,000

Less: ITC

On passenger vehicle = ₹ -5,60,000

On goods vehicle = ₹ -9,24,000

Net Excess ITC c/f = ₹ 12,14,000

Example 28:

Course completion certificate/training offered M/s Sky Ltd. (Flying Training Institute) purchased aircraft for ₹ 22 crores plus GST 28%. Whether the flying institute is eligible for input tax credit on purchase of air craft.

Answer:

Yes. M/s Sky Ltd. (Flying Training Institute) is eligible to avail ITC.

Navigating means: transport to direct the way that a ship, aircraft, etc. will travel, or to find a direction across, along, or over an area of water or land, often by using a map.

Section 17(5)(a) motor vehicles and other conveyances ITC not allowed except when they are used—

(ii) for transportation of goods

Credit of GST paid on motor vehicle and other conveyance will be available when motor vehicle and other conveyance are used for transportation of goods. The motor vehicle and other conveyance can be used for

(a) making outward supply of transportation of goods;

(b) transporting own goods.

Note: if the vehicle is used for supplying own goods if those goods are taxable supplies the taxable person will be entitled to avail credit of such input tax paid on such vehicle.

**Section 17(5)(b) the following supply of goods or services or both— ITC not allowed:**

- (i) food and beverages,
outdoor catering,
beauty treatment,
health services,
cosmetic and plastic surgery

except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

Example 29:

Guidelines Academy organizes parents meeting and provides meal during meeting to students and their parents. The supplier of food charged ₹ 72,500 plus GST 18%, under the category of outdoor catering. Explain Guidelines Academy being provider of taxable supply of services namely commercial training and coaching services is eligible to avail the credit of GST paid on outdoor catering service.

Answer:

GST paid on outdoor catering is not allowed as ITC even though such services are used for business purpose. Since, it is specifically mentioned under Section 17(5)(b)(i) of the CGST Act, 2017 where credit is not allowed.

Example 30:

Annapoorna caterings supply outdoor catering services to its customers by sub-contracting the same. Sub-contractor supplied food items like ice creams, North Indian Meals, South Indian Meals and so on to Annapoorna caterings. Sub-contractor raised invoice on Annapoorna caterings for supply of outdoor catering services ₹ 2,00,000 plus GST 18%. Annapoorna caterings supplied outdoor catering to its customers for ₹ 2,10,000 plus GST 18%. Find the Net GST liability of Annapoorna caterings.

Answer:

Statement showing net GST liability of Annapoorna caterings:

Particulars	Value in ₹	Remarks
GST on outward supply	37,800	₹ 2,10,000 x 18%
Less: ITC from similar line of business	(36,000)	₹ 2,00,000 x 18%
Net GST liability	1,800	

Example 31:

Sky Ltd. is engaged in supply of transport of passengers by air services. The company avails outdoor catering services of M/s Anna Caterers in order to provide food and beverages to the passengers. M/s Anna Caterers raises an invoice on Sky Ltd. charging GST.

Sky Ltd. wants to avail the ITC on outdoor catering services supplied by M/s Anna Caterers. Advise.

Answer:

ITC shall be available where an inward supply of goods or services or both of a particular category is used by a registered person as an element of a taxable composite or mixed supply.

Advise: In the given case, Sky Ltd. will be entitled to avail the ITC of the GST paid to M/s Anna Caterers since outdoor catering services forms part of taxable composite supply of passengers by air services.

Section 17(5)(b) the following supply of goods or services or both— ITC not allowed

- (ii) membership of a club, health and fitness centre;
the following are not eligible for availing ITC:
(a) only Membership charges.

Example 32:

if you have taken any subscription of the gym, yoga classes, or membership of any club for any sport or for anything else, the ITC credit shall not be allowed.

Section 17(5)(b) the following supply of goods or services or both— ITC Not allowed:

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

- (A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or
- (B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply;

Example 33:

Wipro Pro Ltd is a BPO which works on night shift basis. As per the Government Notification, it has to provide rent a cab facilities to its employees who work on night shifts.

Whether, Wipro Pro is eligible to avail ITC on rent a cab services.

Answer:

Yes. Wipro pro Ltd can claim ITC on the GST paid on such rent-a-cab services.

Example 34:

Hotel King Pvt Ltd. provider of short-term accommodation services and also provides picking up guest from airport. Accordingly, Hotel King Pvt. Ltd availed rent-a-cab services from M/s X & Co.

Rent-a-cab services provided by M/s X & Co to Hotel King Pvt Ltd. during Nov 2017 for ₹ 2,00,000 plus GST 18%.

Hotel King Pvt Ltd. provided short-term accommodation services to its customers (i.e. guests) during Nov 2017 for ₹ 15,75,250 plus GST 18%.

Find the Net GST liability of Hotel King Pvt Ltd. during the month of November 2017.

Answer:

Statement showing Net GST liability of Hotel King Pvt. Ltd for the month of Nov 2017

Particulars	Value in ₹	Remarks
GST on outward supplies	2,83,545	15,75,250 x 18%
Less: ITC on rent-a-cab service	(36,000)	2,00,000 x 18%
Net GST liability	2,47,545	

Note: In the given case Hotel King Pvt. Ltd. providing a composite supply of rent-a-cab and accommodation service. The principal supply of service is accommodation service. Hence, GST paid on rent-a-cab will be available as a credit to Hotel King Pvt. Ltd.

Example 35:

Infosys Ltd. being a registered person under GST Law paid insurance premium for its employees along with GST thereon. Infosys Ltd. is can avail the ITC of GST paid on insurance premium?

Answer:

No. Infosys Ltd cannot avail the ITC benefit in the given case.

Example 36:

M/s MRFL Ltd. being a manufacturer of taxable goods paid general insurance premium to cover loss of stock of finished goods. Company wants to avail the GST paid on such premium as input tax credit. Advise.

Answer:

GST paid on general insurance premium to cover loss of stock of finished goods is well allowed as input tax credit. Hence, M/s MRFL Ltd. is eligible to avail the tax paid on general insurance premium as ITC.



Section 17(5)(b) the following supply of goods or services or both— ITC Not allowed:

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

ITC on tax paid on travel benefits extended to employees on vacation such as leave or home travel concession shall not be available under any circumstances. This restriction is absolute and no exception has been provided.

Section 17(5) of the CGST Act, 2017 ITC Not allowed:

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

Situations in which ITC can be availed on any tax paid on work contract services:

ITC for any tax paid on work contract services shall be available in the following cases:

- a. When supplied for construction of plant and machinery
- b. Where it is an input service for further supply of works contract service.

Works contract:

Under Sec 2(119) of CGST Act "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

The expression 'works contract' is limited to contracts to do with immoveable property, unlike the existing understanding of the phrase which also extends to moveable property. A contract will amount to a 'works contract' only where there is a transfer of property in goods, while such a transfer may result in goods or anything else (i.e., immoveable property).

Construction [applicable to clause (c) and (d)]:

The expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

Plant and Machinery:

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

- a. land, building or any other civil structures
- b. telecommunication towers; and
- c. pipelines laid outside the factory premises.

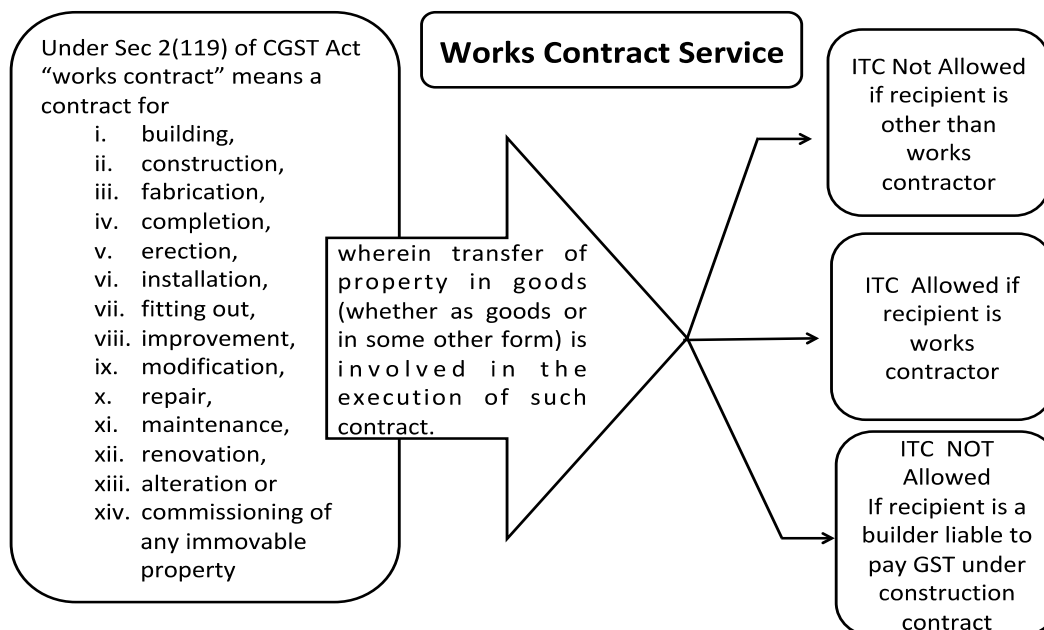
Section 17(5) of the CGST Act, 2017 ITC Not allowed:

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

It is important to note: Distinction between Section 17(5)(c) and Section 17(5)(d) of the CGST Act, 2017:

Section 17(5)(c), deals with works contract services i.e when such services are received under composite contracts and used for the purpose of construction of an immovable property (other than plant and machinery).

Section 17(5)(d), deals with situations when goods or services or both are received under different independent contracts i.e supply of goods and supply of services under separate contracts for the construction of an immovable property (other than plant and machinery).

Concept of Input Tax Credit in Real Estate Industry:

This concept further elucidated in the following table:

Nature of service	ITC	Remarks
Cement is used for construction of administration building	Not allowed	Building is not plant and machinery.
Cement is used for foundation of pillars supporting a boiler	Allowed	As such structural support for plant and machinery is included in definition of plant and machinery.
Works contract services is provided by sub-contractor to a contractor	Allowed	Works contracts service is excluded except when used for providing work contract service
Steel and other structural supports are used for Land, building or any other civil structures; or setting up a telecommunication tower; or pipelines laid outside the factory premises	Not allowed	These are specifically excluded from the term plant and machinery. Note: Credit of tax paid on goods and services used for construction of immovable property including work contract service has been allowed only if such immovable property is in the nature of "plant and machinery".
GST paid on parts of telecommunication towers or parts of pipelines.	Not Allowed	GST paid on any inputs or capital goods used for construction of telecommunication towers, pipeline laid outside the factory, will not be available as input tax credit.

Input tax credit (ITC) shall not be available in respect of the following [Section 17(5) of the CGST Act, 2017]:

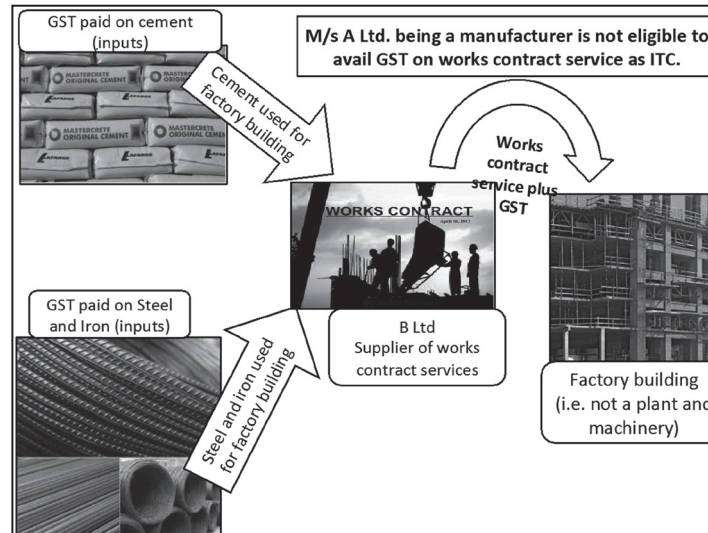
- (c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is input service for further supply of works contract service;

Explanation: For the purpose of Chapter V (i.e Input Tax Credit) and Chapter VI (i.e. Registration), the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural support but excludes-

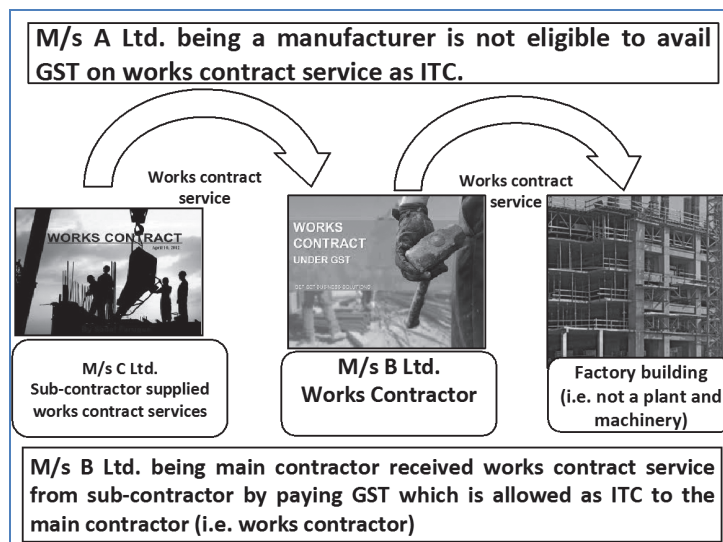
- land, building or any other civil structures;
- telecommunication towers; and
- pipelines laid outside the factory premises.

Example 37:

M/s A Ltd. being a manufacturer of laptops registered under GST. Company appointed M/s B Ltd. for construction of factory building in the factory premises.


Example 38:

M/s A Ltd. being a manufacturer of laptops registered under GST. Company appointed M/s B Ltd. for construction of factory building in the factory premises. Accordingly M/s B Ltd. sub-contacted works contract service to M/s C Ltd.


Example 39:

M/s A Ltd. being a manufacturer of laptops registered under GST. Company appointed M/s B Ltd. for construction of foundation or structural support of Hot Mix Plant (i.e. plant and machinery) that are used for making outward supply of goods or services or both. Accordingly M/s B Ltd used cement, steel, Iron, water, chemicals and labour to complete the job. GST paid on such works contract service is allowed as input tax credit to M/s A Ltd. GST paid on Hot Mix Plant (i.e. plant and machinery) is also allowed as input tax credit to M/s A Ltd.

Input tax credit (ITC) shall not be available in respect of the following [Section 17(5) of the CGST Act, 2017]:

- (d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.;

Explanation: Construction [applicable to clause (c) and (d) of Section 17(5) of the CGST Act, 2017]:

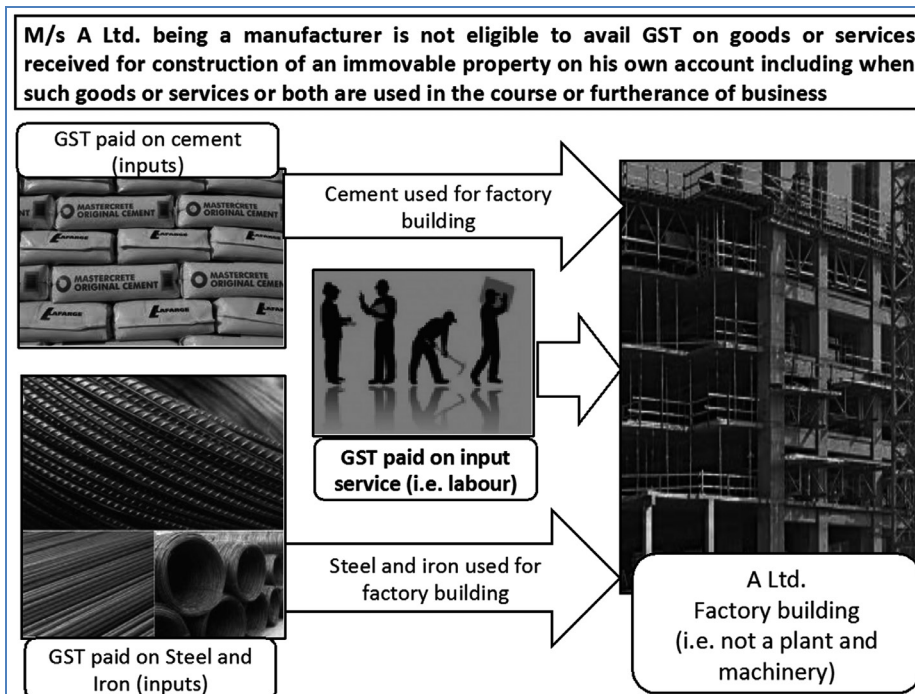
The expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

Explanation: For the purpose of Chapter V (i.e. Input Tax Credit) and Chapter VI (i.e. Registration), the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural support but excludes-

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

Example 40:

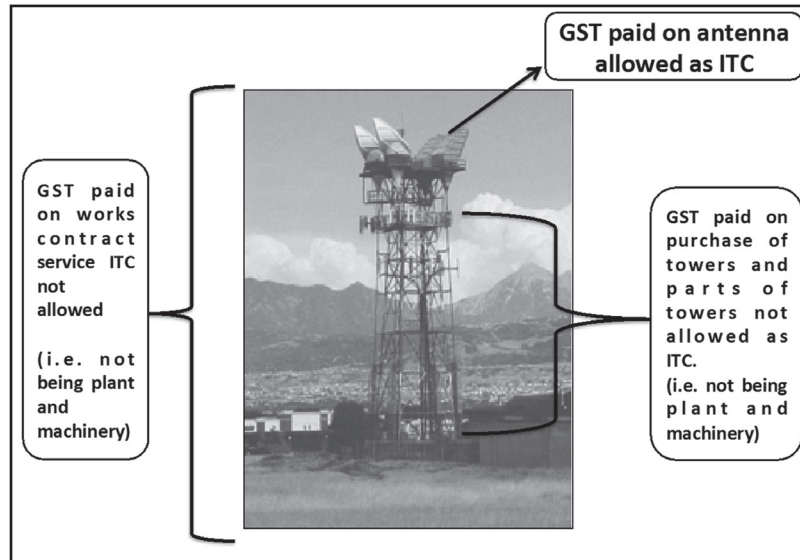
M/s A Ltd. being a manufacturer of laptops registered under GST. Company appointed M/s B Ltd. for construction of factory building in the factory premises. M/s B Ltd. agreed to undertake only labour contract plus GST. Material supplied by M/s C Ltd, plus GST.



Example 41:

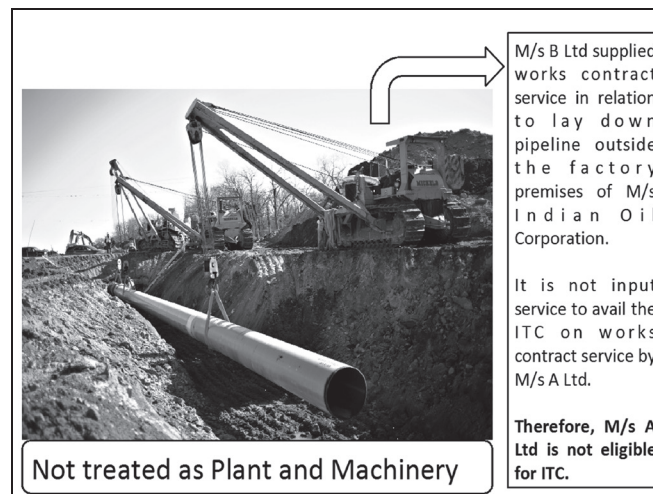
M/s Bharti Airtel Limited purchased antennas, towers and parts thereof by paying GST. Company also received works contract service from M/s B Ltd. for its installation by paying GST thereon. Finally towers and parts thereof are fastened and are fixed to the earth and after their erection become Immovable. Find the eligibility of input tax credit to M/s Bharti Airtel Limited.

Answer:



Example 42:

M/s Indian Oil Corporation wants to lay down pipeline from Bhubaneswar to Chennai. Company awarded this contract to M/s B Ltd. for a consideration plus GST. Is it input service to M/s Indian Oil Corporation.



Example 43:

M/s X Ltd manufacturer of taxable goods and registered under GST Law. M/s X Ltd assigned the contract in the month of January 2018, for ₹ 5,00,000 plus GST 18% to M/s Y Ltd. for constructing structural support of Hot Mix Plant, which is used for making taxable supply of goods.

Accordingly M/s Y Ltd used cement, steel, Iron, water, chemicals and labour to complete the job. Entire work has been completed and payment also be received in the month of January 2018.

M/s X Ltd further provides the following information to find net GST liability of M/s X Ltd. for the month of January 2018:

Inward Supply	Value in ₹	GST Rate	Outward Supply	Value in ₹	GST Rate
Raw material (10 Kgs)	2,00,000	18%	Finished goods	15,00,000	28%
Hot Mix Plant	6,00,000	28%			
Works contract service	5,00,000	18%			

Note: There is process loss @1% while converting raw materials into finished goods.

Answer:

Statement showing net GST liability for the month of January 2018 of M/s X Ltd.

Particulars	GST ₹	Remarks
Output tax	4,20,000	15,00,000 x 28%
Less: ITC on Input	(36,000)	2,00,000 x 18%
ITC on Capital goods	(1,68,000)	6,00,000 x 28%
ITC on Input service	(90,000)	5,00,000 x 18%
Net GST liability	1,26,000	

Note: Hot Mix Plant is capital goods, hence ITC allowed.

Inputs and input services used for constructing of building or any other civil structures ITC not allowed:

Example 44:

M/s A Ltd. being a manufacturer of laptops registered under GST. Company appointed M/s B Ltd. for construction of factory building in the factory premises. Contract price is ₹ 120 lacs plus GST 18%. M/s B Ltd., supplied cement, steel and labour while executing the contract. Whether M/s A Ltd is eligible to avail the input tax credit on such works contract service.

Answer:

GST paid on works contract services which is used for land, building or any other civil structures specifically excluded from availing input tax credit under section 17(5)(c) of the CGST Act, 2017.

Therefore, in the given case M/s A Ltd is not eligible for input tax credit.

Example 45:

Mr. X being a contractor undertaken construction work of an individual residential unit otherwise than as part of a residential complex.

You are required to answer:

- Mr. X is liable to pay GST where he under taken pure labour contract.
- Mr. X is liable to pay GST where he under taken both labour and material contract.
- Mr. X gives contract to sub-contractor, can sub-contractor also get exemption if it is pure labour contract.

Answer:

As per Notification No. 12/2017 Central tax (rate) "Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex." are exempt from GST.

- Since, Mr. X under taken services by way of pure labour contracts of construction of single residential unit is exempt from GST.
- If in case Mr. X providing service with both labor and material i.e. termed as works contract under GST. He will be charged 12% GST.
- Yes. Services provided by a sub-contractor to a contractor are also exempt as he is providing labor for the construction of residential house.

Example 46:

M/s Raji builders appoint M/s Viswa contractors for providing the service of plastering of walls. As per terms of contract M/s Raji builders provides the entire material namely cement, water, bricks and chemicals and so on. As a result M/s Viswa contractors does not use any material.

Is it works contract service?

Answer:

It cannot be considered as works contract service, as it does not involve the transfer of property.

Example 47:

M/s MR Ltd. manufacturer of laptops. Company appoints M/s RM Constructions for constructing a new factory building. Terms and conditions of contract are as follows:

S.No.	Particulars	Value in ₹	Remarks
(1)	Land value	2 crore	Land owned by M/s MR Ltd.
(2)	Material cost	30 lacs	Material supplied by M/s RM Constructions
(3)	Service cost	10 lacs	Supplied by RM Constructions

(a) Construction completed in the month of October 2017.

(b) Assume Time of supply in the month of October 2017.

(c) Applicable rate of GST 18%.

(d) Fully payment made in the month of October 2017.

Output supplies of M/s MR Ltd during the month of October 2017 are ₹ 20,00,000 plus GST 18%.

Find the net liability of GST in the hands of M/s MR Ltd. in the month of October 2017.

Rework, if M/s MR limited is provider of works contract service.

Answer:

Net GST liability in the month of October 2017 is ₹ 3,60,000.

(20,00,000 x 18%).

Note: works contract service is not input service to M/s MR Ltd.

Net GST liability in the month of October 2017 is ₹

GST on output supply = ₹ 3,60,000

Less: ITC on Works contract service (₹ 30 lacs + ₹ 10 lacs) x 18% = ₹ (7,20,000)

Excess ITC c/f = ₹ (3,60,000)

Note: works contract services are an input service to a supplier of works contract services.

Example 48:

M/s P Ltd. appoints M/s Q Ltd. for laying of pipelines inside its factory premises which resulting into movable property. For which M/s P Ltd. purchased pipelines for ₹ 10,00,000 plus GST 12%. On completion of works contract service M/s Q Ltd charged for ₹ 2,00,000 plus GST 18%. Find the eligible input tax credit to M/s M/s P Ltd.

Answer:

The credit of GST paid on pipelines inside the factory will be available. Since, pipelines laid inside the factory premises are in the course or furtherance of business (i.e. capital goods). Therefore, input tax credit allowed is ₹ 1,20,000.

GST paid on works contract services, which are used for laying of pipelines resulting into movable property, is also qualify for claiming input tax credit of ₹ 36,000.

Therefore, total eligible input tax credit is ₹ 1,56,000.

Example 49:

Ram is the chairman of reputed construction company. He ordered certain input goods or services like cement, steel and labour to be used for the construction of his house. Cement purchased was also used partly for the company building (i.e. captive use).

Input tax credit allowed on purchase of cement?

Answer:

ITC would not be available on purchase of cement including steel and labour.

Note: As per Section 17(5)(d) of the CGST Act, 2017, No ITC will be provided for materials used in the construction of immovable property of for furtherance of business. ITC will not be available for the goods or services or both provided to a taxable person used in the construction of an immovable property on his own account including when such goods or services or both are used in the course or furtherance of business.

Example 50:

Determine the amount of input tax credit available with Arihant Manufacturing Ltd. in respect of the following items procured by them in the month of January 2018:

Items	GST paid in ₹
Raw materials	72,000
Food and beverages & cateringservicesare used in the guesthouse primarily for the stay of thenewly recruited employees.	40,000
Inputs used for making structures for support of plant and machinery	1,25,000
Capital goods used as parts and components for use in themanufacture of final product	40,000

Answer:

Statement showing eligible input tax credit to Arihant Manufacturing Ltd.

Items	ITC in ₹
Raw materials	72,000
Food and beverages & cateringservicesare used in the guesthouse primarily for the stay of thenewly recruited employees.	Not allowed
Inputs used for making structures for support of plant and machinery	1,25,000
Capital goods used as parts and components for use in themanufacture of final product	40,000
Total credit allowed	2,37,000

Example 51:

ABC India Ltd. is engaged in the manufacture of some taxable goods. It purchased the following goods in the month of October, 2017:-

Items	GST paid in ₹
Raw material used for the production of the final product	1,00,000
Goods used for generation of electricity for captive consumption	20,000
Goods used for providing free warranty – Value of such freewarranty provided by ABC India Ltd. is included in the price ofthe final product and is not charged separately from the customers	10,000
Light diesel oil	5,000

Note: ABC India Ltd. is also purchased High Speed Diesel oil by paying central excise duty of ₹ 12,000, which is also used in the manufacturer of taxable output.

Compute the amount of input tax credit available to ABC India Ltd.

Answer:

Statement showing Input tax Credit of ABC India Ltd.

Items	ITC in ₹
Raw material used for the production of the final product	1,00,000
Goods used for generation of electricity for captive consumption	20,000
Goods used for providing free warranty – Value of such freewarranty provided by ABC India Ltd. is included in the price of the final product and is not charged separately from the customers	10,000
Light diesel oil	5,000
High Speed Diesel oil	Not allowed
Total input tax credit	1,35,000

Section 17(5)(e) of the CGST Act, 2017 Goods or services or both on which tax has been paid under section 10;

Goods and/ or services on which tax is paid to the supplier under composition scheme is not eligible for ITC.

Accordingly, a small supplier who has opted for composition scheme would stand to lose business, because neither supplier nor recipient of supply is eligible for ITC.

Section 17(5)(f) of the CGST Act, 2017 goods or services or both received by a non-resident taxable person except on goods imported by him;

Input tax credit shall not be available in respect of goods or services or both received by a non-resident taxable person except on goods imported by him. It means IGST on import of goods allowed as ITC. It is to avoid double taxation.

The taxes paid by a non-resident taxable person shall be available as credit to the respective recipients.

Example 52:

Mr. A of USA being technician came to India to assemble parts of machinery. He also imported goods worth ₹ 10,00,000 and paid following customs duties:

- (i) Basic customs duty is ₹ 1,00,000.
- (ii) Education Cess 2% plus 1% Secondary and Higher Education Cess together it is ₹ 3,000.
- (iii) Integrated Goods and Services Tax (IGST) of ₹ 1,98,540.

In India Mr. A wants to register as non-resident taxable person and his estimated liability is ₹ 2,50,000. How much Mr. A is liable to pay as advance tax?

Answer:

Mr. A of USA is liable to pay advance tax of ₹ 51,460.

(i.e ₹ 2,50,000 – 1,98,540)

Section 17(5)(g) of the CGST Act, 2017 goods or services or both used for personal consumption;

Input tax paid on goods and or services used for personal consumption is not eligible for ITC.

If the goods or services on which input tax credit has been availed are used for personal consumption, it actually means that the credit on the input or input services to the extent of its use for personal consumption shall be disallowed. It means reverse the credit by debiting to profit and loss account or pay an amount to the department by using electronic cash ledger account.

Example 53:

M/s X Ltd purchased shoes for their employee's personal consumption by paying GST thereon. ITC not allowed on such goods.

**Example 54:**

M/s Y Ltd. for safety reasons purchased hand gloves and shoes for workers as mandatory. Hence, ITC on such goods cannot be considered as used for personal purpose. Therefore, ITC allowed.

Example 55:

M/s Info Ltd. providing various facilities to their employees like club, sports facilities etc. to ensure that the employees stay comfortably in the colony. It increases the efficiency of employee. Examine the credit applicability in this case.

Answer:

Expenses incurred in colony are in the course or furtherance of business. Hence, credit of GST paid on such services will also be available to the taxable person.

Example 56:

M/s Andhra ITC Ltd. purchased inputs and capital goods by paying GST to produce electricity or steam for manufacture of taxable goods. The electricity generated for use in manufacture of goods is sometimes also supplied in the residential colony of employees. Whether, M/s Andhra ITC Ltd. is eligible to avail the credit fully?

Answer:

As per the GST Law provisions there is no requirement of use of electricity in manufacture of goods. The only requirement is that the input or capital goods shall be used in the course or furtherance of business. This view also confirmed by Hon'ble Andhra Pradesh High Court in the case of ITC Ltd. 2013(32) STR 283 (AP).

Therefore, M/s Andhra ITC Ltd. is eligible to avail input tax credit.

Section 17(5)(h) of the CGST Act, 2017 goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples;

Credit of GST paid on input or capital goods is permitted when input or capital goods are used in the course or furtherance of business.

ITC not allowed in the following cases:

- Goods lost
- Goods stolen
- Goods destroyed
- Goods written off or
- Disposed of by way of gift
- Disposed of by way of free samples

Note: As per Section 17(5)(h) of the CGST Act, 2017 input tax credit shall be reversed when the goods have been disposed of by way of gift or free sample. In this case, there is no consideration for sale of goods and GST is not payable on output supply. However, the input tax credit availed on such goods shall be reversed or pay GST to the department as the case may be.

Section 17(5)(i) of the CGST Act, 2017 any tax paid in accordance with the provisions of Fraud, Detention, Seizure and confiscation of goods or conveyance.

(a) Section 74 of the CGST Act, 2017: Show cause notice issued in case of fraud, to recover the GST.

(b) Section 129 of the CGST Act, 2017: Tax is paid, when goods are under detention by the officers for further investigation

(c) Section 130 of the CGST Act, 2017: Tax paid, when the goods or conveyance are being confiscated.

GST paid under the above provisions, credit is not available to a taxable person.

Note: Section 73 of the CGST Act, 2017: Show cause notice issued in case other than fraud to recover the GST. It means duty paid under section 73 of the CGST Act, 2017 can avail the credit by the taxable person (namely receipt of goods or services)

Example 57:

M/s X Ltd. sold goods to M/s Y Ltd. for ₹ 2,00,000 plus GST ₹. 36,000. M/s X Ltd. remitted the GST on or before the due date. During the audit of M/s X Ltd. books by the Central Tax Department quantified the GST liability ₹ 72,000 and demanded to pay differential duty of ₹ 36,000 u/s 74 of the CGST Act, 2017. Finally, M/s X Ltd. paid the differential GST of ₹ 36,000.

M/s Y Ltd. wants to avail the input tax credit of differential amount of GST, advise.

Answer:

Since, the differential GST paid by M/s X Ltd. against show cause notice u/s 74 of the CGST Act, 2017, will not be available as credit to M/s Y Ltd. in view of clause (i) of section 17(5) of the CGST Act, 2017.

Case Law: 2

Commr. of C. Ex., & S.T., LTU v. Rane TRW Steering Systems Ltd. 2015 (039) STR 13 (Mad.)

Facts of the case: Assessee had availed credit of GST paid on housekeeping and gardening services. However, Revenue disallowed the credit and also imposed penalty on the ground that the assessee was not eligible to avail credit of GST on these services.



Decision: The High Court noted that principle laid down in the case of CCE v. Millipore India Pvt. Ltd. 2012 (26) S.T.R. 514 (Kar.). In this case, the Karnataka High Court held that landscaping of factory or garden certainly would fall within the concept of modernization, renovation, repair, etc., of the office premises. The environmental law expects the employer to keep the factory without contravening any of those laws. That apart, now the concept of corporate social responsibility is also relevant. It is to discharge a statutory obligation, when the employer spends money to maintain their factory premises in an eco-friendly manner, certainly, the tax paid on such services would form part of the costs of the final products. Therefore, housekeeping and gardening services would fall within the ambit of input services and the assessee is entitled to claim the benefit of input tax credit on the same.

Amendments:

The following amendments were made vide CGST Amendment Act, 2018 to amend Sec 17(5) of CGST Act, 2017:

1. Motor Vehicles - input tax credit will be available in respect of dumpers, work-trucks, fork-lift trucks and other special purpose motor vehicles, vessels and aircraft when these are used for personal purposes.
2. ITC allowed for motor vehicles used for transportation of money for or by a banking company or a financial institution
3. ITC allowed in respect of food and beverages or both where the provision of such goods or services or both is obligatory for an employer to provide to its employees under any law for the time being in force.

7.4 METHOD OF REVERSAL OF CREDITS

Under GST, a registered person can use input tax on purchase to pay output GST Tax on supply/sale.

Apart from general ITC rule and list of ineligible ITC, availed ITC of input supplies need to be reversed on subsequent occurrence of the below-mentioned event:

1. Recipient of supply Doesn't pay to the supplier within 180 days of issue of the invoice.
2. Recipient of supply uses input goods/services for any purpose other than business or for supplying exempted supplies [like Personal use]
3. Recipient of supply uses capital goods for any purpose other than business or for supplying exempted supplies
4. A person transfer his regular GST registration into Composite Scheme [u/s 18(4)] or Cancels GST registration [u/s 29(5)]
5. A person sells Capital good or Plant and machinery [u/s 18(6)].

In Form GSTR-2, point 11 deals with reversal of input tax credit. Following format is seen for reversal of input tax credit:

Description for reversal of Input Tax Credit	To be added or to be reduced from output tax liability	Amount of Input Tax Credit			
		IGST	CGST	SGST	Cess
Amount in terms of rule 37(2)	To be Added				
Amount in terms of rule 42(1)(m)	To be Added				
Amount in terms of rule 43(1)(h)	To be Added				
Amount in terms of rule 42(2)(a)	To be Added				
Amount in terms of rule 42(2)(b)	To be Added				
On account of amount paid subsequent to reversal of ITC	To be Reduced				
Any other liability					

The detailed Analysis of the Reversal of Input Tax credit are as follows:

Amount in terms of Rule 37(2):

Reversal of Input Tax credit in case of Non-payment of consideration

- If a registered person who has availed input tax credit on any inward supply of goods or services or both, but fails to pay the supplier within a period of 180 days, then ITC availed is to be reversed. If part of the invoice is paid then ITC will be reversed on a proportionate basis.
- The amount of input tax credit shall be added to the output tax liability of the registered person.
- The registered person shall be liable to pay interest not exceeding 18% for the period starting from the date of availing the credit till the date when the amount added to the output tax liability.

For example –

Mr.A received goods on 1st July 2017 worth ₹ 10000 on which GST ₹ 1800 was charged.

Mr. A claimed the GST of Rs 1800 as ITC in his GSTR 2

Mr. A could not pay the invoice amount till December 2017.

This means that Mr. A will have to reverse the ITC of Rs 1800 while filing GSTR 2 for December 2017 in January 2018.

Amount in terms of rule 42(1) (m):

ITC on input supplies partly used for business and partly for exempt supplies or personal use:

The ITC used for exempt supplies and personal purpose has to be reversed in GSTR 2.



How to Calculate ITC reversal on Exempt Supplies:

Step 1: Calculate Common Credit

Common Credit = Total ITC on Input Supplies

(Less) ITC on input supplies used for Personal purposes (non-business)

(Less) ITC on input supplies used for providing exempt supplies

(Less) ITC on which credit is not available (section 17(5))

(Less) ITC on input supplies other than exempted but including zero rated supplies

In simple words, Common Credit is ITC on inputs partly used for exempt supplies or personal use.

Step 2: Amount of reversal of input tax credit attributable to inputs partly used for Exempt supplies

= (Value of Exempt Supplies * Common Credit) / Total Turnover in the State

How to Calculate ITC on Personal Use: 5 % of Common Credit

The ITC amounts as calculated above has to be reversed in the GSTR 2 filed by the registered person.

Amount in terms of rule 43(1) (h):

ITC on Capital Goods partly used for business and partly for exempt supplies or personal use:

ITC on capital goods used for the supply of exempt supplies and non-business purposes will also be reversed.

The calculation will be similar to the calculation for ITC on inputs used for exempt supplies and personal use.

Step 1: Calculate Common Credit –

Common Credit = ITC on Capital Goods

(Less) ITC on capital goods put to personal use

(Less) ITC on capital goods used for exempted goods

(Less) ITC on capital goods used in supplies other than exempted but including zero rated supplies (ITC on normal supplies)

Step 2: Amount of ITC reversal attributable to capital goods partly used for Exempt supplies and Personal use

= (Value of Exempt Supplies * Common Credit)/Total Turnover in the State

Step 3: This reversal of input tax credit has to be done on a monthly basis. The life of any asset is considered as 5 years. So the amount of ITC reversal every month will be

= Amount arrived at in Step 2 / 60 (months)

Amount in terms of rule 42(2) (a)

Reversal of ITC on inputs used for exempted/non-business purpose is more than the ITC reversed during the year:

If the total of ITC on input supplies for exempted/non-business is more than total ITC reversed during the year in GSTR-2, then the differential amount should be reversed in GSTR-2 that is it should be added to the output tax liability.

Amount in terms of rule 42(2) (b)

ITC reversed during the year is more than ITC on inputs used for exempted/non-business purpose:

At the year-end after filing GSTR-9 (Annual Return), if the total of ITC reversed is more than the ITC on inputs used for exempted/non-business purpose, then the differential amount should be reclaimed as ITC that is it should be reduced from output tax liability.

7.5 INPUT TAX CREDIT IN SPECIAL CIRCUMSTANCES

Availability of credit in special circumstances [Section 18 of the CGST Act, 2017]:

Section 18 (1) Subject to such conditions and restrictions as may be prescribed—

- (a) a person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;
- (b) a person who takes registration under sub-section (3) of section 25 (i.e. voluntary registration) shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration;
- (c) where any registered person ceases to pay tax under section 10 (i.e. from composition levy to normal levy of GST), he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9:

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

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

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

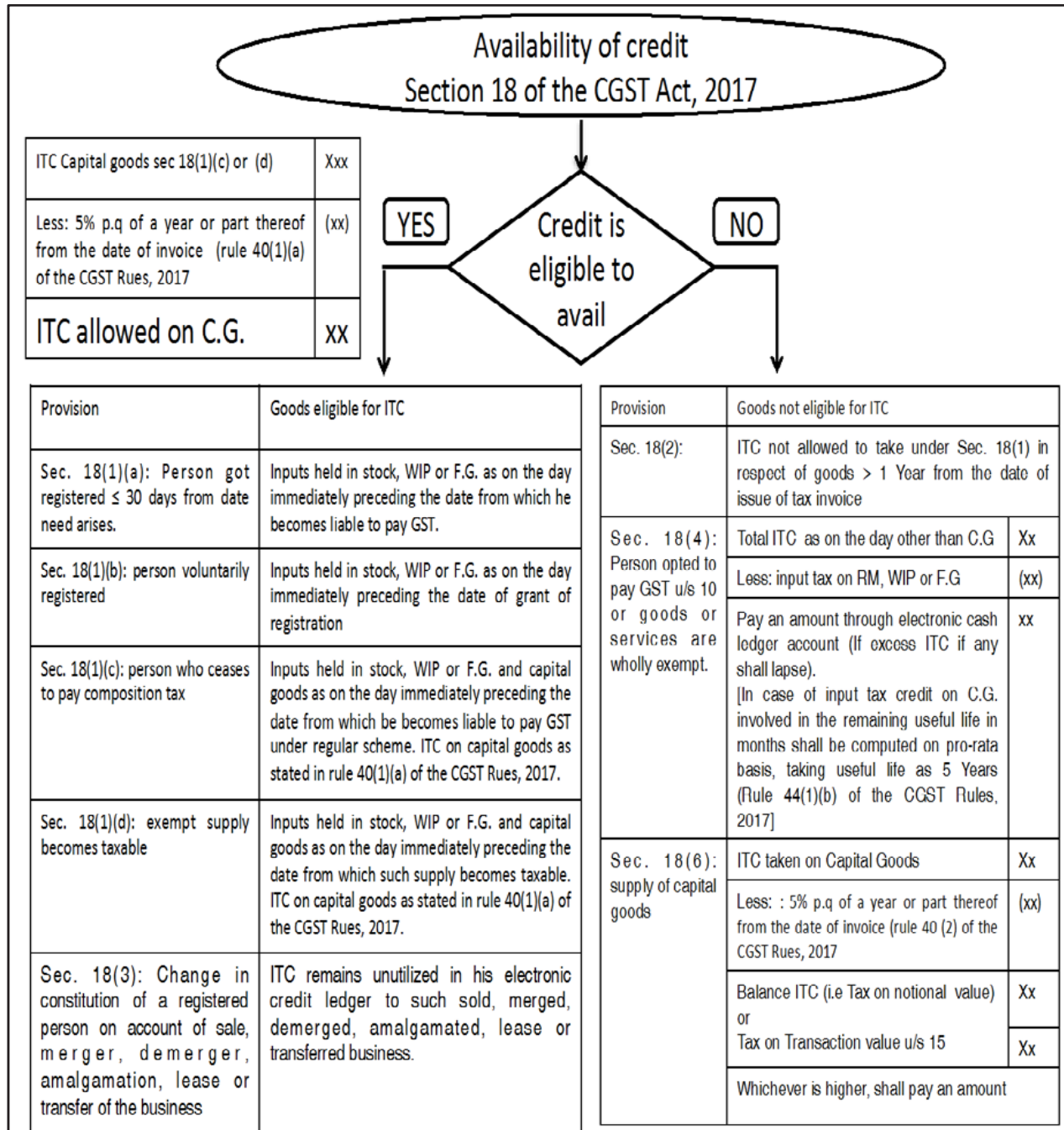
- (2) A registered person shall not be entitled to take input tax credit under sub-section (1) in respect of any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply.
- (3) Where there is a change in the constitution of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

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

- (5) The amount of credit under sub-section (1) and the amount payable under sub-section (4) shall be calculated in such manner as may be prescribed.

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

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

Simplified approach with regard to Section 18 of the CGST Act, 2017:




Proviso to section 18(6) of the CGST Act, 2017 where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under Sec. 15. It means 5% p.q reduction not required to apply.

As per Rule 40(1)(b) of the CGST Rules, 2017 the registered person shall within a period of 30 days from the date of his becoming eligible to avail the input tax credit under sub-section (1) of section 18 shall make a declaration, electronically, on the common portal in FORM GST ITC-01 to the effect that he is eligible to avail the input tax credit as aforesaid;

As per Rule 40(1)(d) of the CGST Rules, 2017 the details furnished in the declaration under clause (b) shall be duly certified by a practicing **Chartered Accountant** or a **Cost Accountant** if the aggregate value of the claim on account of central tax, State tax, Union territory tax and integrated tax exceeds ₹ 2,00,000;

Manner of reversal of credit under special circumstances: As per Rule 44(1)(b) of the CGST Rules, 2017 the amount

Illustration:

Capital goods have been in use for 4 years, 6 month and 15 days.

The useful remaining life in months = 5 months ignoring a part of the month.

Input tax credit taken on such capital goods = C

Input tax credit attributable to remaining useful life = $C \times 5/60$.

Therefore, input tax credit attributable to remaining useful life shall be reversed or pay as an amount.

of tax credit relating to capital goods held in stock shall, for the purpose of Section 18(4) of the CGST Act, 2017 (i.e. person opted to pay composition scheme or supplies are exempted wholly from GST) or section 29(5) of the CGST Act, 2017 (i.e. registration cancelled), be determined in the following manner, namely:-

For capital goods held in stock, the input tax credit involved in the remaining useful life in months shall be computed on pro-rata basis, taking the useful life as five years.

Example 58:

M/s X Ltd. becomes liable to pay tax on 1st December and has obtained registration on 15th December.

The GST paid goods lying in the premises of M/s X Ltd. as on 30th November are as follows:

Particulars	Value in ₹ (Excluding tax)	GST ₹
Raw material	2,00,000	36,000
Capital goods	5,00,000	1,40,000
Raw material lying work in progress	3,00,000	54,000
Raw material lying in Finished Goods	12,00,000	2,16,000

You are required to answer the following:

- Eligible amount of input tax credit.**
- Time limit to submit declaration on common portal.**
- Whether any certification required while availing the credit, if so from whom.**

Answer:

- Eligible input tax credit is ₹ 3,06,000/-**
- Declaration in Form GST ITC -01 on or before 14th January should be submitted on common portal of GSTN.**
- Declaration regarding inputs tax credit shall be duly certified by a practicing Chartered Accountant or a Cost Accountant if the aggregate value of the claim on account of central tax, State tax, Union territory tax and integrated tax exceeds ₹ 2,00,000.**

In the give case, since, input tax credit declared is ₹ 3,06,000. Therefore, certificate from a practicing Chartered Accountant or a Cost Accountant is required.

Note: M/s X Ltd. cannot take ITC on capital goods.

Example 59:

Mr. A applies for voluntary registration on 22nd November and obtained registration on 25th November.

Mr. A has stock on the following two dates:

Date	Opening balance (units)	Purchased (units)	Sold (units)
21 st November	12,000	20,000	8,000

On 24th November, Mr. A purchased 5,000 units and sold 15,000 units.

On 24th November, Mr. A is also purchased plant and machinery for ₹ 2,00,000 plus GST 28%.

Mr. A purchased good at uniform rate through out the year at ₹ 100 per unit plus GST paid 18%.

You are required to find the eligible input tax credit to Mr. A.

Answer:

Stock as on 24th November = 14,000 units

Value of stock = ₹ 14,00,000

(i.e. 14,000 units x ₹ 100 per unit).

Input tax credit eligible is ₹ 2,52,000/-.

Note: ITC on capital goods not allowed.

Example 60:

Mr. C a registered taxable person, was paying tax at composition scheme upto 30th July. However, w.e.f. 31st July, Mr. C becomes liable to pay tax under regular scheme.

Other information:

(a) Input as on 30th July for ₹ 3,54,000 (inclusive of GST paid @18%).

(b) Capital goods purchased for ₹ 5,00,000 (invoice date 22nd April 2017, GST 18%)

Find the eligible ITC to Mr. C.

Note: Mr. C not availed depreciation on the GST paid on capital goods.

Answer:

ITC allowed on inputs = ₹ 54,000

ITC allowed on capital goods

ITC on capital goods = 90,000

Less: 5% p.q. = - 4,500 = ₹ 85,500

(₹ 90,000 x 5% x 1)

Total ITC allowed to Mr. C as on 31st July = ₹ 1,39,500

Example 61:

M/s A Ltd. sold plant and machinery after being used in the manufacture of taxable goods for ₹ 4,00,000 on 1st November 2018. GST is payable on transaction value of pant and machinery 18%. M/s A Ltd. was purchased this machine vide invoice dated 22nd November 2017 for ₹ 5,50,000/- plus GST 18%.

M/s A Ltd. availed the credit on said plant and machinery. Find the amount payable by M/s A Ltd. under section 18(6) of the CGST Act, 2017.

**Answer:**

Particulars	Amount in ₹	Working note
ITC taken on capital goods	99,000	5,50,000 x 18%
Less: 25% reduction	(24,750)	No. of quarters = 5 5% x 5 = 25% reduction
Balance ITC	74,250	
Tax on Transaction value	72,000	4,00,000 x 18%

Note: M/s A Ltd. shall pay amount equal to the input tax credit taken on the said capital goods reduced by 5% per quarter or part thereof from the date of the issue of the invoice for such goods or the tax on the transaction value of such capital goods u/s 15 of the CGST Act, 2017 whichever is higher.

Therefore, M/s A Ltd. is liable to pay an amount of ₹ 74,250/-.

Example 62:

The goods manufactured by Royal Ltd. have been exempted from GST with effect from 15th November 2017. Earlier these goods were liable to tax @18%. Its inputs were liable to GST @12%. Following information is supplied on 15th November 2017:

- The inputs costing ₹ 1,44,720 are lying in stock.
- The inputs costing ₹ 77,184 are in process.
- The finished goods valuing ₹ 4,82,400 are in stock, the input cost is 50% of the value.
- The balance in electronic credit ledger account shows credit balance of ₹ 2,79,104.
- Royal Ltd. also purchased capital goods for ₹ 2,00,000 by paying GST 28% (invoice dated 10th July 2017)

The department has asked Royal Ltd. to reverse the credit taken on inputs referred above. However, Royal Ltd. contends that credit once validly taken is indefeasible and not required to be reversed. Decide.

What would be your answer if the balance in electronic credit ledger receivable account as on 15th November 2017 were ₹ 29,104?

Answer:

Statement showing amount to be paid by Royal Ltd. as on 15th November 2017

S.No.	Particulars	Amount to be paid (₹)	Workings
(i)	Inputs lying in stock	17,366	₹ 1,44,720 x 12/100 = ₹ 17,366
(ii)	Inputs in process (i.e. Work in Progress)	9,262	₹ 77,184 x 12/100 = ₹ 9,262
(iii)	Inputs contained in finished goods lying in stock	28,944	₹ 4,82,400 x 50% x 12/100 = ₹ 28,944
(iv)	Capital goods	51,333	Useful life as per rule 44(1)(b) = 5 years (i.e. 60 months). No. of months capital goods have been in use = 4 months 5 days (i.e. 5 months) The useful remaining life in months = 55 months 2,00,000 x 28% x 55/60 = ₹ 51,333
	Amount to be paid by Royal Ltd.	1,06,906	

Amount payable by Royal Ltd. = ₹ 1,06,906

Less: ITC Receivable = ₹ (2,79,104)

Excess ITC = ₹ (1,72,198)

Excess ITC in electronic credit ledger of ₹ 1,72,198 shall lapse as 15th November 2017.

If the balance in electronic credit ledger as on 15th November 2017 is ₹ 29,104, then amount payable is as follows:

Amount payable by Royal Ltd. = ₹ 1,06,906

Less: ITC Receivable = ₹ (29,104)

Amount payable = ₹ 77,802

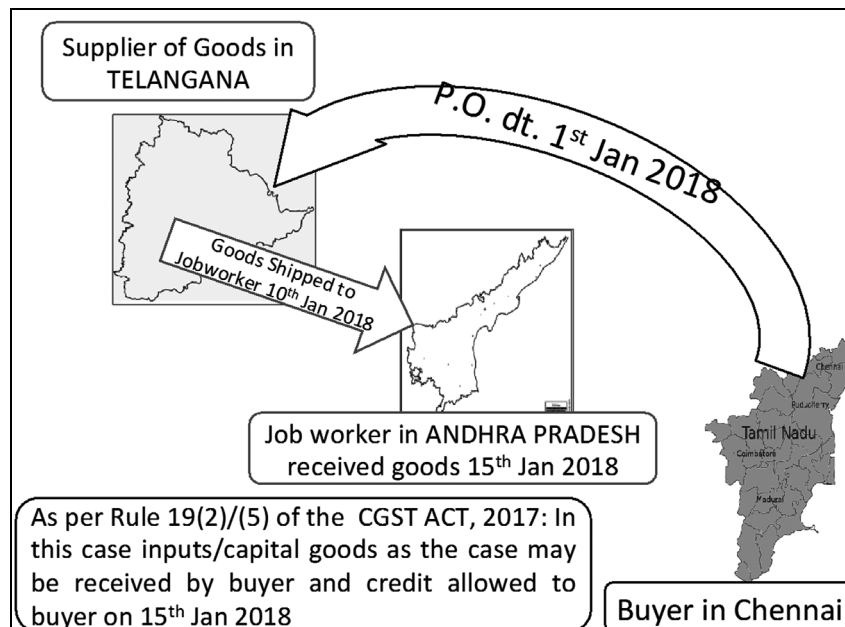
7.6 INPUT TAX CREDIT IN RESPECT OF GOODS SENT FOR JOB-WORK

Taking input tax credit in respect of inputs and capital goods sent for job work [Section 19 of the CGST Act, 2017]:

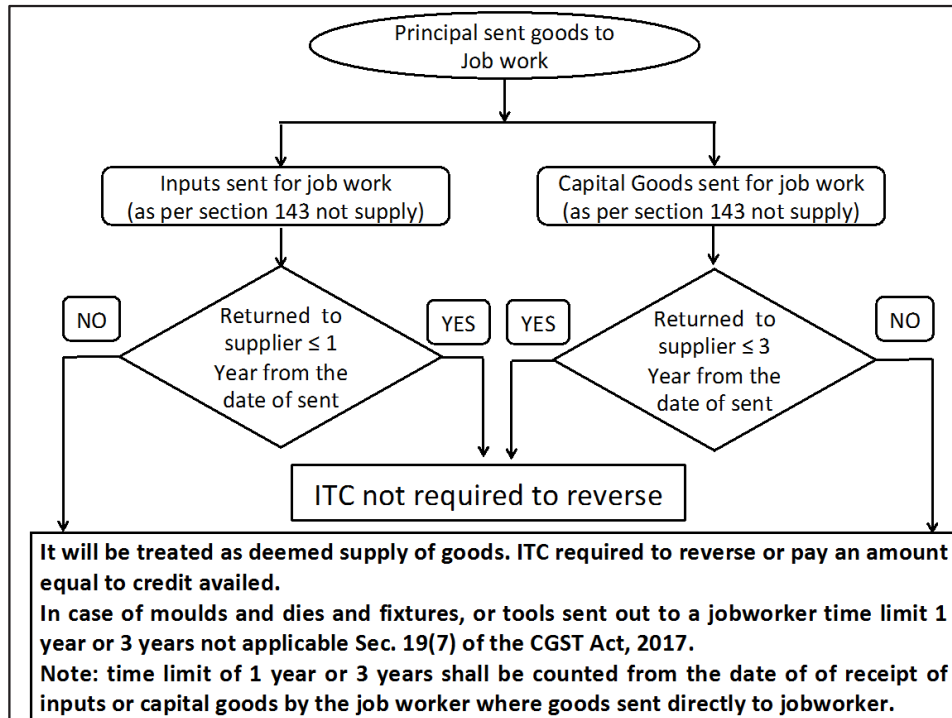
- (1) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on inputs sent to a job worker for job work.
- (2) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job work without being first brought to his place of business.
- (3) Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise or are not supplied from the place of business of the job worker in accordance with clause (a) or clause (b) of sub-section (1) of section 143 within one year of being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out:
Provided that where the inputs are sent directly to a job worker, the period of one year shall be counted from the date of receipt of inputs by the job worker.
- (4) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on capital goods sent to a job worker for job work.
- (5) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on capital goods even if the capital goods are directly sent to a job worker for job work without being first brought to his place of business.
- (6) Where the capital goods sent for job work are not received back by the principal within a period of three years of being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out:
Provided that where the capital goods are sent directly to a job worker, the period of three years shall be counted from the date of receipt of capital goods by the job worker.
- (7) Nothing contained in sub-section (3) or sub-section (6) shall apply to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work.

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

As per Section 19(2) or (5) of the CGST Act, 2017:



As per Section 19(3)/19(6) of the CGST Act, 2017:



What is job-work?

Section 2(68) of the CGST Act, 2017 defines job-work as 'any treatment or process undertaken by a person on goods belonging to another registered person'. The one who does the said job would be termed as 'jobworker'.

Contents of a job-work:

- The ownership of the goods does not transfer to the job-worker but it rests with the principal.
- The jobworker is required to carry out the process specified by the principal on the goods.

Who is Principal?

Section 143 of the CGST Act, 2017: A registered person (hereafter in this section referred to as the "principal") may under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, without payment of tax, to a job worker for job work and from there subsequently send to another job worker and likewise.

Deemed supply:

As per section 143(3) and 143(4) of the CGST Act, 2017 makes provision for payment of tax when the inputs or capital goods respectively are not returned back by the job worker.

The inputs after processing shall be returned back within ONE year of their being sent out. Other wise it will be treated as deemed supply (i.e. supplied by the principal to the job worker on the day when the said inputs were sent out). Therefore, the principal will have to pay tax along with interest.

Example 63:

M/s X Ltd. has supplied inputs to job worker M/s Y Ltd on 25th August 2017. These inputs not received back till 24th August 2018 by M/s X Ltd., after processing.

Find the consequences in this regards?

Answer:

As per section 143(3) of the CGST Act, 2017 principal will be required to pay the tax on supply of inputs. The time of supply is 25th August 2017. If the principal decided to pay tax on 25th August 2018 he will have to pay tax with interest of one year.



Example 64:

M/s X Ltd. (i.e. seller) supplied capital goods on 20th August 2017 directly to job worker M/s Y Ltd and the same received on 25th August 2017 by the job worker, based on the directions of M/s Z (i.e. Buyer-Principal).

These capital goods not received back till 24th August 2020 by M/s Z Ltd. after processing.

Find the consequences in this regards?

Answer:

These capital goods not received back by 24th August 2020 by M/s Z Ltd., after processing. As per section 143(4) of the CGST Act, 2017 principal will be required to pay the tax on supply of capital goods. The time of supply is 25th August 2017. If the principal decided to pay tax on 25th August 2020 he will have to pay tax with interest of 3 year.

Job-work procedural aspects:

Certain facilities with certain conditions are offered in relation to job-work, some of which are as under:

- (a) A registered person (Principal) can send inputs/capital goods under intimation and subject to certain conditions without payment of tax to a job-worker and from there to another job-worker and after completion of job-work bring back such goods without payment of tax. The principal is not required to reverse the ITC availed on inputs or capital goods dispatched to job-worker.
- (b) Principal can send inputs or capital goods directly to the job-worker without bringing them to his premises and can still avail the credit of tax paid on such inputs or capital goods.
- (c) However, inputs and/or capital goods sent to a job worker are required to be returned to the principal within 1 year and 3 years, respectively, from the date of sending such goods to the job-worker.
- (d) After processing of goods, the job-worker may clear the goods to-
 - (i) Another job-worker for further processing
 - (ii) Dispatch the goods to any of the place of business of the principal without payment of tax
 - (iii) Remove the goods on payment of tax within India or without payment of tax for export outside India on fulfillment of conditions.

The facility of supply of goods by the principal to the third party directly from the premises of the job worker on payment of tax in India and likewise with or without payment of tax for export may be availed by the principal on declaring premise of the job-worker as his additional place of business in registration.

In case the job-worker is a registered person under GST, even declaring the premises of the job-worker as additional place of business is not required.

Before supply of goods to the job-worker, the principal would be required to intimate the Jurisdictional Officer containing the details of the description of inputs intended to be sent by the principal and the nature of processing to be carried out by the job-worker.

The said intimation shall also contain the details of the other job-workers, if any. The inputs or capital goods shall be sent to the job worker under the cover of a challan issued by the principal.

The challan shall be issued even for the inputs or capital goods sent directly to the job-worker. The challan shall contain the details specified in Rule 10 of the Invoice Rules. The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal.

Waste clearing provisions:

As per Section 143 (5) of the CGST Act, 2017, waste generated at the premises of the job-worker may be supplied directly by the registered job-worker from his place of business on payment of tax or the principal may clear such waste, in case the job-worker is not registered.



7.7 DISTRIBUTION OF CREDIT BY INPUT SERVICE DISTRIBUTOR

Manner of distribution of credit by Input Service Distributor [Section 20 of the CGST Act, 2017]:

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

Explanation.—For the purposes of this section,—

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

7.8 RECOVERY OF INPUT TAX CREDIT

Manner of recovery of credit distributed in excess [Section 21 of the CGST Act, 2017]:

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

Claim of input tax credit and provisional acceptance thereof (Section 41 of the CGST Act, 2017):

Section 41 (1) of the CGST Act, 2017 Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.



Section 41(2) of the CGST Act, 2017 The credit referred to in sub-section (1) shall be utilised only for payment of self-assessed output tax as per the return referred to in the said sub-section.

Declaration of outward supplies:

As per section 37 of the CGST Act, 2017 every registered person shall electronically furnish Form GSTR-1 details of outward supply of goods or services effected during the tax period on or before 10th of the month succeeding the tax period.

For example, details of outward supply made during January 2018 is required to declare by 10th of February 2018 in Form GSTR-1. It also ensures that the information declared by the registered person tallies with the financial ledger.

Confirming inward supplies:

The information furnished by person making outward supply in various tables of GSTR-1 will be auto populated into GSTR-2A.

As per section 38 of the CGST Act, 2017 every registered person (other than ISD, non-resident taxable person and composition levy assessee) shall verify and validate, modify or delete the details relating to inward supply and credit or debit notes communicated to him.

The registered person who receives the information in Form GSTR-2A shall accept, reject or keep it pending. Accordingly, he should prepare GSTR-2 for the purpose of completing the inward supply and file by 15th of the following month.

Matching or mismatching of ITC:

If the information matches, credit will be finally accepted; otherwise it will be shown as mismatched entry in the

- Form GST MIS-1 (i.e. sent electronically to recipient of supplies)
- and
- GST MIS-2 (i.e. sent electronically to supplier of supplies)

Provisional acceptance of input tax credit:

One of the conditions for taking ITC by the recipient of the supply is that "the tax charged in respect of such supply has actually been paid to the Government, either in electronic cash ledger or through utilization of electronic credit ledger (section 16(2) of the CGST Act, 2017.

Therefore, law provides that the ITC will first be taken provisionally in the electronic credit ledger as per section 41 of the CGST Act, 2017, thereafter, filing of GSTR-3 (consolidated monthly return) be matched with the available information of tax payment in respect of that supply.

Clarifications of certain issues under GST- Input Tax Credit

1. Clarification on issue whether moulds and dies owned by Original Equipment Manufacturers (OEM) that are sent free of cost (FOC) to a component manufacturer is leviable to tax and whether OEMs are required to reverse input tax credit in this case- Under GST Law

The above mentioned issue has been clarified vide Circular No. 47/21/2018-GST dt 08.06.2018:

Moulds and dies owned by the original equipment manufacturer (OEM) which are provided to a component manufacturer (the two not being related persons or distinct persons) on FOC basis does not constitute a supply as there is no consideration involved. Further, since the moulds and dies are provided on FOC basis by the OEM to the component manufacturer in the course or furtherance of his business, there is no requirement for reversal of input tax credit availed on such moulds and dies by the OEM. However, if the contract between OEM and component manufacturer was for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis, the amortised cost of such moulds/dies shall be added to the value of the components. In such cases, the OEM will be required to reverse the credit availed on such moulds/ dies, as the same will not be considered to be provided by



OEM to the component manufacturer in the course or furtherance of the former's business.

Example – A die of ₹ 10,000/- can be used to manufacture 10,00,000 pieces. But the recipient has ordered only 5000 pieces @ 10/- per piece. Now the complete cost of die comes to ₹10,000/- cannot be loaded to supply of 5000 pieces. Hence, the amortised value is to be arrived at and value is to be added. So, we will calculate the amortized value by dividing 10,000 by 10,00,000 and will add per unit cost in the GST value.

2. Clarification on issue whether the books of accounts are required to be maintained at every place of business by the principal and the auctioneer of auction of tea, coffee, rubber etc, and whether they are eligible to avail input tax credit?

The above mentioned issue has been clarified vide Circular No. 47/21/2018-GST dt 08.06.2018:

Books of accounts will be maintained at the principal place of business and additional place(s) of business as follow-

- The principal and the auctioneer may declare the warehouses, where such goods are stored, as their additional place of business.
- The buyer is also required to disclose such warehouse as his additional place of business if he wants to store the goods purchased through auction in such warehouses.

(For the purpose of supply of tea through a private treaty, the principal and an auctioneer may also comply with the said provisions) The principal and the auctioneer are required to maintain the books of accounts relating to each and every place of business in that place it.

However, in case of any difficulty, they may maintain the books of accounts relating to the additional place(s) of business at their principal place of business. (Principal and the auctioneer are required to intimate their jurisdictional officer in writing about the same.)

Principal and the auctioneer shall be eligible to avail input tax credit subject to the fulfillment of other provisions of the CGST Act read with the rules made there under.



Study Note - 8

REGISTRATION UNDER GST



This Study Note includes

- 8.1 Introduction
- 8.2 Persons not liable for Registration
- 8.3 Compulsory Registration in Certain Cases
- 8.4 Procedure for Registration
- 8.5 Concept of Distinct Person under GST
- 8.6 Deemed Registration
- 8.7 Cancellation of Registration
- 8.8 Revocation of Registration

8.1 INTRODUCTION

Registration is the most fundamental requirement for identification of taxpayers ensuring tax compliance in the economy. Without registration, a person can neither collect tax from his customers nor claim any input tax credit of tax paid by him.

Registration of any business entity under the GST Law implies obtaining a unique number from the concerned tax authorities for the purpose of collecting tax on behalf of the government and to avail input tax credit for the taxes on his inward supplies.

Advantages of registration:

The following are advantages to a taxpayer who obtain registration under GST:

- (i) He is legally recognized as supplier of goods or services or both.
- (ii) He is legally authorized to collect taxes from his customers and pass on the credit of the taxes paid on the goods or services supplied to the purchasers/recipients.
- (iii) 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.
- (iv) Seamless flow of Input Tax Credit from suppliers to recipients at the national level.
- (v) Registered person is eligible to apply for Government bids or contracts or assignments.
- (vi) Registered person under GST can easily gain trust from customers.

Exception of One Registration for One State:

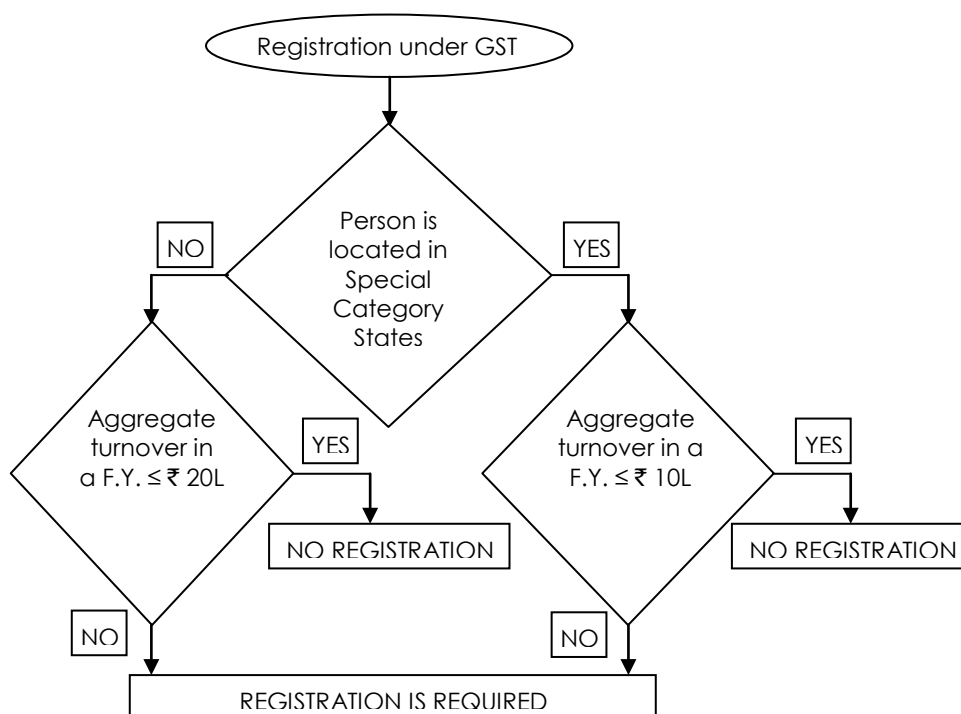
- (i) Multiple registrations permitted for separate business vertical.
- (ii) One as an input service distributor and other for outward supply

Example : 1

Apple manufactures computers, tablets, phones, headphones, music players and more. Management at Apple can divide the overall company performance into smaller segments based on these products to measure where the company is succeeding.

Note: It is similar to AS 17 Business Segments

Sec. 22 (1): Every supply shall be liable to be registered under the GST other than special category States, from where he makes a taxable supply of goods and services or both, if his aggregate turnover in a financial year exceeds ₹ 20 Lakh (in case of special category States ₹ 10 lakhs).



Special Category States under GST:

As per Explanation (3) of Section 22 of CGST act 2017, "special category States " shall mean the States as specified in sub-clause (g) of clause (4) of article 279A of the Constitution. List of which is as follows: –

1. Arunachal Pradesh
2. Assam
3. Jammu & Kashmir
4. Manipur
5. Meghalaya
6. Mizoram
7. Nagaland
8. Sikkim
9. Tripura
10. Himachal Pradesh
11. Uttarakhand

Note:

- (1) Registration is required if the aggregate turnover exceeds ₹ 10 Lakhs in case of special category States except Jammu & Kashmir and States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand. It means person located in Jammu & Kashmir may enjoy the benefit of minimum threshold limit of ₹ 20 lakh.
- (2) The small businesses, having turnover below the threshold limit can, however, voluntarily opt to register.

Advantages of voluntary registration under GST:

- (i) Legally recognized as supplier of goods or services; This helps in attracting more customers.
- (ii) Provide input tax credit to customers. As they can issue taxable invoices, they can collect GST. Their customers can take input credit on their purchases.



- (iii) They will be more competitive than other small business as buying from them will ensure input credit.
- (iv) Voluntarily registered persons can take input credit on their own purchases and input services like legal fees, consultation fees etc.
- (v) They can make inter-state sales without many restrictions.

Note: The following paragraph has been inserted vide THE CENTRAL GOODS AND SERVICES TAX (AMENDMENT), ACT, 2018 to amend Sec 22(1) of CGST Act, 2018:

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

However, the objective to amend Section 22 of the Act is to enhance the exemption limit for registration in the special category States from ten lakh rupees to twenty lakh rupees.

Aggregate turnover in a Financial Year [Sec. 2(6) of CGST] Act:

Aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-state supplies of person having the same PAN, to be computed on all India basis but excludes Central Tax, State Tax, Union Territory Tax, integrated tax and Cess.

Aggregate turnover includes	Aggregate turnover excludes
The value of exported goods/services	Inward supplies on which the recipient is required to pay tax under Reverse Charge Mechanism (RCM).
Exempted goods/services or both which attracts nil rate of tax or wholly exempt from tax and includes non-taxable supply.	• Central tax (CGST), • State tax (SGST), • Union territory tax and • Integrated tax (IGST)
Inter-State supplies between distinct persons having same PAN	• Compensation Cess
Supply on own account and on behalf of principal.	

Important points:

- (i) The turnover will be computed PAN wise.
- (ii) The partner and partnership firm will have different PAN Nos. Thus the turnover of the partner and partnership firm will not be aggregated.
- (iii) The HUF and individual coparcener of the family have different PAN Nos. Hence, turnover of Karta of HUF in his individual capacity and turnover of Karta as a Karta of HUF will not be aggregated.
- (iv) Supply of goods, after completion of jobwork, by a registered jobworker shall be treated as the supply of goods by the principal referred to in Sec. 143 of the CGST Act, 2017, and the value of such goods shall not be included in the aggregate turnover of the registered jobworker. It will be included in the turnover of principal.

Example : 2

Mr. J has been involved in supplying taxable material in J&K, since, 1st July 2017. His turnover in the month of Nov 2017 exceeded the limit of ₹ 20 lacs. Mr. J is required to register under GST law?

Answer:

Taxable turnover exceeds ₹ 20 lacs, and then the supplier shall apply for registration in the month of Nov 2017. Therefore, Mr. J is required to register under GST law.

Example : 3

Mr. C of Calicut is trading on his own goods and also acting as an agent of Mr. B of Bengaluru. Mr. C turnover in the financial year 2017-18 is ₹ 12 lacs in his own account and ₹ 9 lacs on behalf of principal. Whether Mr. C is liable to register compulsorily under GST law.

Answer:

As per explanation 1 in computing the total turnover, both the value of supply on his own account that is ₹ 12 lacs and on behalf of principal ₹ 9 lacs will be aggregated. Hence, the aggregate turnover will be ₹ 21 lacs. Mr. C is liable to register compulsorily under the GST law.

Example : 4

Mr. Rajan is a farmer with an annual turnover in relation to agriculture of ₹ 18,00,000 lakh. Since this income is agriculture-related, the turnover is exempt from GST. However, Mr. Rajan also supplies plastic bags worth of ₹ 2,50,000 (taxable goods) along with his crop and charges separately for this. Mr. Rajan is required to register under GST? Advise.

Answer:

Mr. Rajan is required to register under GST because his aggregate turnover exceeds the threshold limit of ₹ 20 lakh.

Example 5:

Mr. X a dealer dealing with Intra State supply of goods and services has place of business in India furnished the following information in the financial year 2017-18:

1. Sale of taxable goods by Head Office located in Chennai for ₹ 1,00,000
2. Supply of taxable services by Branch office at Bengaluru for ₹ 50,000
3. Supply of goods exempted from GST ₹ 10,000
4. Export of goods and services for ₹ 2,00,000
5. Sale of goods acting as agent on behalf of principal for ₹ 15,00,000

Answer:

Statement showing aggregate turnover in a Financial Year

Particulars	Value in ₹
Sale of taxable goods by Head Office located in Chennai	1,00,000
Supply of taxable services by Branch office at Bengaluru	50,000
Supply of goods exempted from GST	10,000
Export of goods and services	2,00,000
Sale of goods acting as agent on behalf of principal	15,00,000
Aggregate turnover	18,60,000

Since, aggregate turnover does not exceeds ₹ 20 lakhs, Mr. X is not required to register under GST.

Registration effective w.e.f. 1st July 2017 under GST

Sec. 22(2): Every person who, on the day immediately preceding, the appointed day, is registered or holds a licence under an existing law shall be liable to be registered under this Act with effect from the appointed day.

Registration under GST in case of transfer of going concern

Sec. 22(3): Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee or the successor, as the may be, shall be liable to be registered w.e.f. The date of such transfer or succession.



Registration under GST in case of amalgamation or demerger

Sec. 22(4): in case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of High Court, Tribunal or otherwise, the transferee should be liable to be registered, w.e.f the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.

8.2 PERSONS NOT LIABLE FOR REGISTRATION

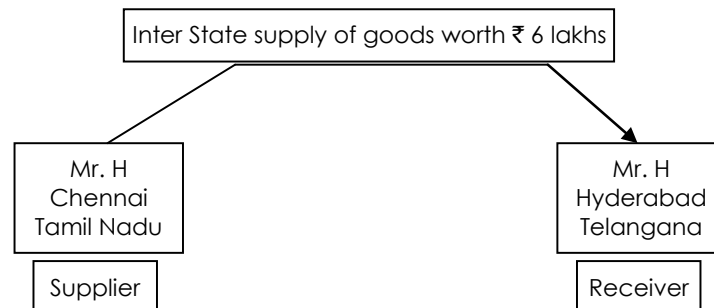
- (i) **Sec 23(1)(a):** Any person engaged exclusively in the business of supplying of goods or services or both they are not liable to tax or wholly exempt from tax under CGST or IGST.
- (ii) **Sec 23(1)(b):** An agriculturist, to the extent of supply of produce out of cultivation of land.
- (iii) **Sec. 23(2):** The Government may, on the recommendation of the GST Council.

8.3 COMPULSORY REGISTRATION IN CERTAIN CASES

Sec. 24: the following categories of persons shall be required to be registered under GST:

- i. Person making any inter-state taxable supply;
- ii. Causal taxable persons making taxable supply;
- iii. Person who are required to pay tax under reverse charge;
- iv. Person who are required to pay tax under sec. 9(5) of CGST (i.e. Electronic Commerce Operator);
- v. Non-resident taxable person making taxable supply;
- vi. Persons who are required to deduct tax under Sec 51, whether or not separately registered under this Act;
- vii. Persons who make taxable supply of goods or services or both on behalf of other taxable person whether as an agent or otherwise;
- viii. Input Service Distributor, whether or not separately registered under CGST;
- ix. Persons who supply of goods or services or both, other than supplies specified under Sec 9(5), through such electronic commerce operator who is required to collect tax at source under Sec 52;
- x. Every electronic commerce operator;
- xi. Every person supplying online information and database access or retrieval services from place outside India to a person in India, other than a registered person; and
- xii. Such other person or class of persons as may be notified by the Govt. on the recommendation of the Council.

(i) Person making any inter state taxable supplies;



If a person makes a single inter-state supply, he will be liable to obtain registration and pay GST.

Inter State supply of services exempted from registration:

The GST Council, in its 22nd meeting held on 6th October 2017, has recommended that it has now been decided to exempt those service providers whose annual aggregate turnover is less than ₹ 20 lacs (₹ 10 lacs in special category states. ₹ 20 lacs for J & K) from obtaining registration even if they are making inter-State taxable supplies of services (vide Notification No. 10/2017 – Integrated Tax Dt 13th Oct 2017).

Example : 6

Mr. CMA Manish, an unregistered person under GST, has place of profession in Bhubaneswar, Odisha, supplies taxable services to Infosys Ltd, a registered person under GST in Bangalore.

Answer the following:

(a) Is it inter-State supply or intra-State supply.

(b) Who is liable to pay GST.

Note: Mr. CMA Manish turnover in the P.Y. is ₹ 18 lakhs.

Answer:

Any person making inter-state supply has to compulsorily obtain registration and therefore in such cases, section 5(4) of IGST will not come into play.

However, Services providers providing aggregate supplies including inter-state services up to ₹ 20 lakh will be exempted from GST.

(a) It is inter-State supply.

(b) Mr. C is not liable to pay IGST. Since, registration is not made mandatory to him.

Example : 7

M/s Moon Pvt. Ltd. is incorporated in Chennai on 1st July 2017 has the following details for the year 2017-18:

S.No.	Particulars	Value (₹ in lacs)
i	Inter-State exempted supply of goods	4.0
ii	Intra-State supplies of services	5.0
iii	Non-taxable supplies	2.0
iv	Exempted supplies of services	0.60
V	Value of export of goods	7.0

M/s Moon Pvt. Ltd. is required to register compulsorily under GST Law, advise.

Whether your answer is different if S.No. (i) above, inter-State taxable supply goods for ₹ 4 lacs.

Answer:

Aggregate turnover is as follows:

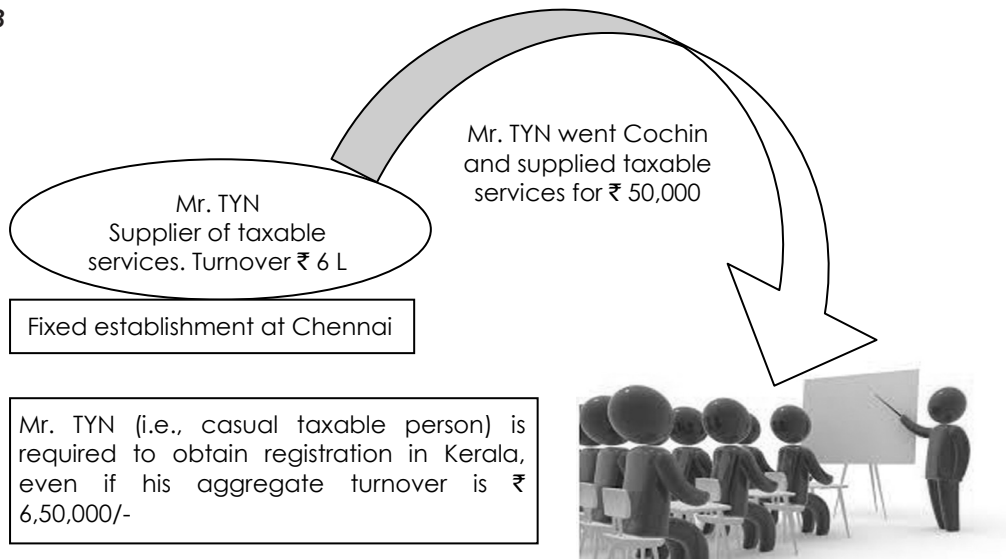
S.No.	Particulars	Value (₹ in lacs)
I	Inter-State exempted supply of goods	4.0
II	Intra-State supplies of services	5.0
III	Non-taxable supplies	2.0
IV	Exempted supplies of services	0.60
V	Value of export of goods	7.0
	Aggregate turnover	18.60

Advise: Since, aggregate turnover of Moon Pvt. Ltd. does not exceeds ₹ 20 lakhs, registration is not compulsory in the financial year 2017-18.

Yes. Our answer is different in the case of M/s Moon Pvt. Ltd. made inter state taxable supply of goods. As per Sec. 24 of the CGST Act, 2017 Person making any inter-state taxable supply of goods is required to register under GST Law irrespective of his aggregate turnover. Therefore, M/s Moon Pvt. Ltd. is required to register under GST Law.

(ii) Causal taxable persons making taxable supply [Sec 2(20)]:

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

Example : 8**Registration compulsory:**

A casual taxable person making taxable supply in India has to compulsorily take registration. There is no threshold limit for registration. A casual taxable person cannot exercise the option to pay tax under composition levy.

Application for Registration:

Casual taxable persons are required to obtain GST registration under a special category at least 5 days prior to the undertaking business.

There is no special form to register as a casual taxable person. Casual taxable person can use the normal form GST REG-01 which is used by other taxable persons for registration.

A casual taxable person, before applying for registration, declare his:

- Permanent Account Number,
- mobile number,
- e-mail address,
- State or Union territory

in Part A of FORM GST REG-01 on the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

The Permanent Account Number shall be validated online by the common portal from the database maintained by the Central Board of Direct Taxes. The mobile number declared shall be verified through a one-time password sent to the said mobile number; and the e-mail address shall be verified through a separate one-time password sent to the said e-mail address.

On successful verification of the Permanent Account Number, mobile number and e-mail address, a temporary reference number shall be generated and communicated to the applicant on the said mobile number and e-mail address. Using this reference number generated, the applicant shall electronically submit an application in Part B of FORM GST REG-01, duly signed or verified through electronic verification code, along with the documents specified in the said Form at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

Advance Payment of Tax:

The Common Portal, after making the mandatory advance deposit of tax for an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought will give the applicant a temporary reference number. The registration certificate shall be issued electronically only after the said deposit appears in his electronic cash ledger. The amount deposited shall be credited to the electronic cash ledger of casual taxable person.

On depositing the amount, an acknowledgement shall be issued electronically to the applicant in FORM GST REG-02.



The casual taxable person can make taxable supplies only after the issuance of the certificate of registration.

Validity of Registration:

The certificate of registration shall be valid for the period specified in the application for registration or ninety days from the effective date of registration, whichever is earlier.

The proper officer may extend registration for a period not exceeding 90 days. The casual taxable person shall make an advance deposit of tax (i.e. ADVANCE PAYMENT OF TAX) in an amount equivalent to estimated tax liability of such person for the period for which extension of registration is sought.

Returns:

The casual taxable person is required to furnish the following returns electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

- a) **FORM GSTR-1** giving the details of outward supplies of goods or services to be filed on or before the tenth day of the following month.
- b) **FORM GSTR-2**, giving the details of inward supplies to be filed after tenth but before before the fifteenth day of the following month.
- c) **FORM GSTR-3** to be filed after fifteenth day but before the twentieth day of the following month.

Annual return:

However, a casual tax person shall not be required to file any annual return as required by a normal registered taxpayer.

Refund by Casual taxable person:

The casual taxable person is eligible for the refund of any balance of the advance tax deposited by him after adjusting his tax liability. The balance advance tax deposit can be refunded only after all the returns have been furnished, in respect of the entire period for which the certificate of registration was granted to him had remained in force. The refund relating to balance in the electronic cash ledger has to be made in serial no. 14 of the last FORM GSTR-3 return required to be furnished by him.

"If the estimated tax is much more than what is payable, it would be a lengthy process to obtain a refund. In the absence of output tax in the state where the goods or service has been supplied as a casual taxable person, input tax credit also cannot be claimed."

Input Tax Credit:

Input tax credit shall be availed in respect of goods or services or both received by a casual taxable person. The taxes paid by a casual taxable person shall be available as credit to the respective recipients.

Example : 9

Mr. Gold runs a retail shop for handmade jewellery and is registered in Chennai. Mr. Gold is planning to sell the jewellery at an exhibition in Mumbai, to be held from 1st January 2018 to 10th January 2018. Advise time with regard to registration and payment of GST.

Answer:

Mr. Gold should apply for registration as a casual taxable person within 5 days prior to the date of commencing the exhibition on 1st January 2018. Mr. Gold should also make an advance deposit of the estimated tax liability for the period from 1st January 2018 to 10th January 2018.

**Example : 10**

M/s X Ltd is an advertising company located in Chennai and is registered as a normal taxable person there. Now, they have secured an assignment to manage digital marketing for the Koti Deepothsavam Festival, which will take place in Hyderabad, Telangana. This will require M/s X Ltd. to displace some resources in Hyderabad until the festival is over. Advise M/s X Ltd. to obtain for separate registration in the State of Telangana.

Answer:

In this case, since M/s X Ltd does not have too many assignments coming from Hyderabad, they can register as a Casual Taxable Person in Telangana for 90 days. This will enable the organizers of the festival to take input credit on all GST paid to M/s X Ltd.

(iii) Person who are required to pay tax under reverse charge;

Already discussed.

(iv) Person who are required to pay tax under sec. 9(5) of CGST (i.e. Electronic Commerce Operator):

Electronic commerce operator: shall include every person who, directly or indirectly, owns, operates or manages an electronic platform that is engaged in facilitating the supply of any goods and/or services or in providing any information or any other services incidental to or in connection there with but shall not include persons engaged in supply of such goods and/or services on their own behalf.

However, Titan company supplying watches and jewels through its own website would not be considered as an e-commerce operator for the purpose of this provision.

(v) Non-resident taxable person making taxable supply:

Sec 2(77): non-resident taxable person means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India. A non-resident taxable person cannot exercise the option to pay tax under composition levy.

Registration compulsory:

A non-resident taxable person making taxable supply in India has to compulsorily take registration. There is no threshold limit for registration.

Application for Registration:

Non-resident taxable person has to apply for registration at least five days prior to commencing his business in India using a valid passport (and need not have a PAN number in India).

A non-resident taxable person is not required to apply in normal application for registration being filed by other taxpayers. A simplified form GST REG-09 is required to be filled. A non-resident taxable person has to electronically submit an application, along with a self-attested copy of his valid passport, for registration, duly signed or verified through electronic verification code (EVC), in FORM GST REG-09, at least five days prior to the commencement of business at the Common Portal either directly or through a Facilitation Centre notified by the Commissioner.

In case the non-resident taxable person is a business entity incorporated or established outside India, the application for registration shall be submitted along with its tax identification number or unique number on the basis of which the entity is identified by the Government of that country or its PAN, if available.

The application for registration made by a non-resident taxable person has to be signed by his authorized signatory who shall be a person resident in India having a valid PAN. On successful verification of PAN, mobile number and e-mail address the person applying for registration as a non-resident taxable person will be given a temporary reference number by the Common Portal for making the mandatory advance deposit of tax for an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought.



The registration certificate shall be issued electronically only after the said deposit appears in his electronic cash ledger. The amount deposited shall be credited to the electronic cash ledger of the Non-resident person.

The non-resident taxable person can make taxable supplies only after the issuance of the certificate of registration.

Advance tax:

A non-resident taxable person has to make an advance deposit of tax in an amount equivalent to his estimated tax liability for the period for which the registration is sought.

Validity of Registration:

The certificate of registration shall be valid for the period specified in the application for registration or ninety days from the effective date of registration, whichever is earlier.

In case the non-resident taxable person intends to extend the period of registration indicated in his application of registration, an application in FORM GSTREG-11 shall be submitted electronically through the Common Portal, either directly or through Facilitation Centre notified by the Commissioner, before the end of the validity of registration granted to him.

The validity period of 90 days can be extended by a further period not exceeding ninety days. The extension will be allowed only on payment of the amount of an additional amount of tax equivalent to the estimated tax liability for the period for which the extension is sought has to be deposited.

Input Tax Credit:

Input tax credit shall not be available in respect of goods or services or both received by a non-resident taxable person except on goods imported by him. The taxes paid by a non-resident taxable person shall be available as credit to the respective recipients.

Returns:

The non-resident taxable person shall furnish a return in FORM GSTR-5 electronically through the Common Portal, either directly or through a Facilitation Centre notified by the Commissioner, including therein the details of outward supplies and inward supplies and shall pay the tax, interest, penalty, fees or any other amount payable under the Act or these rules within 20 days after the end of a calendar month or within 7 days after the last day of the validity period of registration, whichever is earlier.

Refund:

The amount of advance tax deposited by a non-resident taxable person under, will be refunded only after the person has furnished all the returns required in respect of the entire period for which the certificate of registration granted to him had remained in force. Refund can be applied in the serial no. 13 of the FORM GSTR -5.

(vi) Persons who are required to deduct tax under Sec 51 whether or not separately registered under this Act:

As per 22nd GST Council meeting of 6th October 2017 Provisions of TDS deferred to 1st April 2018.

(vii) Persons who make taxable supply of goods or services or both on behalf of other taxable person whether as an agent or otherwise;

Clearing and forwarding (C&F) Agent receives the goods on behalf of the principal. Subsequently he supplies goods to the customer as an agent of the principal. He maintains the stock and report to the principal. If so such an agent shall be liable to obtain the registration compulsorily irrespective of the aggregate turnover of such agent.

(viii) Input Service Distributor whether or not separately registered under CGST;

As per Sec. 2(61) of the CGST Act, 2017, Input Service Distributor (ISD) means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 of the CGST Act, 2017 towards receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax (CGST), State tax

(SGST)/ Union territory tax(UTGST) or integrated tax (IGST) paid on the said services to a supplier of taxable goods or services or both having same PAN as that of the ISD.

It is important to note that the ISD mechanism is meant only for distributing the credit on common invoices pertaining to input services only and not goods (i.e. inputs or capital goods).

Registration compulsory:

An ISD will have to compulsorily take a separate registration as such ISD and apply for the same in form GST REG-1. There is no threshold limit for registration for an ISD. The other locations may be registered separately.

Distribution of input tax credit by ISD:

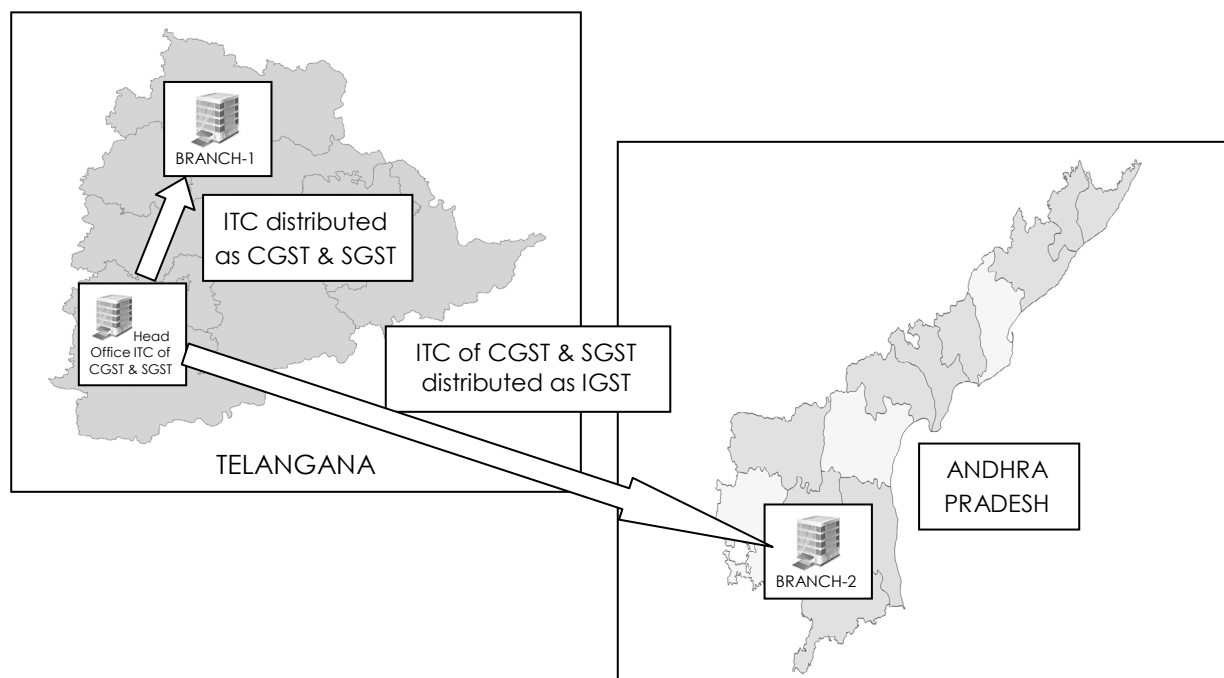
The Head Office would be procuring certain services which would be for common utilization of all units across the country. The bills for such expenses would be raised on the Head Office. But the Head Office itself would not be providing any output supply so as to utilize the credit which gets accumulated on account of such input services. ISD mechanism enables such proportionate distribution of credit of input services amongst all the consuming units.

For the purposes of distributing the input tax credit, an ISD has to issue an ISD invoice, as prescribed in rule 54(1) of the CGST Rules, 2017, clearly indicating in such invoice that it is issued only for distribution of input tax credit.

The input tax credit available for distribution in a month shall be distributed in the same month and details furnished in FORM GSTR-6. Further, an ISD shall separately distribute both the amount of ineligible and eligible input tax credit.

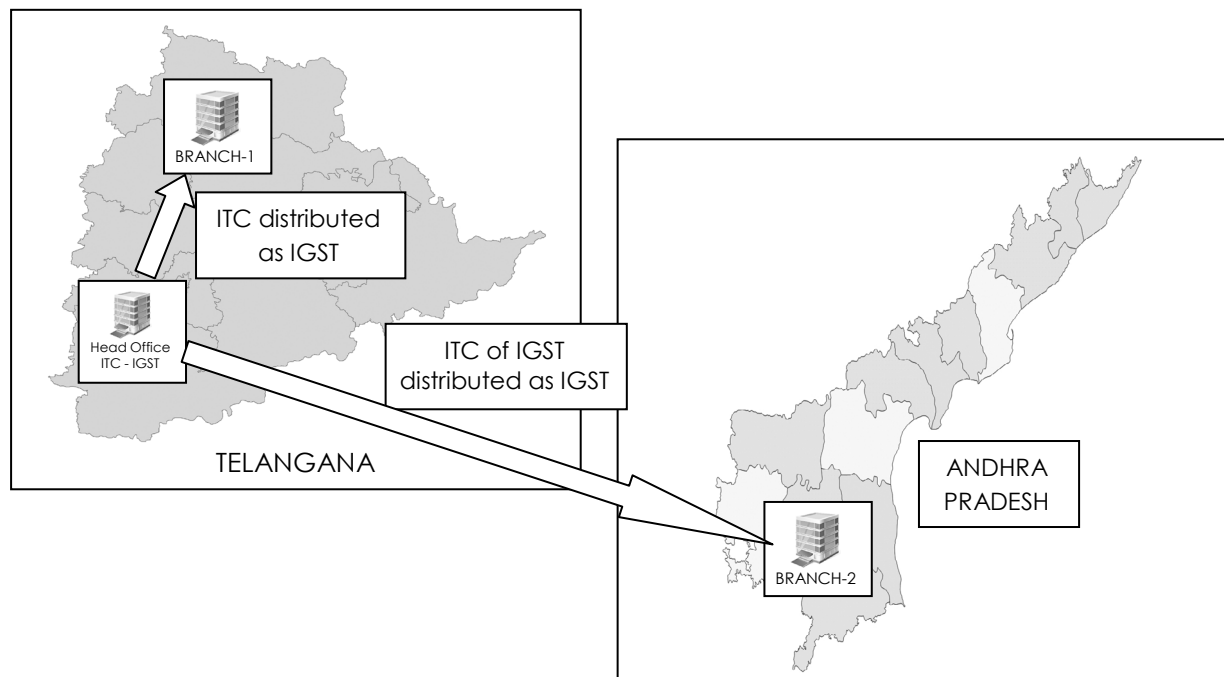
Distribution of CGST and SGST or UTGST:

Distribution of CGST and SGST or UTGST by Input Service Distributor



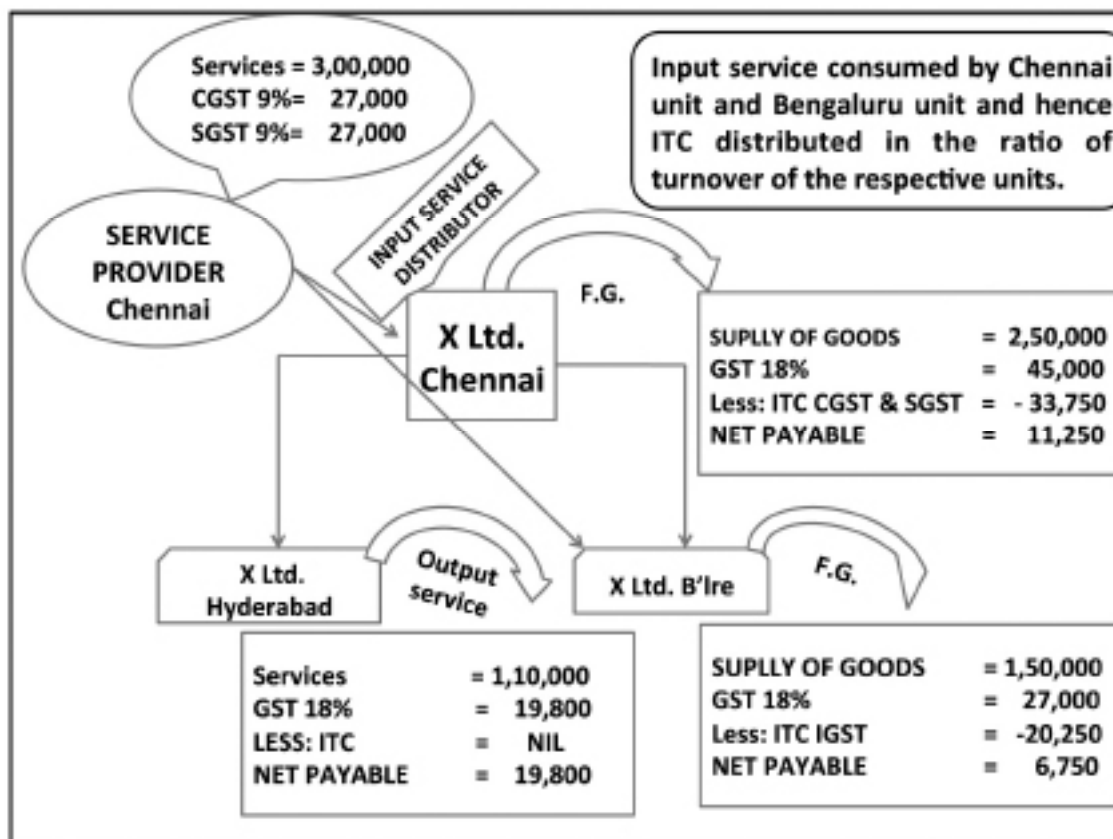
Distribution of IGST:

Distribution of IGST by Input Service Distributor



Manner of Distribution of ITC by ISD:

- (i) The credit has to be distributed only to the unit to which the supply is directly attributable to.
For example, if an ISD has 4 units across the country. However, if a particular input service pertains exclusively to only one unit and the bill is raised in the name of ISD, the ISD can distribute the credit only to that unit and not to other units.
- (ii) If input services are attributable to more than one recipient of credit, the distribution shall be in the pro-rata basis of turnover in the State/Union Territory.
For example, if an ISD has 4 units across the country. If the input services are common for all units, then it will be distributed according to the ratio of turnover of all the units.

Example 11:**Example : 12**

M/s X Ltd. incorporated in Bangalore, with its business locations of selling and servicing of goods in Bangalore, Chennai, Mumbai and Kolkata.

M/s X Ltd. an ISD situated in Bangalore receives invoices indicating ₹ 4 lakhs of Central tax, ₹ 4 lakhs of State tax and ₹ 7 lakhs of integrated tax on input service. Input services commonly used by the units of M/s X Ltd. How these taxes are distributed by M/s X Ltd. to their other units.

Answer:

M/s X Ltd. can distribute central tax, State tax as well as integrated tax of ₹ 15 lakhs as credit of integrated tax amongst its locations at Bangalore, Chennai, Mumbai and Kolkata through an ISD invoice containing the amount of credit distributed.

Example : 13

M/s XYZ Ltd, having its head Office at Mumbai, is registered as ISD. It has three units in different states namely 'Mumbai', 'Chennai' and 'Delhi' which are operational in the current year. M/s XYZ Ltd furnishes the following information for the month of December 2017. You are required to distribute the below input tax credit.

- CGST and SGST paid on services used only for Mumbai Unit: ₹3,00,000/-
- IGST, CGST & SGST paid on services used for all units: ₹12,00,000/-

Total Turnover of the units for the Financial Year 2016-17 are as follows: -



Unit	Turnover in ₹
Turnover of Mumbai unit	5,00,00,000
Turnover of Chennai	3,00,00,000
Turnover of Delhi	2,00,00,000
Total turnover	10,00,00,000

Answer:**Statement showing distribution of input tax credit:**

Particulars	Credit distributed to all the units			
	Total credit available ₹	Mumbai ₹	Chennai ₹	Delhi ₹
CGST & SGST paid on services used only for Mumbai Unit.	3,00,000	3,00,000	0	0
IGST, CGST & SGST paid on services used in all units Distribution on pro-rata basis to all the units which are operational in the current year	12,00,000	6,00,000	3,60,000	2,40,000
Total	15,00,000	9,00,000	3,60,000	2,40,000

Working note:

(1) CGST & SGST paid on services used only for Mumbai Unit should be distributed only to that unit.

(2) Credit distributed pro rata basis on the basis of the turnover of all the units is as under: -

	₹
(a) Unit Mumbai: $(5,00,00,000/10,00,00,000)*12,00,000$	6,00,000
(b) Unit Chennai: $(3,00,00,000/10,00,00,000)*12,00,000$	3,60,000
(c) Unit Delhi: $(2,00,00,000/10,00,00,000)*12,00,000$	2,40,000

Return:

An ISD will have to file monthly returns in GSTR-6 within 13 days after the end of the month and will have to furnish information of all ISD invoices issued.

The details in the returns will be made available to the respective recipients in their GSTR 2A.

The recipients may include these in its GSTR-2 and take credit.

Annual Return:

An ISD shall not be required to file Annual return.

Important Note: An ISD cannot accept any invoices on which tax is to be discharged under reverse charge mechanism. This is because the ISD mechanism is only to facilitate distribution of credit of taxes paid. The ISD itself cannot discharge any tax liability (as person liable to pay tax) and remit tax to government account. If ISD wants to take reverse charge supplies, then in that case ISD has to separately register as Normal taxpayer.

Clarifications of certain issues under GST

Clarification on issues under GST related to casual taxable person and recovery of excess Input Tax Credit distributed by an Input Service distributor – under GST Law

The above mentioned issue has been clarified vide Circular No. 71/45/2018-GST dt 26.10.2018:

1. CBIC has clarified that the amount of advance tax, which a casual taxable person is required to deposit while obtaining registration should be calculated after considering the due eligible ITC, which might be available to such taxable person.



2. The Circular clarified that in case of long running exhibitions (for a period more than 180 days), the taxable person cannot be treated as a CTP and thus such person would be required to obtain registration as a normal taxable person, subject to certain conditions as prescribed in the said circular.
3. It has also directed that recipient unit(s) who have received excess credit from ISD may deposit the said excess amount voluntarily along with interest if any by using FORM GST DRC-03. If not, then proceedings under section 73 or 74 of the CGST Act can be initiated against the said recipient unit(s) and general penalty may also be imposed.

(ix) Persons who supply of goods or services or both, other than supplies specified under Sec 9(5) through such Electronic Commerce Operator (ECO) who is required to collect tax at source under Sec 52;

As per 22nd GST Council meeting of 6th October 2017 Provisions TCS deferred to 1st April 2018.

(x) Every electronic commerce operator:

As per section 2(45) of the CGST Act, 2017, Electronic Commerce Operator (ECO) means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

As per CGST (Amendment) Act, 2018 – In Section 24 [Compulsory registration in certain cases], now small e-commerce operators who are not required to collect TCS u/s 52 would not be liable for registration.

Registration compulsory:

As per Section 24(x) of the CGST Act, 2017 the benefit of threshold exemption is not available to e-commerce operators and they are liable to be registered irrespective of the value of supply made by them.

A person supplying goods or services through e-commerce operator would not be entitled to threshold exemption (i.e. ₹ 20 lacs or ₹ 10 lacs as the case may be). This requirement is, however, applicable only if the supply is made through such electronic commerce operator who is required to collect tax at source under section 52 of the CGST Act, 2017.

Hence, any person who intends to sell on Flipkart or Amazon or Snapdeal must obtain GST registration.

An e-commerce operator is any online business that operates using a marketplace model. Under the marketplace model, an organization sets up an online portal where several small suppliers put up their products for sale. The organization that runs the portal collects payments, takes a percentage as a convenience fee, and sends the rest of the payment to the suppliers (like Flipkart, Amazon, and Snapdeal etc.).

However, where the e-commerce operators are liable to pay tax on behalf of the suppliers under a notification issued under section 9 (5) of the CGST Act, 2017, the suppliers of such services are entitled for threshold exemption.

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

Sec. 2(17) of IGST Act, 2017 "online information and database access or retrieval services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as:-

- (i) advertising on the internet;
- (ii) providing cloud services;
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- (v) online supplies of digital content (movies, television shows, music and the like);
- (vi) digital data storage; and
- (vii) online gaming;



8.4 PROCEDURE FOR REGISTRATION

Registration Procedure under GST [u/s 25 of CGST]:

Every person who is liable to be registered shall apply for registration within 30 days from the date on which he becomes liable to registration, before applying for registration declare his

1. Legal name of business
2. PAN,
3. Mobile number,
4. e-mail address,
5. State or Union territory

in Part A of Form GST REG -01 on Common Portal.

On successful verification of these numbers, a reference number will be generated.

Applicant shall submit Part B of Form GST REG-01, duly signed, along with documents specified in the said Form at the Common Portal.

Form GST REG – 02: Acknowledgement of Application

If these documents are found to be in order, the Proper Officer shall approve the registration within 3 working days from the date of submission.

8.5 CONCEPT OF DISTINCT PERSON UNDER GST

Distinct persons are persons with different GSTINs belonging to one legal entity (single PAN) situated within the same state or in two different states or in a different country.

Provisions of Distinct Person under the CGST (Amendment) Act[u/s 25 (2),(4) and (25):

(2) A person seeking registration under this Act shall be granted a single registration in a State or Union territory: Provided that a person having multiple business verticals in a State or Union territory may be granted a separate registration for each business vertical, subject to such conditions as may be prescribed.

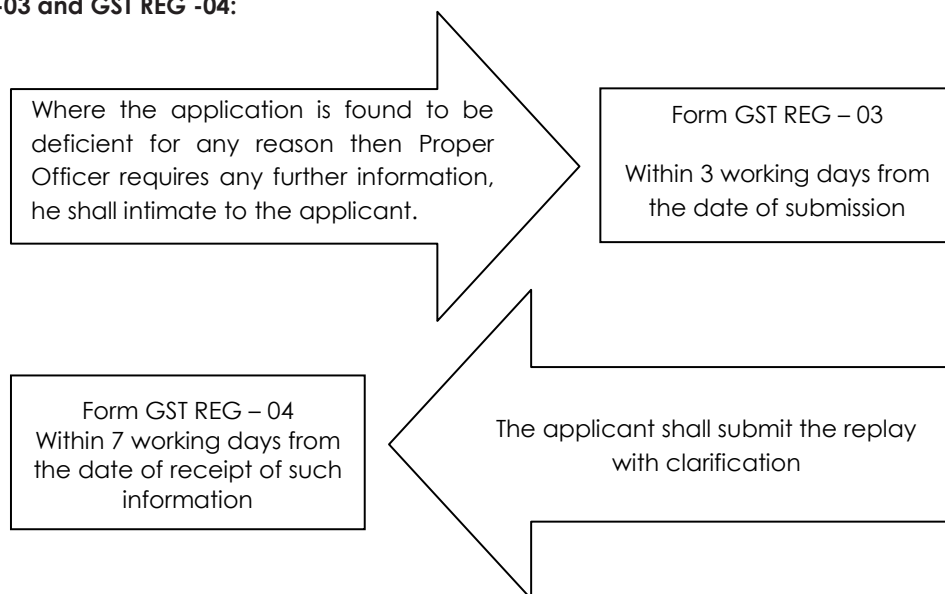
(4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

For example: If person has one place of business in Maharashtra for which registration is obtained and another place of business of the same person in Gujarat for which registration is obtained then such place of businesses will be considered as distinct person.

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

8.6 DEEMED REGISTRATION

If the Proper Officer fails to take action in 3 working days from the date of submission, the registration is deemed to have been approved.

Form GST REG -03 and GST REG -04:

The Proper Officer is satisfied with the clarification; he may approve the grant of registration to the applicant within 7 working days on receipt of such clarification.

If no reply is furnished by applicant in response to notice issued or Proper Officer is not satisfied with the clarification, he shall reject such application with reasons in writing and inform the applicant in Form GST REG-05.

Where no action is taken in 7 working days on the clarification received from the applicant, the registration is deemed to have been granted.

Certificate of Registration:

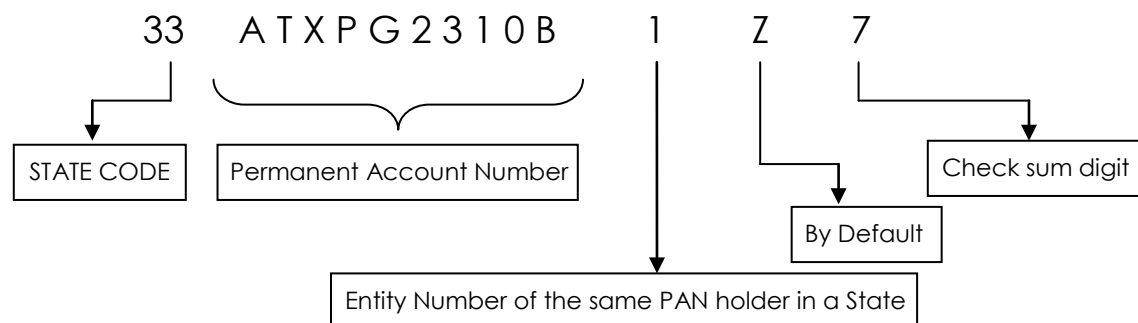
Certificate of registration shall be granted in Form GST REG-06.

Certification of registration contains Goods and Service Tax Identification Number (GSTIN):

- Two characters for the State code
- Ten characters for the PAN
- Two characters for the entity code; and
- One checksum character

Structure of GSTIN

Each taxpayer is assigned a state-wise PAN-based 15 - digit Goods and Services Taxpayer Identification Number (GSTIN).





8.7 CANCELLATION OF REGISTRATION

Cancellation of GST Registration [Section 29 of the CGST Act, 2017]:

The following persons are allowed to cancel GST registration:

- 1) The registered person himself
- 2) By a GST officer
- 3) The legal heir of the registered person

The above mentioned section has been amended vide CGST (Amendment Act), 2018 wherein the word after the word "CANCELLATION", the words "OR SUSPENSION" shall be inserted.

However, the purpose to amend Sec 29 of the Act so as to insert a provision for temporary suspension of registration while cancellation of registration is under process.

1) Cancellation by the registered person him self [Sec. 29(1)]:

Registered person under GST can himself/herself cancel their registration in any one of the following cases:

- Business has been discontinued.
- The business has been sold or transferred to some other party. That other party needs to register under GST.
- There is any change in the constitution of the business (like Partnership firm now converted into Private Limited company and so on).
- Turnover is not more than ₹ 20 lakh (₹ 10 lakh in the case of special category States except J&K).

Clarification on issues relating to Cancellation of Registration- Under GST Law

The above mentioned issue has been clarified vide Circular No. 69/43/2018 –GST dated 26.10.2018:

The clarification on the same are as below:

1. The Circular clarified that in cases where it is difficult to exactly identify or pinpoint the day on which occurrence of the event warranting cancellation of registration occurs, 30-days deadline may be liberally interpreted and taxpayers application for cancellation of registration may not be rejected because of possible violation of deadline.
2. It has also directed the proper officers to accept all applications within 30 days (except where application is incomplete or in case of transfer, merger or amalgamation where new entity is unregistered) since cancellation of registration has no effect on liability of taxpayer for any acts of commission/omission committed before or after date of cancellation
3. Person whose registration has been cancelled shall file a final return in Form GSTR-10, failing which notice in Form GSTR-3A has to be issued and in case the failure continues, assessment order in Form GST ASMT-13 under section 62 shall be issued to determine liability of taxpayer.

2) Cancellation by a GST officer [Section 29(2)]:

GST registration of a person or business can be cancelled by a proper GST officer in one of the following cases:

- If the registered person has violated any of GST provisions or laws.
- A composition registered person has not filed tax returns for three consecutive quarters.
- A normal registered person who has not filed returns consecutively for six months.
- A voluntarily registered person who has not commenced any business in the six months from the registration date.
- If the registration is obtained by fraud methods, the proper officer has the right to cancel the registration with retrospective effect.



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

The following proviso of the Sec 22(1) of CGST Act has been inserted, vide CGST (Amendment) Act, 2018:

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

Note : The above paragraph inserted vide the CGST (Amendment) Act, 2018 :

In rule 22, in sub-rule (4), the following proviso shall be inserted, namely:-

"Provided that where the person instead of replying to the notice served under sub-rule (1) for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29, furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order in FORM GST-REG 20.

Section 29(3) of the CGST Act, 2017, the cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

Section 29(4) of the CGST Act, 2017, the cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.

Section 29 (5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

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

(3) Cancellation by the legal heir of the registered person:

The legal heir of the registered person can request cancellation through an application, in case of death of the person.

Procedure for cancellation of registration under GST: GST registration can be cancelled by using the forms below.

Particulars	Relevant Form
Application for cancellation	GST REG 16
Note: The voluntary registrations can only be cancelled after one year or more from the date of GST registration.	
A proper officer can send the show cause / cancellation notice to a registered person	GST REG 17
The concerned person must reply back in this form within 7 days of notice explaining why his/her registration should not be cancelled	GST REG 18
This form will be used by the proper officer to issue a formal order for cancellation of registration. The order is to be sent within 30 days from the application date or from the date of response in GST REG 18 form.	GST REG 19
If the proper officer is satisfied with the explanation, he can use this form to drop the cancellation proceeding and pass a formal order.	GST REG 20

**8.8 REVOCATION OF REGISTRATION****Revocation of cancellation of registration [Section 30 of the CGST Act, 2017]:**

As per section 30(1) of the CGST Act, 2017, subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within 30 days from the date of service of the cancellation order.

As per section 30(2) of the CGST Act, 2017, the proper officer may, in such manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application:

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

As per Section 30(3) of the CGST Act, 2017, the revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.

Procedure for Revocation of Cancellation of Registration as per Rule 23 of the CGST Rules, 2017:

Particulars	Relevant Form
Application for revocation of cancellation of registration within 30 days from the date of service of the order of cancellation of registration	GST REG-21 Note: Application for revocation cannot be filed if cancellation is on account of failure to furnish returns or failure to pay liability unless such return is filed / liabilities are discharged.
For justified reasons, proper officer shall revoke cancellation of registration within 30 days of application or receipt of clarification by passing an order	GST REG-22
For unjustified reasons, proper officer shall issue show cause notice	GST REG-23
Reply shall be filed in within 7 days.	GST REG-24
For justified reasons, proper officer shall revoke cancellation of registration within 30 days of application or receipt of clarification by passing an order.	GST REG-22
For unjustified reasons, proper officer shall reject the application for revocation of cancellation of registration by passing an order.	GST REG-05

Note: Notification No. 56/2018 – Central Tax, dated 23.10.2018 seeks to exempt a person making inter-state taxable supplies of handicrafts goods from the requirement to obtain registration.

Provided that the aggregate value of such supplies, to be computed on all India basis, does not exceed the amount of aggregate turnover above which a supplier is liable to be registered in the State or Union territory in accordance with sub-section (1) of section 22 of the said Act, read with clause (iii) of the Explanation to that section.

Such persons making inter-State taxable supplies shall be required to obtain a Permanent Account Number and generate an e-way bill in accordance with the provisions of rule 138 of the Central Goods and Services Tax Rules, 2017.

Note: NOTIFICATION No. 58/2018 – Central Tax, dated 26.10.2018 notifies the persons whose registration under the CST Act has been cancelled by the proper officer on or before the 30th September, 2018, as the class of persons who shall furnish the Final Return in FORMGSTR-10 of the said rules till the 31st December, 2018.

Study Note - 9

TAX INVOICE, CREDIT AND DEBIT NOTES AND OTHER DOCUMENT UNDER GST



This Study Note includes

- 9.1 Tax Invoice
- 9.2 Credit and Debit Notes

9.1 TAX INVOICE

Under the GST regime, a "tax invoice" means the tax invoice referred to in section 31 of the CGST Act, 2017.

For example, if a registered person is making or receiving supplies (from unregistered persons), then a tax invoice needs to be issued by such registered person.

However, if a registered person is dealing only in exempted supplies or is availing the composition scheme (composition dealer), then such a registered person needs to issue a bill of supply in lieu of tax invoice.

An invoice or a bill of supply need not be issued if the value of the supply is less than Rs. 200/-, subject to specified conditions provisos to sub section (3) of Section 31 of the CGST Act, 2017.

Importance of tax invoice under GST:

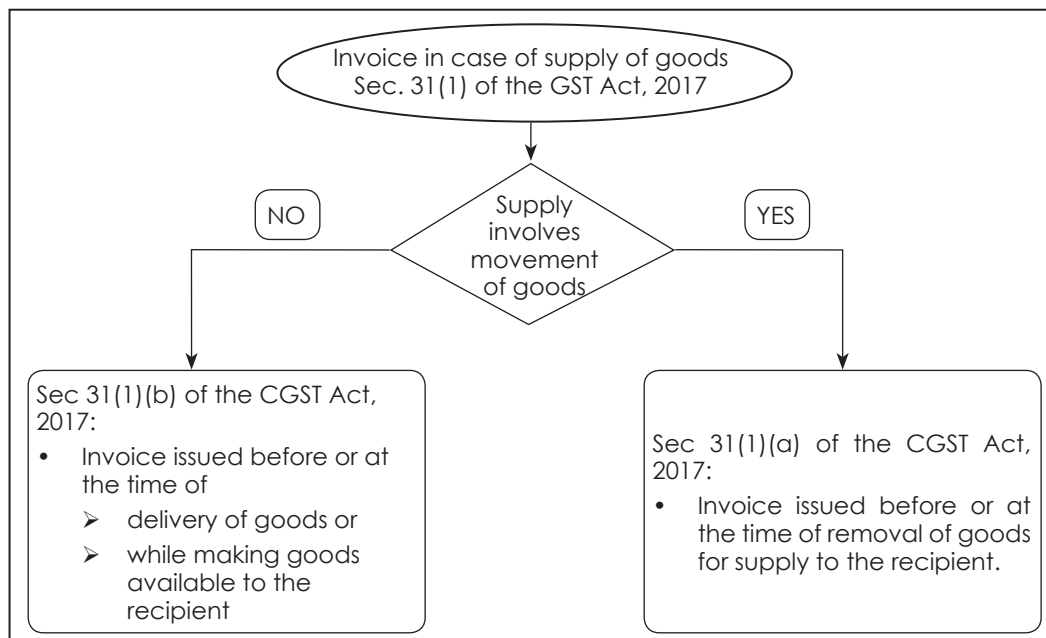
Under GST, a tax invoice an essential document for the recipient to avail Input Tax Credit (ITC).

A registered person cannot avail Input Tax Credit unless he is in possession of a tax invoice or a debit note.

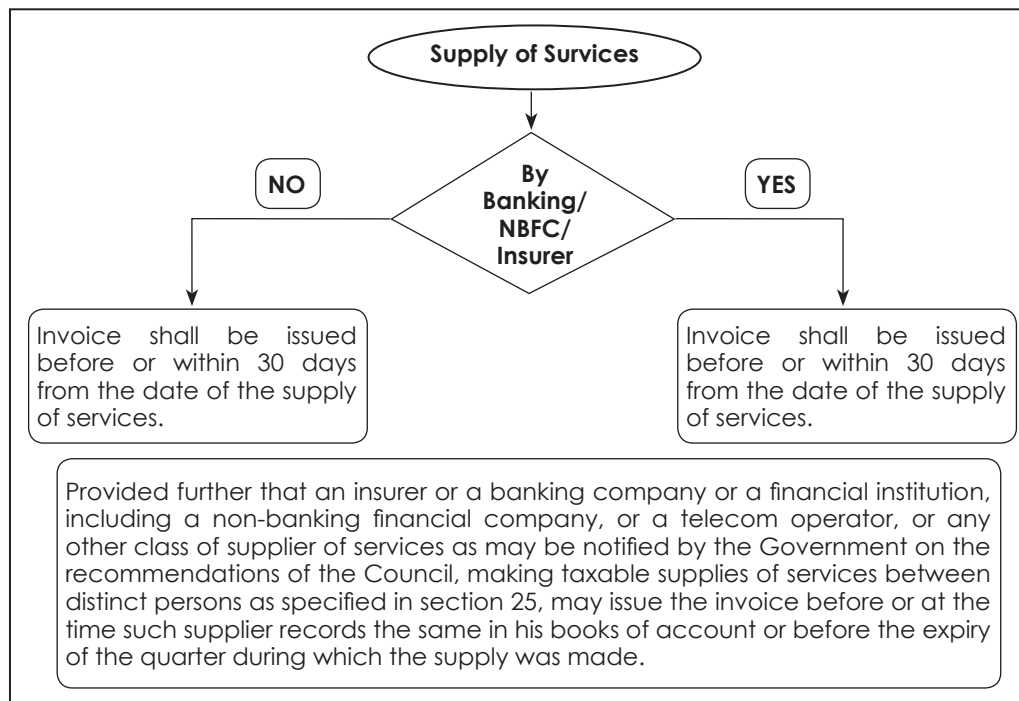
GST is chargeable at the time of supply. Invoice is an important indicator of the time of supply.

When should a tax invoice or a bill of supply be issued by a registered person:

Time limit for issuing tax invoice in case of supply of goods [Section 31(1) of the CGST Act, 2017]:



Time limit for issuing tax invoice in case of supply of service: [Sec. 31(2) of the CGST Act, 2017 read with Rule 47 of the CGST Rules, 2017]



Advance Payment:

Section 31(3)(d) of the CGST Act, 2017 a registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a receipt voucher or any other document, containing such particulars as may be prescribed, evidencing receipt of such payment;

Contents of tax invoice:

[Subject to rule 54 (i.e. other than input service Distributor, Banking or NBFC and so on) Section 31 read with Rule 46 of the CGST Rules, 2017]

There is no format prescribed for an invoice, however, Invoice rules makes it mandatory for an invoice to have the following fields (only applicable field are to be filled):

- Name, address and GSTIN of the supplier
- A consecutive serial number, in one or multiple series, containing alphabets or numerals or special characters like hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination there of, unique for a financial year
- Date of its issue
- Name, address and GSTIN or UIN, if registered, of the recipient.
- Name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered and where the value of taxable supply is fifty thousand rupees or more
- HSN code of goods or Accounting Code of Services
- Description of goods or services
- Quantity in case of goods and unit or Unique Quantity Code there of

Unique Identity Number (UIN):

The GST Act states that any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries and any other persons notified by the Commissioner can be granted a GST Unique Identity Number. GST Unique Identity Number can be used for the purposes of claiming GST refund on notified supplies of goods or services and other purposes as notified by the GST authorities.



- (i) Total value of supply of goods or services or both
- (j) Taxable value of supply of goods or services or both, taking into account the discount or abatement, if any
- (k) Rate of tax (Central tax, State tax, Integrated tax, union territory tax or cess)
- (l) Amount of tax charged in respect of taxable goods or services (Central tax, State tax, Integrated tax, union territory tax or cess)
- (m) Place of supply along with the name of State, in case of a supply in the course of inter-State trade or commerce
- (n) Address of delivery where the same is different from the place of supply
- (o) Whether the tax is payable on reverse charge basis
- (p) Signature or digital signature of the supplier or his authorized representative

Bill of Supply [Section 31(3)(c) of the CGST Act, 2017 read with Rule 49 of the CGST Rules 2017]:

A bill of supply is similar to a GST invoice except that bill of supply does not contain any tax amount as the seller cannot charge GST to the buyer.

A bill of supply is issued in cases where tax cannot be charged:

- Registered person is selling exempted goods/services,
- Registered person has opted for composition scheme

Invoice-cum-bill of supply

As per Notification No. 45/2017 – Central Tax dated 13th October 2017

If a registered person is supplying taxable as well as exempted goods/services to an unregistered person, then he can issue a single "invoice-cum-bill of supply" for all such supplies.

Contents of Bill of supply:

A bill of supply shall be issued by the supplier containing the following details:

- (a) Name, address and GSTIN of the supplier
- (b) A consecutive serial number, in one or multiple series, containing alphabets or numerals or special characters like hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination there of, unique for a financial year
- (c) Date of its issue
- (d) Name, address and GSTIN or UIN, if registered, of the recipient
- (e) HSN Code of goods or Accounting Code for Services
- (f) Description of goods or services or both
- (g) Value of supply of goods or services or both taking into account discount or abatement, if any
- (h) Signature or digital signature of the supplier or his authorized representative

Manner of issuing invoice [Rule 48 of the CGST Act, 2017]:

- (1) The invoice shall be prepared in triplicate, in the case of supply of goods, in the following manner, namely,- by marking on face of the invoice
 - (a) ORIGINAL FOR RECIPIENT;
 - (b) DUPLICATE FOR TRANSPORTER; and
 - (c) TRIPLICATE FOR SUPPLIER.
- (2) The invoice shall be prepared in duplicate, in the case of the supply of services, in the following manner, namely,-
 - (a) ORIGINAL FOR RECIPIENT; and
 - (b) DUPLICATE FOR SUPPLIER.
- (3) The serial number of invoices issued during a tax period shall be furnished electronically through the common portal in FORM GSTR-1.



Revised Invoice [Section 31(3)(a) of the CGST Act, 2017]:

A registered person may, within one month from the date of issuance of certificate of registration and in such manner as prescribed in the Invoice Rules, issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him.

This provision is necessary, as a person who becomes liable for registration has to apply for registration within 30 days of becoming liable for registration. When such an application is made within the time period and registration is granted, the effective date of registration is the date on which the person became liable for registration. Thus there would be a time lag between the date of grant of certificate of registration and the effective date of registration.

For supplies made by such person during this intervening period, the law enables the issuance of a revised invoice, so that ITC can be availed by the recipient on such supplies.

Receipt Voucher on receipt of advance payment [section 31(3)(d) of the CGST Act, 2017]:

Whenever a registered person receives an advance payment with respect to any supply of goods or services or both, he has to issue a receipt voucher or any other document, containing such particulars as per Rule 50 of the CGST Rules, 2017 evidencing the receipt of such payment.

Proviso to Rule 50 of the CGST Rules, 2017, if at the time of receipt of advance,

- (i) the rate of tax is not determinable, the tax may be paid @ 18%;
- (ii) The nature of supply is not determinable, the same shall be treated as inter-State supply.

Refund Voucher [section 31(3)(e) of the CGST Act, 2017]:

Where any such receipt voucher is issued, but subsequently no supply is made and no tax invoice is issued, the registered person who has received the advance payment can issue a refund voucher against such payment as per Rule 51 of the CGST Rules, 2017.

Invoice and payment voucher by a person liable to pay tax under reverse charge [Section 31(3)(f)&(g) of the CGST Act, 2017]:

A registered person liable to pay tax under reverse charge (both for supplies on which the tax is payable under reverse charge mechanism and "supplies received from unregistered persons suspended till 31st March 2018") has to issue an invoice in respect of goods or service or both received by him. Such a registered person in respect of such supplies also has to issue a payment voucher at the time of making payment to the supplier.

Continuous supply of goods:

Section 31(4) of the CGST Act, 2017: In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.

Section 31(5) of the CGST Act, 2017: Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,—

- (a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;
- (b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;
- (c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

Supply of services ceases under a contract before the completion of the supply:

Section 31(6) of the CGST Act, 2017: In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.

**Goods being sent or taken on approval for sale or return:**

Section 31(7) of the CGST Act, 2017: Notwithstanding anything contained in sub-section (1), where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.

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

9.2 CREDIT AND DEBIT NOTES**Credit and Debit Notes (Section 34 of the CGST Act, 2017):**

Credit note (Sec 34(1)&(2) of CGST Act): In cases where tax invoice has been issued for a supply and subsequently it is found that the value or tax charged in that invoice is more than what is actually payable/chargeable or where the recipient has returned the goods, the supplier can issue a credit note to the recipient.

A registered person who issues such a credit note has to declare details of such credit note in the return for the month during which such credit note has been issued but not later than

- **September** following the end of the financial year in which such supply was made
- or
- the date of furnishing of the relevant annual return, whichever is earlier.

The tax liability of the registered person will be adjusted in accordance with the credit note issued, however no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

Note: The above mentioned Section has been amended vide CGST Amendment Act, 2018, wherein A Dealer may Issue One Credit note for multiple Invoices.

However, the main objective to amend 34(1) of the CGST Act, is to ease the procedural matter which was causing great hardship to dealers where specific Credit notes were required to be made for each invoice.

Debit note (Sec 34(3)&(4) of CGST Act): In cases where tax invoice has been issued for a supply and subsequently it is found that the value or tax charged in that invoice is less than what is actually payable/chargeable, the supplier can issue a debit note to the recipient. Any registered person who issues a debit note in relation to a supply of goods or services or both, shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.

Amendment:

The following paragraph was inserted vide CGST Amendment Act, 2018 to amend Sec 34(1) and Sec 34(3) of CGST Act, 2017:

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

A Dealer may Issue One Credit note for multiple Invoices. A change has to be made in the GST Portal also. It may be noted here that this is a procedural matter which was causing great hardship to dealers where specific Credit notes were required to be made for each invoice. However a practice was followed by the dealers to tag the last invoice only with the credit note in addition to providing an annexure of all invoices linked thereto in the hard copy. Such procedure followed for removal of difficulties till date should also be considered leniently by the field officers.

Contents of a revised tax invoice and credit or debit note:

- (a) The word “Revised Invoice”, wherever applicable, indicated prominently
- (b) Name, address and GSTIN of the supplier
- (c) Nature of the document



- (d) A consecutive serial number containing alphabets or numerals or special characters like hyphen or dash and slash symbolised as “-” and “/” respectively, and any combination thereof, unique for a financial year
- (e) Date of issue of the document
- (f) Name, address and GSTIN or UIN, if registered, of the recipient
- (g) Name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered
- (h) Serial number and date of the corresponding tax invoice or, as the case may be, bill of supply
- (i) Value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient.
- (j) Signature or digital signature of the supplier or his authorized representative.

As per Notification No. 39/2018 – Central Tax, dt 04.09.2018 – It amends Rule 36(2) of the CGST Rules, 2017 which further clarifies that even if all specified particulars stipulated by Invoice rules is not satisfied, yet the invoice contains the amount of tax charged, description of supplies, total value of supply, GSTIN of the supplier & recipient and place of supply in case of inter-state supply, then the ITC can be availed by registered taxpayers. This is a very important amendment and hence ITC cannot be denied due to certain clerical mistakes in the invoice by the supplier.

As per Notification No. 39/2018 – Central Tax, dt 04.09.2018 - With regards to transport of goods without the tax invoice as laid down in Rule 55, the same procedure of transport of goods through delivery challans as applicable on Transportation of goods in a semi knocked down or completely knocked down condition, shall also apply to the transportation of goods in batches or lots, i.e. –

- (a) the supplier shall issue the complete invoice before dispatch of the first consignment;
- (b) the supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice;
- (c) each consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice; and
- (d) the original copy of the invoice shall be sent along with the last consignment.

As per Circular No. 64/38/2018 -GST dt 14.09.2018- Modification of the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances, as clarified in Circular Nos. 41/15/2018-GST dated 13.04.2018 and 49/23/2018-GST dated 21.06.2018

The GST Council clarifies issues regarding the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances.

It has been clarified that if a consignment of goods is accompanied with an invoice or any other specified document and an e-way bill then the proceedings may not be initiated in the following situations :

1. Spelling mistakes in the name of the consignor or the consignee but the GSTIN, whichever is applicable, is correct.
2. Error in the address of the consignee to the extent that the locality and other details of the consignee are correct.
3. Error in one or two digits of the document number mentioned in the e-way bill.
4. Error in one or two digits of the vehicle number.
5. Error in 4 or 6 digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct.
6. Error in the pin-code but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill. A penalty of ₹ 1000 under IGST act will be levied in Form GST DRC -07 for every consignment which is incomplete or erroneous in above terms. Also, a record of all these consignments will have to be sent to the proper officer to his controlling officer on a weekly basis.

Study Note - 10

ACCOUNTS AND RECORDS UNDER GST



This Study Note includes

10.1 Accounts and Records

10.2 Compulsorily Audit

10.3 Period for Retention of Accounts

10.1 ACCOUNTS AND RECORDS

Every registered person is required to self-assess the taxes payable and furnish a return for each tax period (i.e. the period for which return is required to be filed).

The compliance verification is done by the department through scrutiny of returns, audit and/or investigation. Thus the compliance verification is to be done through documentary checks rather than physical controls. This requires certain obligations to be cast on the taxpayer for keeping and maintaining accounts and records.

As per Section 35(1) of the CGST Act, 2017:

Every registered person is required to maintain a true and correct account of the following:

- (a) Production or manufacture of goods
- (b) Inward and outward supply of goods or services, or both
- (c) Stock of goods
- (d) Input tax credit availed
- (e) Output tax payable and paid
- (f) Any other particulars deemed necessary

The above records must be maintained at each place of business registered under GST.

In addition, the rules (i.e. Rule 56(1) of the CGST Rules, 2017) also provide that the registered person shall keep and maintain records of-

- (a) goods or services imported or exported or
- (b) supplies attracting payment of tax on reverse charge along with the relevant documents, including invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers, refund vouchers and e-way bills

Rule 56(2) of the CGST Rules, 2017 every registered person, other than a person paying tax under section 10, shall maintain the accounts of stock in respect of goods received and supplied by him, and such accounts shall contain particulars of the

- opening balance,
- receipt,
- supply,
- goods lost, stolen, destroyed,
- written off or disposed of by way of gift or
- free sample and
- the balance of stock including raw materials, finished goods, scrap and wastage thereof.

It means the above records not required to be maintained by a supplier opting for composition levy.



Rule 56(3) of the CGST Rules, 2017 every registered person shall keep and maintain a separate account of advances received, paid and adjustments made thereto.

Rule 56(4) of the CGST Rules, 2017 every registered person, other than a person paying tax under section 10, shall keep and maintain an account, containing the details of tax payable (including tax payable in accordance with the provisions of sub-section (3) and sub-section (4) of section 9), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.

It means the above records not required to be maintained by a supplier opting for composition levy.

Rule 56(5) of the CGST Rules, 2017 every registered person shall keep the particulars of -

- (a) names and complete addresses of suppliers from whom he has received the goods or services chargeable to tax under the Act;
- (b) names and complete addresses of the persons to whom he has supplied goods or services, where required under the provisions of this Chapter;
- (c) the complete address of the premises where goods are stored by him, including goods stored during transit along with the particulars of the stock stored therein.

Rule 56(6) of the CGST Rules, 2017 if any taxable goods are found to be stored at any place(s) other than those declared under sub-rule (5) without the cover of any valid documents, the proper officer shall determine the amount of tax payable on such goods as if such goods have been supplied by the registered person.

Rule 56(7) of the CGST Rules, 2017 every registered person shall keep the books of account at the principal place of business and books of account relating to additional place of business mentioned in his certificate of registration and such books of account shall include any electronic form of data stored on any electronic device.

Rule 56(8) of the CGST Rules, 2017 any entry in registers, accounts and documents shall not be erased, effaced or overwritten, and all incorrect entries, otherwise than those of clerical nature, shall be scored out under attestation and thereafter, the correct entry shall be recorded and where the registers and other documents are maintained electronically, a log of every entry edited or deleted shall be maintained.

Rule 56(9) of the CGST Rules, 2017 each volume of books of account maintained manually by the registered person shall be serially numbered.

Rule 56(10) of the CGST Rules, 2017 unless proved otherwise, if any documents, registers, or any books of account belonging to a registered person are found at any premises other than those mentioned in the certificate of registration, they shall be presumed to be maintained by the said registered person.

Rule 56(11) of the CGST Rules, 2017 every agent referred to in clause (5) of section 2 shall maintain accounts depicting the,-

- (a) particulars of authorisation received by him from each principal to receive or supply goods or services on behalf of such principal separately;
- (b) particulars including description, value and quantity (wherever applicable) of goods or services received on behalf of every principal;
- (c) particulars including description, value and quantity (wherever applicable) of goods or services supplied on behalf of every principal;
- (d) details of accounts furnished to every principal; and
- (e) tax paid on receipts or on supply of goods or services effected on behalf of every principal.

Rule 56(12) of the CGST Rules, 2017 every registered person manufacturing goods shall maintain monthly production accounts showing quantitative details of raw materials or services used in the manufacture and quantitative details of the goods so manufactured including the waste and by products thereof.

Rule 56(13) of the CGST Rules, 2017 every registered person supplying services shall maintain the accounts showing quantitative details of goods used in the provision of services, details of input services utilised and the services supplied.

Rule 56(14) of the CGST Rules, 2017 every registered person executing works contract shall keep separate accounts for works contract showing -

- (a) the names and addresses of the persons on whose behalf the works contract is executed;



- (b) description, value and quantity (wherever applicable) of goods or services received for the execution of works contract;
- (c) description, value and quantity (wherever applicable) of goods or services utilized in the execution of works contract;
- (d) the details of payment received in respect of each works contract; and
- (e) the names and addresses of suppliers from whom he received goods or services.

Rule 56(15) of the CGST Rules, 2017 the records under the provisions of this Chapter may be maintained in electronic form and the record so maintained shall be authenticated by means of a digital signature.

Rule 56(16) of the CGST Rules, 2017 accounts maintained by the registered person together with all the invoices, bills of supply, credit and debit notes, and delivery challans relating to stocks, deliveries, inward supply and outward supply shall be preserved for the period as provided in section 36 and shall, where such accounts and documents are maintained manually, be kept at every related place of business mentioned in the certificate of registration and shall be accessible at every related place of business where such accounts and documents are maintained digitally.

Rule 56(17) of the CGST Rules, 2017 any person having custody over the goods in the capacity of a carrier or a clearing and forwarding agent for delivery or dispatch thereof to a recipient on behalf of any registered person shall maintain true and correct records in respect of such goods handled by him on behalf of such registered person and shall produce the details thereof as and when required by the proper officer.

56(18) Every registered person shall, on demand, produce the books of accounts which he is required to maintain under any law for the time being in force.

As per Notification No. 28/2018 – Central Tax, dt 19.6.2018 - Sub-rule (1A) has been inserted in rule 58 (Records to be maintained by owner or operator of godown or warehouse and transporters) so that a transporter who is registered in more than one state/union territory having the same PAN can apply for a unique common enrolment number by submitting the details in FORM GST ENR-02 using any one of his GSTINs. However, once he has received this Enrolment No., he cannot use any GSTIN for the purposes of any liability.

As per Circular No. 61/35/2018-GST dt 04.09.2018 - Clarification on E-way bill in case of storing of goods in godown of transporter

The GST Council clarifies issue regarding the textile sector and problems being faced by weavers & artisans regarding storage of their goods in the warehouse of the transporter. It clarify that in case the consignee/ recipient taxpayer stores his goods in the godown of the transporter, then the transporter's godown has to be declared as an additional place of business by the recipient taxpayer. In such cases, mere declaration by the recipient taxpayer to this effect with the concurrence of the transporter in the said declaration will suffice. Where the transporter's godown has been declared as the additional place of business by the recipient taxpayer, the transportation under the e-way bill shall be deemed to be concluded once the goods have reached the transporter's godown (recipient taxpayer's additional place of business). Hence, e-way bill validity in such cases will not be required to be extended. Further, whenever the goods are transported from the transporters' godown, which has been declared as the additional place of business of the recipient taxpayer, to any other premises of the recipient taxpayer then, the relevant provisions of the e-way bill rules shall apply. Hence, whenever the goods move from the transporter's godown (i.e. recipient taxpayer's additional place of business) to the recipient taxpayer's any other place of business, a valid e-way bill shall be required, as per the extant State-specific e-way bill rules.

Synopsis.

1. Place of business now also includes a warehouse, a godown, or any other place where a taxable person stores in goods, supplies or receives goods or services or both.
2. In case, the goods have reached the transporter's godown i.e. additional place of business then the transportation under the e-way bill will be deemed to be concluded. There will be no need of an extension of e-way bill's validity.
3. The recipient will be required to maintain books of accounts in relation to the goods stored at the godown of the transporters.

10.2 COMPULSORILY AUDIT

Compulsorily Audit [Section 35(5) of the CGST Act, 2017 read with rule 80(3) of the CGST Rules, 2017]:



Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a Chartered Accountant or a Cost Accountant.

As per Rule 80 (3) of the CGST Rules, 2017 every registered person whose aggregate turnover during a financial year exceeds **two crore rupees** shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in **FORM GSTR-9C**, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

Note: Any department of the Central or State Government / local authority which is subject to audit by CAG need not get their books of account audited by a CA/ CMA. – CGST (AMENDMENT) ACT, 2018.

As per Notification No. 49/2018 – Central Tax, dt 13.09.2018 - In terms of Rule 80(3) of CGST Rules, every registered person whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

10.3 PERIOD FOR RETENTION OF ACCOUNTS

Period for Retention of Accounts under GST (Section 36 of the CGST Act, 2017)

As per section 36 of the CGST Act, 2017 every registered taxable person must maintain the accounts books and records for at least 72 months (**6 years**) from the due date of furnishing of annual return for the year pertaining to such accounts and records. The period will be counted from the last date of filing of Annual Return for that year.

The last date of filing the Annual return is 31st December of the following year.

Example: 1

For the year 2017-2018, the due date of filing the annual return is 31.12.2018. The books & records of 2017-2018 must be maintained for 6 years, i.e., 31.12.2024.

If the taxpayer is a part of any proceedings before any authority (First Appellate) or is under investigation then he must maintain the books for 1 year after the order of such proceedings/appeal has been passed.

Clarification of certain issues Under GST Law Regarding Accounts And Records to be maintained by Principal And auctioneer in case of auction of tea, coffee, rubber etc.

The above mentioned issue is clarified vide **Circular No. 47/21/2018-GST dated 08.06.2018:**

The clarification on the same are as below:

Books of accounts will be maintained at the principal place of business and additional place(s) of business as follow-

- The principal and the auctioneer may declare the warehouses, where such goods are stored, as their additional place of business.
- The buyer is also required to disclose such warehouse as his additional place of business if he wants to store the goods purchased through auction in such warehouses.

(For the purpose of supply of tea through a private treaty, the principal and an auctioneer may also comply with the said provisions) The principal and the auctioneer are required to maintain the books of accounts relating to each and every place of business in that place it.

However, in case of any difficulty, they may maintain the books of accounts relating to the additional place(s) of business at their principal place of business. (Principal and the auctioneer are required to intimate their jurisdictional officer in writing about the same.)

Principal and the auctioneer shall be eligible to avail input tax credit subject to the fulfillment of other provisions of the CGST Act read with the rules made there under.

Study Note - 11

PAYMENT OF TAX



This Study Note includes

11.1 Computation of Tax Liability and Payment of Tax

11.2 Interest on Delayed Payment of Tax

11.3 Refund of Tax

11.1 COMPUTATION OF TAX LIABILITY AND PAYMENT OF TAX

Payments to be made:

Under GST, the tax to be paid is mainly divided into 3 heads – IGST, CGST and SGST.

A registered person is required to make GST payment –

- A Registered dealer is required to make GST payment if GST liability exists.
- Registered dealer required to pay tax under Reverse Charge Mechanism(RCM).
- E-commerce operator is required to collect and pay TCS
- Dealers required deducting TDS

The amount of tax, interest, penalty etc. payable by the person is required to be paid either by utilizing balance available in electronic cash ledger or electronic credit ledger. The amount utilized for payment from the balance in electronic credit or cash ledger will be shown in GST PMT-1.

Payment of tax, interest, penalty and other amounts [Section 49 of the CGST Act, 2017]:

Section 49(1) of the CGST Act, 2017 every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.

Section 49(2) of the CGST Act, 2017 the input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.

ELECTRONIC LDGERS IN GST:

There are three types of Ledgers maintained to discharge tax liability under CGST Act,2017 which are as follows:



S. No.	Ledger name	Amount to be credited	Amount Utilization
(1)	Electronic Cash Ledger	Every deposit made towards • tax, • interest, • penalty, • fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.	As per Section 49(3) of the CGST Act, 2017: The amount available in the electronic cash ledger may be used for making any payment towards • tax, • interest, • penalty, • fees or any other amount payable under the provisions of this Act or the rules made there under in such manner and subject to such conditions and within such time as may be prescribed.
(2)	Electronic Credit Ledger	The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.	As per Section 49(4) of the CGST Act, 2017: The amount available in the electronic credit ledger may be used for making any payment towards • output tax under this Act or • under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.
(3)	Electronic Liability Ledger	All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.	

Section 49(5) of the CGST Act, 2017

Sec. 49(5)	Input	Offset option available against	Not available	Order of Set off
(a)	IGST	IGST CGST SGST UTGST	-	1.IGST 2.CGST 3.SGST 4.UTGST
(b)	CGST	CGST IGST	× SGST × UTGST	1.CGST 2.IGST
(c)	SGST	SGST IGST	× CGST × UTGST	1.SGST 2.IGST
(d)	UTGST	UTGST IGST	× CGST × SGST	1.UTGST 2.IGST

[Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;

Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax] - CGST (Amendment) Act, 2018.

Section 49(5) (e) of the CGST Act, 2017 the central tax shall not be utilised towards payment of State tax or Union territory tax; and

Section 49(5)(f) of the CGST Act, 2017 the State tax or Union territory tax shall not be utilised towards payment of central tax.

**Example 1:**

M/s X Ltd. being a registered person supplying taxable goods in the following manner:

Particulars	₹
Intra-State supply of goods	18,00,000
Inter-State supply of goods	13,00,000
Intra-State purchases	13,00,000
Inter-State purchases	1,50,000
ITC at the beginning of the relevant tax period:	
CGST	1,30,000
SGST	1,30,000
IGST	1,70,000

- (i) Rate of CGST, SGST and IGST to be 9%, 9% and 18% respectively.
- (ii) Inward and outward supplies are exclusive of taxes.
- (iii) All the conditions necessary for availing the input tax credit have been fulfilled.

Compute the net GST payable by M/s X Ltd. during the tax period. Make suitable assumptions.

Answer:

Statement showing input tax credit (i.e. Electronic Credit Ledger)

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
Opening balance	1,30,000	1,30,000	1,70,000
Add: ITC for the tax period	1,17,000	1,17,000	27,000
Total credit	2,47,000	2,47,000	1,97,000

Statement showing Net GST payable by M/s X Ltd for the tax period

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
Output tax	1,62,000	1,62,000	2,34,000
Less: ITC allowed	-2,47,000	-2,47,000	-1,97,000
Sub-total	-85,000	-85,000	37,000
Less: CGST credit adjusted against IGST	37,000	Nil	-37,000
Net GST liability	Nil	Nil	Nil
Excess ITC c/f	48,000	85,000	Nil

Example 2:

Mr. A has output Tax Liability of ₹ 1,00,000/- towards CGST & SGST/UGST and ₹ 20,000 towards IGST and also interest payable of ₹ 1800/-. Explain the manner of discharge tax liability by Mr. A in the following two independent cases:

1. Input tax credit available of CGST & SGST is ₹ 25,000/- each & IGST is ₹ 25,000/-
2. Input tax credit not available.

Answer:**Case 1:**

In case Input Tax credit available-



Ledger	Particulars	CGST	SGST	IGST	Interest payable	Total
Electronic liability ledger	Output tax payable	50,000	50,000	20,000	1,800	1,21,800
Electronic credit ledger	Input Tax Credit	25,000	25,000	25,000		75,000
	Net output tax liability	25,000	25,000	-		50,000
	IGST Credit set off	5,000 (Note-1)	-	-		5,000
Electronic cash ledger	Cash to be deposited	20,000	25,000	-	1800 (Note-2)	46,800

Note:

1. IGST Credit can be adjusted against CGST & SGST.
2. Interest cannot be adjusted with Input Tax credit

Case 2: In case Input Tax credit is not available-

Ledger	Particulars	CGST	SGST	IGST	Interest payable	Total
Electronic liability ledger	Output tax payable	50,000	50,000	20,000	1,800	1,21,800
Electronic Cash ledger	Amount to be deposited	50,000	50,000	20,000	1,800	1,21,800

Order of claiming input tax credit is as follows-

Example 3:

Y Ltd is operating in two states Andhra Pradesh and Tamil Nadu. The tax liability for the month of August 2017 is as follows-

S.No	Tax Liability	Andhra Pradesh (₹)	Tamil Nadu (₹)
1.	Output CGST Payable	25,000	10,000
2.	Output SGST Payable	10,000	5,000
3.	Output IGST payable	3,000	2,500
4.	Input CGST	8,000	13,000
5.	Input SGST	15,000	1,500
6.	Input IGST	12,000	16,000

Calculate the tax payable for the month of August 2017.

Answer:

Net Tax payable for the month of August is as follows-

Particulars	Andhra Pradesh			Tamil Nadu		
	CGST	SGST	IGST	CGST	SGST	IGST
Output tax	25,000	10,000	3,000	10,000	5,000	2,500
Input credit available for setoff	8,000	15,000	12,000	13,000	1,500	16,000
Input credit adjusted	8,000	10,000	3,000	10,000	1,500	2,500
Tax payable after setting of ITC	17,000	-	-	-	3,500	-
Input Tax available for further set-off	-	5,000	9,000	3,000	-	13,500
Inter Adjustment of ITC	9,000	-	(9,000) (Note-1)	-	3,500	(3,500)
Net Tax payable in cash	8,000	-	-	-	-	-
Input credit carry forwarded to next month	-	5,000	-	3,000	-	10,000

Notes:

1. IGST Input tax credit can be adjusted against Output tax of liability of IGST, CGST, SGST, UTGST (set off can be done in same Order)
2. SGST Input tax credit cannot be adjusted against output CGST & Vice-Versa.
3. CGST & SGST Input tax credit of one State cannot be adjusted against Output CGST & SGST of other state (same principle is applicable to IGST credit also).



As per section 49(6) of the CGST Act, 2017 the balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54.

As per section 49(7) of the CGST Act, 2017 all liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.

As per section 49(8) of the CGST Act, 2017 every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:—

The following order shall be maintained while settling the tax liability:

Step 1	First self-assessed tax, and other dues related to returns of previous tax periods
Step 2	Self-assessed tax, and other dues related to the return of the current tax period;
Step 3	Any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74.

As per section 49(9) of the CGST Act, 2017 Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.

Explanation.— For the purposes of this section,—

- (a) the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;
- (b) the expression,—
 - (i) “tax dues” means the tax payable under this Act and does not include interest, fee and penalty; and
 - (ii) “other dues” means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder.

Example 4:

X Ltd has following tax liabilities under the provisions of Act-

S.No	Particulars	Amount (₹)
1.	Tax liability of CGST, SGST/UGST, IGST for supplies made during August 2017	1,00,000
2.	Interest & Penalty on delayed payment and filing of returns belonging to August 2017	20,000
3.	Tax liability of CGST, SGST/UGST, IGST for supplies made during September 2017	1,20,000
4.	Interest & Penalty on delayed payment and filing of returns belonging to September 2017	20,000
5.	Demand raised as per section 73 or section 74 under CGST Act, 2017 belonging to July 2017	8,00,000
6.	Demand raised as per the old provisions of Indirect Taxes	1,00,000

X Ltd has ₹ 5,00,000 in Electronic cash ledger. Suggest X Ltd in discharging the tax liability.

Answer:

Balance in Electronic cash ledger can be used in the following manner to discharge tax liability by X Ltd-

Particulars	Amount
Balance available in Electronic cash ledger	5,00,000
Less-	
Tax liability of CGST, SGST/UGST, IGST for supplies made during August 2017	(1,00,000)
Interest & Penalty on delayed payment and filing of returns belonging to August 2017	(20,000)
Tax liability of CGST, SGST/UGST, IGST for supplies made during September 2017	(1,20,000)
Interest & Penalty on delayed payment and filing of returns belonging to September 2017	(20,000)
Demand raised as per section 73 or section 74 UNDER CGST Act, 2017	(2,40,000)
Balance in electronic cash ledger	Nil

The balance amount of ₹ 5,60,000 towards demand raised under section 73 or section 74 under CGST Act, 2017 to be discharged before discharging liability of demand rose under old provisions of Indirect Taxes.

**Section 49A and 49B inserted vide CGST (Amendment) Act, 2018 –**

49A - Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.

49B - Notwithstanding anything contained in this Chapter and subject to the provisions of clause (e) and clause (f) of sub-section (5) of section 49, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the input tax credit on account of integrated tax, central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax.

11.2 INTEREST ON DELAYED PAYMENT OF TAX

Under GST, interest is liable to be paid when there is a delay in payment. Provisions have been made for interest to be paid, when there is a lapse by the tax payer as well as by the Department.

Interest on late payment of tax by tax payer [Section 50 of the CGST Act, 2017]:

The two scenarios where a tax payer will be liable to pay interest are:

1. Delayed payment of tax
2. Input tax credit has been claimed in excess or where it was not eligible to be claimed/ Tax liability has been shown to be less than the actual

Interest rates Notification No. 13/2017 – Central Tax dt. 28th June 2017:

Section	Scenario	Interest rate w.e.f. 1-7-2017
50(1) of the CGST Act, 2017	Delayed payment of tax	18% per annum
50(3) of the CGST Act, 2017	A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 of the CGST Act, 2017 or undue or excess reduction in output tax liability under sub-section (10) of section 43 of the CGST Act, 2017, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be,	24% per annum

As per Section 50(2) of the CGST Act, 2017 the interest under sub-section 50(1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to paid.

Online payments even made after 8 pm will be credited on the same day to the taxpayer's account. While there will be no physical challan accepted for the GST payment while the challans will be generated from the gst.gov. in only for all the payments of taxes, fees, penalty, interest

For the payment of challan under the 10000 rupees limit, it can be done over the counter with cash, cheques, demand draft through authorised banks while for the payments exceeding the amount of ₹ 10000 will be collected through digital mode only

**Example 5:**

M/s Rajendra Dyeing Pvt. Ltd. supplied goods worth ₹ 10,00,000 to M/s Y Ltd in the month of September, 2017 plus GST 12%. M/s Rajendra Dyeing Pvt. Ltd. paid the GST on 5th December 2018. The amount of input tax credit is 70,000 is available in the books. Calculation of interest payment if any under section 50 of the CGST Act, 2017.

Answer:

Tax = ₹ 1,20,000

Less: ITC = ₹ (70,000)

Tax payable = ₹ 50,000

Interest shall be calculated from the next day of the due date of payment from 21st October 2017 to the actual date of payment i.e. 5th December 2018.

Interest is ₹ 50,000 × 18% × 411/365 = ₹ 10,134/-

Example 6:

M/s Nose Ltd reduced the amount of ₹ 2,25,000 from the output tax liability in contravention of the provisions of section 42(10) of the CGST Act, 2017 in the month of January 2018 (vide invoice date 12.01.2018), which is ineligible credit at invoice level. As a result a show cause notice issued Central Tax Department under section 74 of the CGST Act, 2017 along with interest. M/s Nose Ltd paid the tax and interest on 5th March 2018. Find the interest liability if any?

Note: ignore the penalty.

Answer:

As per section 42(10) read with section 50(3) of the CGST Act, 2017 amount reduced from the output tax liability in contravention of the provisions of section 42(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 section 50(3) of the CGST Act, 2017.

Therefore, applicable rate of interest is @24% per annum.

January month return due date is 20th of February 2018.

Interest = ₹ 1,923/-

(₹ 2,25,000 × 24% × 13/365)

Note: from 21st February 2018 to 5th March 2018 = 13 days

Case Law 1:

- (1) Jeevan Diesels & Electricals Ltd. v. Commissioner of Central Excise, Pondichery (2016) 68 taxmann.com 325 (Chennai-CESTAT);

Hon'ble Tribunal held that interest under Section 50 of the CGST Act, 2017 should be computed in accordance with interest rate in force during the period of delay.

- (2) Interest payable for actual period of delay, not for whole month (BPL Mobile v. CCE (2005) 1 STT 140 (CESTAT).
- (3) Interest is payable even if duty is paid before issue of show cause notice [(CC v. Toyota Kirloskar Motors (2015) 52 GST 1208 (SC)]

**Interest is not applicable in the following cases:**

- (1) No interest is payable if excise duty is paid voluntarily by assessee before show cause notice, even when demand was time barred [CCE v Gujarat Narmada Fertilizers Co. Ltd. (2012) 285 ELT 336 (Guj HC DB)]
- (2) No interest is payable if there was delay in payment of duty by one department of Government to other, because it is only adjustment from one account to other [CCE v. General Manager, Telecom (2012) 37 STT 433 (CESTAT)]

Interest to be paid by the department

The three scenarios where the Department is liable to pay interest on delayed payment to a tax payer are

1. Section 54(12) of the CGST Act, 2017: Refund of tax has been withheld from a person on account of an appeal or proceeding but which is later found to be eligible to be paid.
2. Section 56 of the CGST Act, 2017: Refund of tax has not been given to a person within 60 days from the date of receipt of application for refund
3. Proviso to section 56 of the CGST Act, 2017: Refund ordered by an adjudicating authority or Appellate Authority or Appellate Tribunal or court has not been paid to a person within 60 days from the date of receipt of application for refund.

Interest rates:

Section	Scenario	Interest rate per annum
Section 54(12) of the CGST Act, 2017	Refund of tax has been withheld from a person on account of an appeal or proceeding but which is later found to be eligible to be paid.	6%
Section 56 of the CGST Act, 2017	Refund of tax has not been given to a person within 60 days from the date of receipt of application for refund	6%
Proviso to Section 56 of the CGST Act, 2017	Refund ordered by an adjudicating authority or Appellate Authority or Appellate Tribunal or court has not been paid to a person within 60 days from the date of receipt of application for refund.	9%

Note: As per Section 54(14) of the CGST ACT, 2017 no refund shall be granted if refund amount is less than ₹ 1,000/-. Since, no refund is granted under Section 54(14) of the CGST Act, 2017, no interest is payable by the Department .

Interest on refund**Example 7:**

X Ltd. manufactured and cleared taxable goods on 1st August 2017 for ₹ 20,00,000 plus GST 12%. After payment of GST on or before the due date, it is noticed that these goods are exempted from GST and applied for want refund of GST on 15th November 2017. Department acknowledged the receipt on 15th December November 2017. Department granted the refund on 23rd January 2018.

Find the interest if any on delay refund.

Note: X Ltd. not passed ITC to recipient of supply.

Answer:

From 15th November 2017 to 22nd January 2018 = 69 days

Less: from 15th November 2017 to 13th Jan 2018 = (60) days

No. of days delay = 9 days

Interest = ₹ 355/- (i.e. 2,40,000 x 6% x 9/365)

**Case Law 2:****Kanyaka Parameshwari Engineering Ltd. v. Comm. Of Cus. & Cx 2012 (26) STR 380 (A.P.)**

Facts of the case:

Whether the interest on delayed refund u/s 56 of the CGST Act, 2017 would be payable from the date of deposit of duty or after expiry of 60 days from the date of receipt of application for refund?

Decision:

The interest shall be paid on such tax from the date immediately after expiry of 60 days from the date of receipt of such application till the date of the refund of such tax.

Case Law 3:**Ranbaxy Laboratories Ltd. v. UOI 2011 (273) E.L.T. 3 (S.C.)**

Facts of the case:

Whether the interest on delayed refund u/s 56 of the CGST Act, 2017 would be payable from the date on which order of refund is made by the judiciary or after expiry of 60 days from the date of receipt of application for refund?

Decision:

Sec. 54 of the CGST Act, 2017 (i.e. refund of tax) comes into play only after an order for refund has been made under Sec. 54(12) of the CGST Act, 2017. However, the liability to pay interest under proviso to Sec. 56 commences from the date of expiry of 60 days from the date of receipt of application for refund and not on the expiry of the said period from the date on which order of refund is made.

11.3 REFUND OF TAX

As per section 54(1) of the CGST Act, any person claiming refund of any tax and interest, if any paid on such tax or any other amount paid by him, may make an application before the expiry of 2 Years from the relevant date in such form and manner as may be prescribed.

Explanation (2), to section 54 of the CGST Act, 2017 "relevant date" means—

- (a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,—
 - (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or
 - (ii) if the goods are exported by land, the date on which such goods pass the frontier; or
 - (iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;
- (b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;
- (c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of—
 - (i) receipt of payment in convertible foreign exchange, where the supply of services had been completed prior to the receipt of such payment; or
 - (ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;



- (d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;
- (e) in the case of refund of unutilised input tax credit under sub-section (3), the end of the financial year in which such claim for refund arises;
- (f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;
- (g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and
- (h) in any other case, the date of payment of tax.

Study Note - 12

TDS & TCS UNDER GST



This Study Note includes

12.1 Tax Deduction at Source (TDS)

12.2 Collection of Tax at Source (TCS)

12.1 TAX DEDUCTION AT SOURCE (TDS)

Section 51 (1), refers to TDS related mandating by Central/State Government. Such mandating shall be for the following persons -

- a. Department or Establishment of Central Government or State Government
- b. Local Authority.
- c. Government Agencies.
- d. Persons or category of persons notified by the Central Government on recommendation of the Council. Notification No. 50/2018 – Central Tax dated 13.09.2018 notifies the following persons under Section 51 (1)(d) as liable for TDS;
 - (a) an authority or a board or any other body, -
 - (i) set up by an Act of Parliament or a State Legislature; or
 - (ii) established by any Government, with fifty-one percent or more participation by way of equity or control, to carry out any function;
 - (b) society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);
 - (c) public sector undertakings:

Post audit authorities under Ministry of Defence exempted from TDS compliance vide Notification No 57/2018 – Central Tax dated 23-10-2018

Supply of goods and/or services from a PSU to another PSU, whether a distinct person or not, is exempt from TDS provisions vide Notification No 61/2018 – Central Tax dated 05-11-2018

The Central Government has appointed 01.10.2018 as the date on which the provisions of Section 51 (TDS) shall come into force.

1. The above 'persons' are referred to as deductors.
2. The deductors have to deduct tax at the rate of 2% from the payment made or credited to the supplier of taxable goods and/or services, notified by the Central Government or State Government on the recommendations of the Council. Deduction is required where the total value of supply under 'a contract' exceeds INR 2.5 lakhs. Value of supply shall exclude the tax indicated in the invoice. No deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.
3. The amount deducted shall be paid to the Central Government within ten days after the end of the month in which such deduction is made.

Sub Rule 9 of rule 87 of the CGST rules provides) that payment shall be made by debiting the electronic cash ledger and crediting the electronic tax liability register.
4. As per Rule 66, the deductor shall furnish a TDS certificate in Form GSTR-7A to the deductee mentioning therein the following:



- (a) contract value
 - (b) rate of deduction
 - (c) Amount deducted
 - (d) Amount paid to the appropriate Government
 - (e) Any other particulars as may be prescribed
5. This certificate has to be furnished within five days of remittance as mentioned above.
 6. Certificate not furnished by the deductor: - If the deductor does not furnish the certificate of deduction-cum-remittance within five days of the remittance, the deductor has to pay a late fee of INR 100 per day from the 6th day until the day he furnishes the certificate. The maximum late fee is prescribed as INR 5000.
 7. Non-remittance by the deductor: If the deductor does not remit the amount deducted as TDS, he is liable to pay penal interest under Section 50 in addition to the amount of tax deducted.
 8. The amount of tax deducted reflected in Electronic Cash Ledger of deductee in the return in Form GSTR-7 filed by deductor shall be claimed as credit. This provision enables the Government to cross-check whether the amount deducted by the deductor is correct and that there is no mis-match between the amount reflected in the Electronic Cash Ledger as reflected in the return filed by deductor. One may draw easy analogy from existing practice in income tax related E-TDS returns filed by deductor and 26AS statement available for viewing the TDS remitted in respect of his transactions by deductee.
 9. Refund on excess collection: The deductor or the deductee can claim refund of excess deduction or erroneous deduction. The provisions of section 54 relating to refunds would apply in such cases. However, if the amount deducted has been credited to the Electronic Cash Ledger of the deductee, the deductor cannot claim refund (only deductee can claim).
 10. Illustrative List of various Supplies on which TDS may or may not require to be deducted –

Supply in GST covers both supply of goods as well as supply of services by vendors/suppliers to the Government Departments, local authorities and other recipients.

Examples of supply of goods and services to Government/local authorities:

Procurement of stationery items, toilet articles, towels, furniture, air-conditioning machines, electrical goods, books and periodicals & medicines, food and beverage for employees or other stakeholders, computers and printers, books, Procurement of security services, car rental services, generator rental services, consultants services, legal services, rental services like office building/land taken on rent, maintenance services, rental of machinery, Works Contract services such as road, bridge, building development/renovation/repairing/maintenance services, etc

As per Sec 2(108) of The CGST Act 2017 Taxable Supply means supply of goods or services or both which is leviable to tax under GST

As per Sec 2(47) of The CGST Act 2017 Exempt supply means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11 of the CGST/SGST Acts or under section 6 of the IGST Act, and includes non-taxable supply.

It is to be noted that TDS is not required to be deducted on supply of exempt goods or services. For example, incase a PSU/ GovtDept receives GST books for all its employees, no TDS is required to be deducted since GST books are exempt supplies.

Similarly incase a PSU/ GovtDept avails the services of a medical practitioner, no TDS is required to be deducted.

11. When tax deduction is required to be made in GST and at what rate:

The deductors have to deduct tax at the rate of 2% from the payment made or credited to the supplier of taxable goods and/or services, notified by the Central Government or State Government on the recommendations of the Council. Deduction is required where the total value of supply under 'a contract' exceeds INR 2.5 lakhs. Value of supply shall exclude the tax indicated in the invoice. No deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.

Hence, Tax deduction is required if all the following conditions are satisfied –

- (a) Total value of taxable supply > ₹ 2.5 Lakh under a single contract. This value shall exclude taxes & cess leviable under GST.



Eg.– Incase the value of 1 contract for printing material is ₹ 3 Lakhs plus GST and the same is received vide 6 invoices of ₹ 50,000/- plus GST each in 18-19 and 19-20. TDS is required to be deducted on each bill

Eg.–Incase the value of 6 contracts for printing material from the same vendor A is ₹ 50,000/- plus GST each and the same is received vide 6 invoices of ₹ 50,000/- plus each. TDS is not required to be deducted on any bill

Eg. – Incase the value of 1 contract for printing material from a vendor A is ₹ 2,75,000/- inclusive of 18% GST. TDS is not required to be deducted as the value of contract exclusive of GST is less than ₹ 2,50,000/-

- (b) If the contract is made for both taxable supply and exempted supply, deduction will be made if the total value of taxable supply in the contract > ₹ 2.5 Lakh. This value shall exclude taxes & cess leviable under GST.

Eg. – Incase the value of 1 contract for printing material and books from a vendor A is ₹ 3,50,000/- plus GST as applicable. Value of books is ₹ 1,00,000/- (GST is exempt) and Value of printing material is ₹ 2,50,000/- (GST chargeable). TDS is not required to be deducted as the value of contract of taxable goods (printing material) is not exceeding ₹ 2,50,000/-.

Eg. – Incase the value of 1 contract for printing material and books from a vendor A is ₹ 4,00,000/- plus GST as applicable. Value of books is ₹ 1,00,000/- (GST is exempt) and Value of printing material is ₹ 3,00,000/- (GST chargeable). TDS is required to be deducted on only the value of contract of taxable goods (printing material) of ₹ 3,00,000/-

- (c) Where the location of the supplier and the place of supply are in the same State/UT, it is an intra-State supply and TDS @ 1% each under CGST Act and SGST/UTGST Act is to be deducted if the deductor is registered in that State or Union territory without legislature

Eg.–Incase material is purchased by A (WB) from B (WB) where value of contract of taxable goods (printing material) of ₹ 3,00,000/- plus GST, GST is liable to be deducted as follows –

1% CGST on ₹ 3,00,000/- = ₹ 3,000/-

1% SGST on ₹ 3,00,000/- = ₹ 3,000/-

- (d) Where the location of the supplier is in State A and the recipient of supply is in another State or Union territory B. However, if the customer is in the same state A, then it is intra-State supply and TDS @ 1% under CGST Act and @ 1% under SGST Act is to be deducted as the deductor is registered in State or Union territory A.

Where the location of the supplier is in State A and the recipient of supply is in another State or Union territory B. However, if the customer is in the yet another state C, then it is inter-State supply and TDS @ 2% under IGST Act is to be deducted as the deductor is not registered in State or Union territory A.

Eg.– Incase material is purchased by B (WB) from A (WB) but to be delivered to C(TN) and where value of contract of taxable goods (printing material) of ₹ 3,00,000/- plus GST, GST is liable to be deducted as follows –

1% CGST on ₹ 3,00,000/- = ₹ 3,000/-

1% WB SGST on ₹ 3,00,000/- = ₹ 3,000/-

Eg.– Incase material is purchased by B (WB) from A (Bihar) but to be delivered to C(TN) and where value of contract of taxable goods (printing material) of ₹ 3,00,000/- plus GST, GST is liable to be deducted as follows –

2% IGST on ₹ 3,00,000/- = ₹ 6,000/-

- (e) When advance is paid to a supplier on or after 01.10.2018 to a supplier for supply of taxable goods or services or both

Eg.–Incase contract of ₹ 3,00,000/- plus GST is made on 30th September 2018 but neither supply of goods nor payment is made on that day. Thereafter advance is made on 1st October 2018 of ₹ 10,000/- plus GST. Herein TDS will be deducted on the advance of ₹10,000/- made on 1st October 2018.

- (f) When The contract value is revised

Eg.–A contract with a supplier ABC was entered into where the value of taxable supply is ₹ 2 Lakh and payment of ₹1 Lakh has been made on 15.10.2018. Now, on 20.10.2018 the contract value is revised from ₹ 2 Lakh to ₹ 6 Lakh. In this case TDS shall have to be deducted on entire amount i.e. ₹ 6 lakhs while making remaining payment of ₹ 5 Lakh. In other words, ₹12,000/- would be deducted when remaining payment of ₹ 5 Lakh is made.



Circular No. 65/39/2018 - Dated 14.09.2018

Guidelines for Deductions and Deposits of TDS by the DDO under GST

The GST Council provides Guidelines for Deductions and Deposits of TDS by the DDO under GST.

For the process of deduction and deposit of TDS, the DDO can follow any of the following two options :

- i. Individual Bill-wise deduction and its deposit to the Government by DDO
- ii. Bunching of deductions and its deposit by DDO

The DDO has to file GSTR -7 by 10th of next month and must generate TDS certificate through the GSTN portal in GSTR-7A. The process flow for Option I and Option II are described as under:

Option I - Individual Bill-wise Deduction and its Deposit by the DDO

In this option, the DDO will have to deduct as well as deposit the GST TDS for each bill individually by generating a CPIN (Challan) and mentioning it in the Bill itself.

Following process shall be followed by the DDO in this regard:

- (i) The DDO shall prepare the Bill based on the Expenditure Sanction. The Expenditure Sanction shall contain the (a) Total amount, (b) net amount payable to the Contractor/Supplier/Vendor and (c) the 2% TDS amount of GST.
- (ii) The DDO shall login into the GSTN Portal (using his GSTIN) and generate the CPIN (Challan). In the CPIN he shall have to fill in the desired amount of payment against one/many Major Head(s) (CGST/SGST/UTGST/IGST) and the relevant component (e.g. Tax) under each of the Major Head.
- (iii) While generating the CPIN, the DDO will have to select mode of payment as either (a) NEFT/RTGS or (b) OTC. In the OTC mode, the DDO will have to select the Bank where the payment will be deposited through OTC mode.
- (iv) The DDO shall prepare the bill on PFMS (in case of Central Civil Ministries of Govt), similar payment portals of other Ministries/Departments of Govt or of State Governments for submission to the respective payment authorities.
- (v) In the Bill,
 - (a) the net amount payable to the Contractor; and
 - (b) 2% as TDSwill be specified
- (vi) In case of NEFT/RTGS mode, the DDO will have to mention the CPIN Number (as beneficiary's account number), RBI (as beneficiary) and the IFSC Code of RBI with the request to payment authority to make payment in favour of RBI with these credentials.
- (vii) In case of the OTC mode, the DDO will have to request the payment authority to issue 'A' Category Government Cheque in favour of one of the 25 authorized Banks. The Cheque may then be deposited along with the CPIN with any of branch of the authorized Bank so selected by the DDO.
- (viii) Upon successful payment, a CIN will be generated by the RBI/Authorized Bank and will be shared electronically with the GSTN Portal. This will get credited in the electronic Cash Ledger of the concerned DDO in the GSTN Portal. This can be viewed and the details of CIN can be noted by the DDO anytime on GSTN portal using his Login credentials.
- (ix) The DDO should maintain a Register as per proforma given in Annexure 'A' to keep record of all TDS deductions made by him during the month. This Record will be helpful at the time of filing Monthly Return (FORM GSTR-7) by the DDO. The DDO may also make use of the offline utility available on the GSTN Portal for this purpose.
- (x) The DDO shall generate TDS Certificate through the GST Portal in FORM GSTR-7A after filing of Monthly Return.



Option II - Bunching of deductions and its deposit by the DDO

Option-I may not be suitable for DDOs who make large number of payments in a month as it would require them to make large number of challans during the month. Such DDOs may exercise this option wherein the DDO will have to deduct the TDS from each bill, for keeping it under the Suspense Head. However, deposit of this bunched amount from the Suspense Head can be made on a weekly, monthly or any other periodic basis.

Following process shall be followed by the DDO in this regard:

- (i) The DDO shall prepare the Bill based on the Expenditure Sanction. The Expenditure Sanction shall contain the (a) Total amount, (b) net amount payable to the Contractor/Supplier/Vendor and (c) the 2% TDS amount of GST.
- (ii) The DDO shall prepare the bill on PFMS (in case of Central Civil Ministries of Govt), similar payment portals of other Ministries/Departments of Govt or of State Governments for submission to the respective payment authorities.
- (iii) In the Bill, it will be specified
 - (a) the net amount payable to the Contractor; and
 - (b) 2% as TDS
- (iv) The TDS amount shall be mentioned in the Bill for booking in the Suspense Head (8658 - Suspense; 00.101 - PAO Suspense; xx - GST TDS)
- (v) The DDO will require to maintain the Record of the TDS so being booked under the Suspense Head so that at the time of preparing the CPIN for making payment on weekly/monthly or any other periodic basis, the total amount could be easily worked out.
- (vi) At any periodic interval, when DDO needs to deposit the TDS amount, he will prepare the CPIN on the GSTN Portal for the amount (already booked under the Suspense Head).
- (vii) While generating the CPIN, the DDO will have to select mode of payment as either (a) NEFT/RTGS or (b) OTC. In the OTC mode, the DDO will have to select the Bank where the payment will be deposited through OTC mode.
- (viii) The DDO shall prepare the bill for the bunched TDS amount for payment through the concerned payment authority. In the Bill, the DDO will give reference of all the earlier paid bills from which 2% TDS was deducted and kept in the suspense head. The DDO may also attach a certified copy of the record maintained by him in this regard.
- (ix) The payment authority will pass the bill by clearing the Suspense Head operated against that particular DDO after exercising necessary checks.
- (x) In case of NEFT/RTGS mode, the DDO will have to mention the CPIN Number (as beneficiary's account number), RBI (as beneficiary) and the IFSC Code of RBI with the request to payment authority to make payment in favour of RBI with these credentials.
- (xi) In case of the OTC mode, the DDO will have to request the payment authority to issue 'A' Category Government Cheque in favour of one of the 25 authorized Banks. The Cheque may then be deposited along with the CPIN with any of branch of the authorized Bank so selected by the DDO.
- (xii) Upon successful payment, a CIN will be generated by the RBI/Authorized Bank and will be shared electronically with the GSTN Portal. This will get credited in the electronic Cash Ledger of the concerned DDO in the GSTN Portal. This can be viewed and the details of CIN can be noted by the DDO anytime on GSTN portal using his Login credentials.
- (xiii) The DDO should maintain a Register as per proforma given in Annexure 'A' to keep record of all TDS deductions made by him during the month. This Record will be helpful at the time of filing Monthly Return (FORM GSTR-7) by the DDO. The DDO may also make use of the offline utility available on the GSTN Portal for this purpose.
- (xiv) The DDO shall file the Return in FORM GSTR-7 by 10th of the following month
- (xv) The DDO shall generate TDS Certificate through the GSTN Portal in FORM GSTR-7A.

Further, the above circular has been amended by Circular No67/41/2018 dated 28/09/2018 - Guidelines for deductions and deposits of TDS by the DDO under GST have been modified. DDOs can now account TDS bunched together below the Head 8658.00.101-PAO where a suspense account has been opened.



12.2 COLLECTION OF TAX AT SOURCE (TCS)

After deferring the provisions related to TDS & TCS since the implementation of GST, Government has, vide **Notification No. 50/2018 – Central Tax dated September 13, 2018** and **Notification No. 51/2018 – Central Tax dated September 13, 2018, appointed 1st October, 2018** as the date from which the said provisions shall be made applicable. Here are the Salient features of TCS with examples -

1. TCS stands for the tax collection at source. It is a concept borrowed from the Income Tax. Basically the payer (viz. collector) is required to collect some amount as tax while making the payment to the supplier. Such amount shall be collected separately over and above the invoice value. Hence let us say INR 1180 is the invoice value (Basic amount is INR 1000 plus tax is INR 180). Then the payer shall collect 1% (i.e. INR 10) and make the payment of such tax to the Government. Net amount of INR 1170 (i.e. 1180-10) shall be paid to the concerned supplier.

On the other hand, supplier can claim credit of the tax so collected while discharging his liabilities. It acts as a powerful instrument to prevent tax evasion and expands the tax net, as it provides for the creation of an audit trail

2. Only companies who are in the business of providing such platform for electronic commerce shall be regarded as electronic commerce operators. Hence companies like Amazon, Flipkart, etc. which displays/lists on their portal products as well as services which are actually supplied by some other person to the consumer are electronic commerce operator. On placing the order for a particular product/ services the actual supplier supplies the selected product/services to the consumer. The price/consideration for the product/services is collected by the Operator from the consumer and passed on to the actual supplier after deducting his commission by the Operator. Such Operator is only required to collect the tax at source.
3. Every E-Commerce Operator, other than an agent, shall collect TCS at a rate not exceeding 1% on the net value of transaction in which he collects consideration of the supply.
4. The "net value of taxable supplies" means the aggregate value of taxable supplies of goods or services or both, other than the services on which entire tax is payable by the e-commerce operator, made during any month by a registered supplier through such operator reduced by the aggregate value of taxable supplies returned to such supplier during the said month.

An e-commerce company is required to collect tax only on the net value of taxable supplies made through it. In other words, value of the supplies which are returned (supply return) may be adjusted from the aggregate value of taxable supplies made by each supplier (i.e. on GSTIN basis). In other words, if two suppliers "A" and "B" are making supplies through an ecommerce operator, the "net value of taxable supplies" would be calculated separately in respect of "A" and "B". If the value of returned supplies is more than supplies made on behalf of any of such supplier during any tax period, the same would be ignored in his case. If returns are more than the supplies made during any tax period, the same would be ignored in current as well as future tax period(s).

The value of net taxable supplies is calculated at GSTIN level.

Please note that if there is returning of supplies to Suppliers, then the same shall be reduced from the gross value; TCS shall be worked on such net figure only (after such reduction).

5. Net Value of Taxable Supplies = [(Aggregate Value of Taxable Supplies of Goods + Services) – (Section 9(5) Services)]] – (Aggregate Value of Returned Taxable Supplies + Goods)]

Let us take an example to understand. Gross taxable value of supplies made by a particular supplier in a month is let us say INR 10 lakhs. During the said month, the aggregate value of supplies returned (original supply might have been done during the same month or even before) is INR 1 lakhs. Then, as per the above definition, "net value of taxable supplies" shall be INR 9 lakhs on which TCS is to be collected for that particular month.

It may be noted that the "value of taxable supplies" shall not include the GST since Sec. 15(2)(a) of the CGST Act, 2017 clearly excludes the same.

It may also be noted that the value of services notified u/s 9(5) are to be excluded. As per Notification No. 17/2017-Central Tax (Rate) dated 28.06.2017 following supplies have been notified u/s 9(5):

- (a) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle



- (b) services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the said Central Goods and Services Tax Act
- (c) services by way of house-keeping, such as plumbing, carpentering etc., except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the said Central Goods and Services Tax Act

In all the above three cases, since the electronic commerce operator has been made liable to pay the tax as if he is the supplier u/s 9(5), there is no requirement to collect TCS.

6. It is pertinent to note the following definitions here –

Section 2 (44), – “electronic commerce” means the supply of goods or services or both, including digital products over digital or electronic network;

Section 2 (45), – “electronic commerce operator” means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce

7. Every e-commerce operator is required to collect tax where the supplier is supplying goods or services through e-commerce operator and consideration with respect to the supply is to be collected by the said e-commerce operator.

There is no threshold exemption from TCS once the above cited conditions are fulfilled. However, the supplies made by the electronic commerce operator on its own account are not subject to TCS requirements since the above stated conditions are not fulfilled.

8. Rate of TCS is 0.5% under each Act (i.e. the CGST Act, 2017 and the respective SGST Act/UTGST Act respectively) and the same is 1% under the IGST Act, 2017. Notifications No. 52/2018 – Central Tax and 02/2018-Integrated Tax both dated 20th September, 2018 have been issued in this regard. Similar notifications have been issued by the respective State Governments also.
9. TCS is not required to be collected on exempt supplies.
10. TCS is not required to be collected on supplies on which the recipient is required to pay tax on reverse charge basis.
11. TCS is not liable to be collected on any supplies on which the recipient is required to pay tax on reverse charge basis. As far as import of goods is concerned since same would fall within the domain of Customs Act, 1962, it would be outside the purview of TCS. Thus, TCS is not liable to be collected on import of goods or services.
12. As per section 10(2)(d) of the CGST Act, 2017, a composition taxpayer cannot make supplies through e-commerce operator.
13. TCS is to be collected once supply has been made through the e-commerce operator and where the business model is that the consideration is to be collected by the ecommerce operator irrespective of the actual collection of the consideration. For example, if the supply has taken place through the ecommerce operator on 30th November, 2018 but the consideration for the same has been collected in the month of December, 2018, then TCS for such supply has to be collected and reported in the statement for the month of November, 2018.
16. The amount collected so shall be paid to the Central/State Government respectively within ten days after the end of the month in which such collection is made.

Payment of TCS is not allowed through Input Tax Credit of e-Commerce operator

17. TCS collected is to be deposited by the ecommerce operator separately under the respective tax head (i.e. Central tax/State tax/Union territory tax/Integrated tax). Based on the statement (FORM GSTR-8) filed by the ecommerce operator, the same would be credited to the electronic cash ledger of the actual supplier in the respective tax head. If the supplier is not able to use the amount lying in the said cash ledger, the actual supplier may claim refund of the excess balance lying in his electronic cash ledger in accordance with the provisions contained in section 54(1) of the CGST Act, 2017.
18. In case the E-commerce operator fails to collect tax under sub-section 1 of section 52 or collects an amount which is less than the amount required to be collected under said sub-section or where he fails to



pay to the government the amount collected as tax under sub-section 3 of section 52, he shall be liable to penalty under clause (vi) of subsection 1 of section 122 of the Act which may extend to twenty five thousand along with penalty under of i.e. ₹10,000 or the amount of TCS involved, whichever is higher.

19. As per section 24(x) of the CGST Act, 2017, every electronic commerce operator has to obtain compulsory registration irrespective of the value of supply made by him.
20. As per Section 24(ix) of the CGST Act, 2017, every person supplying goods through an ecommerce operator shall be mandatorily required to register irrespective of the value of supply made by him. However, a person supplying services, other than supplier of services under section 9(5) of the CGST Act, 2017, through an e-commerce platform are exempted from obtaining compulsory registration provided their aggregate turnover does not exceed INR 20 lakhs (or INR 10 lakhs in case of specified special category States) in a financial year. Government has issued the notification No. 65/2017 – Central Tax dated 15th November, 2017 in this regard.
21. As per the extant law, registration for TCS would be required in each State/UT as the obligation for collecting TCS would be there for every intra-State or inter-State supply. In order to facilitate the obtaining of registration in each State/UT, the e-commerce operator may declare the Head Office as its place of business for obtaining registration in that State/UT where it does not have physical presence.
22. Where registered supplier is supplying goods or services through a foreign e-commerce operator to a customer in India, such foreign ecommerce operator would be liable to collect TCS on such supply and would be required to obtain registration in each State/UT. If the foreign e-commerce operator does not have physical presence in a particular State/UT, he may appoint an agent on his behalf.
23. E-Commerce operator has to obtain separate registration for TCS irrespective of the fact whether e-Commerce operator is already registered under GST as a supplier or otherwise and has GSTIN.
24. E-Commerce operator shall furnish details of outward supplies of goods or services or both made through it, including the supplies returned through it and the amount collected by it in sub-section 1, in Form GSTR-8 within the 10 days after end of the month in which supplies are made.
25. As per Rule 46 of the CGST Rules, 2017 there is no requirement to indicate TCS on the invoice issued by the concerned supplier.
26. The details of tax collected at source furnished by an E-commerce operator under section 52 in Form GSTR-8 shall be made available to the supplier in Part D of FORM GSTR - 2A electronically through the Common Portal and such taxable person may include the same in FORM GSTR-2."
27. Section 52(5) of CGST Act requires filing of Annual Statement by E-Commerce operator on or before 31st December following the year end (31st March of relevant year).
28. The amount of tax collected is reflected in Electronic Cash Ledger of supplier since related monthly return is filed by E-Commerce Operator.
29. As on date there is no concept of TCS certificate.
30. Any mismatch between the data submitted by the E-Commerce operator in his monthly returns and that of suppliers making supplies through him shall cause due 'mismatch enquiry' from the proper officer; and either party may rectify the erroneous data. If rectification is not carried out by supplier his offences get confirmed. Short remittance, if any, identified thus will have to be paid by erring supplier (who under reported the turnover) with interest calculated as per Section 50.
31. Any authority, in the rank of Deputy Commissioner or above it can issue a notice – during, or before a proceeding under this Act - to E Commerce Operator seeking information on –
 - (a) supplies of goods or services or both effected through such operator during any period; or
 - (b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.

This shall be a notice which need to be responded within 15 days from the date of receipt by the E Commerce Operator. Failure to submit the required details will cause penalty under Section 52 (14) of the Act which may extend to ₹ 25,000.



32. Consequences of not complying with the TCS provisions -

Sr.No.	Event	Consequence
1	TCS not collected	As per Sec. 122(1)(vi) of the CGST Act, 2017 failure to collect the tax as per Sec. 52(1) can invite penalty of INR 10,000/- or the amount not collected or short collected, whichever is higher.
2	TCS collected but not paid to the Government	Sec. 76 of the CGST Act, 2017 may be invoked by the officer to recover such TCS along with interest. Penalty u/s 122(1)(vi) may also be imposed subject to principles of natural justice.
3	Late filing of TCS returns	Provisions of Sec. 47 of the CGST Act, 2017 imposing late fees shall not apply to the TCS return since the same is to be filed u/s 52(4) of the said Act (which is not covered u/s 47). However general penalty up to INR 25,000/- can be imposed u/s 125. It must however be noted that unless the return is filed, the concerned supplier shall not get the credit in his electronic cash ledger.

33. The operator is also required to file an annual statement by 31st day of December following the end of the financial year in which the tax was collected in FORM GSTR-9B.

34. As per section 12(11) of the IGST Act, 2017, the address on record of the customer with the supplier of services is the place of supply, for ecommerce operator for recharge of talk time of the Telecom Operator/recharge of DTH/in relation to convenience fee charged from the customers on booking of air tickets, rail supplied through its online platform

35. Under multiple ecommerce model, Customer books a Hotel via ECO-1 who in turn is integrated with ECO-2 who has agreement with the hotelier. In this case, ECO-1 will not have any GST information of the hotelier. TCS is to be collected by that e-Commerce operator who is making payment to the supplier for the particular supply happening through it, which is in this case will be ECO-2.

36. How shall the amount collected in excess be refunded -

As per Sec. 52(6) of the CGST Act, 2017 any errors or omissions in the return filed can be corrected subject to certain time limit. However there is no specific provision to seek refund of the tax collected in excess. Hence the concerned supplier can claim the credit of such excess tax in his cash ledger and utilize the same.

37. There are cases in which the ECO does not provide invoicing solution to the seller. In such cases, invoice is generated by the seller and received by the buyer without ECO getting to know about it. The payment flows through the ECO. In such cases, on what value is TCS to be collected? Can TCS be collected on the entire value of the transaction -

Section 52(1) of the CGST Act, 2017 mandates that TCS is to be collected on the net taxable value of such supplies in respect of which the ECO collects the consideration. The amount collected should be duly reported in GSTR-8 and remitted to the Government. Any such amount collected will be available to the concerned supplier as credit in his electronic cash ledger.

38. There are sellers who are selling exempted or zero-tax goods like books through ECOs. Will marketplaces be required to collect TCS on such supplies -

As per Section 52(1) of the CGST Act, 2017 TCS is to be collected on "the net value of taxable supplies" made through an ECO. When the supply itself is not taxable, the question of TCS does not arise.

39. I am a supplier selling my own products through a web site hosted by me. Do I fall under the definition of an "electronic commerce operator"? Am I required to collect TCS on such supplies

As per the definitions in Section 2 (44) and 2(45) of the CGST Act, 2017, you will come under the definition of an "electronic commerce operator". However, according to Section 52 of the Act *ibid*, TCS is required to be collected on the net value of taxable supplies made through it by other suppliers where the consideration is



to be collected by the ECO. In cases where someone is selling their own products through a website, there is no requirement to collect tax at source as per the provisions of this Section. These transactions will be liable to GST at the prevailing rates.

40. We purchase goods from different vendors and are selling them on our website under our own billing. Is TCS required to be collected on such supplies –

No. According to Section 52 of the CGST Act, 2017, TCS is required to be collected on the net value of taxable supplies made through it by other suppliers where the consideration is to be collected by the ECO. In this case, there are two transactions - where you purchase the goods from the vendors, and where you sell it through your website. For the first transaction, GST is leviable, and will need to be paid to your vendor, on which credit is available for you. The second transaction is a supply on your own account, and not by other suppliers and there is no requirement to collect tax at source. The transaction will attract GST at the prevailing rates

Circular No. 78/48/2018 - GST dated 05.11.2018

Collection of tax at source by Tea Board of India

The GST council clarifies issue regarding Tea Board of India (hereinafter referred to as the, "Tea Board"), being the operator of the electronic auction system for trading of tea across the country including for collection and settlement of payments, admittedly falls under the category of electronic commerce operator liable to collect Tax at Source (hereinafter referred to as, "TCS") in accordance with the provisions of section 52 of the Central Goods and Service Tax Act, 2017- whether they should collect TCS under section 52 of the CGST Act from the sellers of tea (i.e. the tea producers), or from the auctioneers of tea or from both.

Accordingly, it is clarified, that TCS at the notified rate, in terms of section 52 of the CGST Act, shall be collected by Tea Board respectively from the -

- (i) sellers (i.e. tea producers) on the net value of supply of goods i.e. tea; and
- (ii) auctioneers on the net value of supply of services (i.e. brokerage).

Study Note - 13

RETURNS UNDER GST



This Study Note includes

- 13.1 Furnishing of Returns
- 13.2 First Return
- 13.3 Revision of Returns
- 13.4 Penalty/Late Fee
- 13.5 Highlights of Proposed New Returns

GENERAL PROVISION RELATING TO RETURNS UNDER GST.

“Return” means any return prescribed or otherwise required to be furnished by or under this Act or the rules made thereunder [Section 2(97)].

A return is a document containing details of income which a taxpayer is required to file with the tax administrative authorities.

This is used by tax authorities to calculate tax liability.

Under GST, a registered dealer has to file GST returns that include:

- Purchases
- Sales
- Output GST (On sales)
- Input tax credit (GST paid on purchases)

In the GST regime, any regular business has to file two monthly returns and one annual return. This amounts to 26 returns in a year.

The beauty of the system is that one has to manually enter details of one monthly return – GSTR-1.

The other return GSTR 3B will get auto-populated by deriving information from GSTR-1 filed by you and your vendors.

There are separate returns required to be filed by special cases such as composition dealers.

13.1 FURNISHING OF RETURNS

To meet the concept of digital India, the Government of India made it mandatory to file all returns electronically.

Moreover, one of the basic features of the returns mechanism in GST include electronic filing of returns, uploading of invoice level information and auto-population of information relating to Input Tax Credit (ITC) from returns of supplier to that of recipient, invoice-level information matching and auto-reversal of Input Tax Credit in case of mismatch.

The returns mechanism is designed to assist the taxpayer to file returns and avail ITC.

Under GST, a regular taxpayer needs to furnish monthly returns and one annual return. There are separate returns for a taxpayer registered under the composition scheme, non-resident taxpayer, taxpayer registered as an Input Service Distributor, a person liable to deduct or collect the tax (TDS/TCS) and a person granted Unique Identification Number.

It is important to note that a taxpayer is not required to file all types of returns. In fact, taxpayers are required to file returns depending on the activities they undertake.



Returns can be filed using any of the following methods:

1. GSTN portal (www.gst.gov.in)
2. Offline utilities provided by GSTN
3. GST Suvidha Providers (GSPs)

Following table lists the various types of returns under GST Law:

Return Form	Particulars	Frequency	Due Date
GSTR-1	Details of outward supplies of taxable goods and/or services effected (Section 37 of the CGST Act, 2017).	Monthly	10th of the next month
GSTR-2	Details of inward supplies of taxable goods and/or services effected claiming input tax credit (Section 38 of the CGST Act, 2017).	Monthly	15th of the next month
GSTR-3	Monthly return on the basis of finalization of details of outward supplies and inward supplies along with the payment of amount of tax (Section 39(1) of the CGST Act, 2017).	Monthly	20th of the next month
GSTR-3B	Simple return for Jul 2017- Mar 2018	Monthly	20th of the next month
GSTR-4	Return for compounding taxable person (Section 39(2) of the CGST Act, 2017)	Quarterly	18th of the month succeeding quarter
GSTR-5	Return for Non-Resident foreign taxable person (Section 39(5) of the CGST Act, 2017)	Monthly	20th of the next month or within 7 days after the last day of the period of registration specified u/s 27(1), whichever is earlier
GSTR-6	Return for Input Service Distributor (Section 39(4) of the CGST Act, 2017)	Monthly	13th of the next month
GSTR-7	Return for authorities deducting tax at source (Section 39(3) of the CGST Act, 2017)	Monthly	10th of the next month
GSTR-8	Details of supplies effected through e-commerce operator and the amount of tax collected	Monthly	10th of the next month
GSTR-9	Annual Return (section 44 of the CGST Act, 2017) (a) Who Files: Registered Person other than an ISD, TDS/TCS Taxpayer, Casual Taxable Person and Non-resident Taxpayer. (b) In this return, the taxpayer needs to furnish details of expenditure and details of income for the entire Financial Year.	Annually	31st December of next financial year
GSTR-10	Final Return (Section 45 of the CGST Act, 2017)	Once. When registration is cancelled or surrendered	Within three months of the date of cancellation or date of cancellation order, whichever is later.
GSTR-11	Details of inward supplies to be furnished by a person having UIN and claiming refund.	Monthly	28th of the month following the month for which statement is filed



GSTR 1 - FURNISHING DETAILS OF OUTWARD SUPPLIES

1. Section 37 relates to furnishing of details of outward supplies by the supplier
 - (a) A return of Outward supplies under this Section should be furnished by every registered taxable person except for the following persons namely
 - (i) Input service distributor
 - (ii) A non-resident taxable person
 - (iii) A person paying tax under the provisions of section 10 (composition levy)
 - (iv) A person paying tax under the provisions of section 51 (TDS)
 - (v) A person paying tax under the provisions of section 52 (TCS)
 - (vi) A person referred to in Section 14 of IGST Act – Person providing Online Information and Data Access & Retrieval Services
 - (b) A monthly return GSTR-1 needs to be filed by the taxable persons, except input service provider and persons under composition scheme u/s 10 or TDS Deductor u/s 51 giving details of outward supplies including zero rated supplies, Inter State supplies, return of inward supplies & export made along with relevant debit/ credit notes or supplementary invoices for the month by 10th of succeeding month.

2. The details about outward supplies along with debit/credit notes issued shall be communicated to the corresponding purchasing taxpayer within prescribed time so as to enable them to file return for inward supplies.
3. In case of any error relating to output tax or input tax credit that remains unmatched with monthly return GSTR-3B, the same must be rectified in the month it comes to the notice, and the payment of interest on short payment or refund claim must be made accordingly. However, no rectification is allowed after filing the return for the month of September following the end of the relevant financial year to which such details pertain or filing of the relevant annual return, whichever is earlier.

It is pertinent to mention here that ITC should be matched with GSTR 2A available on GST Portal. In case mismatch, the department may raise demands going forward. However, many a times it is seen that there are various constraints in the Portal which must be taken care of by The Dept.

4. Rectification due to error/omission in return is possible only before filing the return of September of the following FY or before filing the annual return whichever is earlier.
5. Details of invoice: The GSTR require every details of every invoice in case of B2B Transaction. Similar provision prevails in the VAT return of various States. Some idea can be drawn from this existing provision.
6. Mismatch of details: The GST law seeks matching of documents between supplier and receiver for allowing input tax credit (ITC). In case of a mismatch and where the supplier has not made the tax payment, the ITC shall not be allowed to the other party. However, this provision does not exist in the current regime.
7. Such returns shall be for supply of goods or services or both as effected during a tax period and shall be filed electronically
8. The registered person shall not be allowed to furnish any details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period. This implies that the filing portal may not be available for the person filing the return of outward supplies during the above said dates.
9. In case of late filing of the above details, the person who defaults shall pay a sum of rupees One hundred for every day of continuing default subject to a maximum to Rupees five thousand only.
10. The Commissioner is empowered to notify any extension of due date of filing, for any class of persons, beyond the tenth of the succeeding month, with reasons to be recorded in writing.



11. The present process of return filing envisages that the recipient of the supply shall be Provided an opportunity to accept, reject, amend or delete the details in a two-way communication process. The details Provided by the supplier shall be auto – populated and available electronically to the recipient, for matching purposes, in accordance with the provision of Rule 60 in a FORM GSTR-2A.
12. In case any error or omission is discovered in the course of matching as specified in the Act and discussed under Section 42 and 43, rectifications of the same shall be effected and tax and interest, if any as applicable shall be paid on such corrections by the person responsible for filing the return of outward supplies.
13. Such rectification, however, is not permitted after filing of annual return or the return for the month of September of the following financial year to which the details pertain whichever is earlier.

GSTR 2 - FURNISHING DETAILS OF INWARD SUPPLIES

Section 38 relates to furnishing of details of inward supplies by the recipient.

1. The monthly return of GSTR-2 will be required to be filed by the taxpayer giving details of inward supplies and relevant debit/ credit notes. The details of GSTR-2 will mostly be auto-populated from the GSTR-1 of counterparty making supplies. The auto-populated details can be modified, validated, deleted and additional invoices or debit/credit can also be added in case such details are missed out by the supplier. The taxable person shall file the details of inward supply, including those under reverse charge and IGST with relevant debit/credit notes within 15th of succeeding month, unless extended by Board/Commissioner.

GSTR - 3B

1. GSTR-3B is a monthly self-declaration that has to be filed a registered dealer from July 2017 till March 2018. Points to Note:
 - You must file a separate GSTR-3B for each GSTIN you have
 - Tax liability of GSTR-3B must be paid by the last date of filing GSTR-3B for that month
 - GSTR-3B cannot be revised
2. Every person who has registered for GST must file the return GSTR-3B including nil returns. However, the following registrants do not have to file GSTR-3B
 - Input Service Distributors & Composition Dealers
 - Suppliers of OIDAR
 - Non-resident taxable person

13.2 FIRST RETURN

As per section 40 of the CGST Act, 2017 every registered person who has made outward supplies in the period between the date on which he became liable to registration till the date on which registration has been granted shall declare the same in the first return furnished by him after grant of registration.

ANNUAL RETRUN

1. As per Section 44 of CGST ACT, 2017 an annual return is required to be furnished by every taxpayer GSTR-9, excluding input service distributor, TDS deductor, casual taxable persons and non-resident taxable persons, in GSTR-9 within 31st December of succeeding financial year.
2. A reconciliation statement of supplies declared in other returns, i.e. GSTR-1, and GSTR-3B as well as audited financial statement must be submitted along with annual return, copy of audited accounts and other prescribed documents. It shall be noted here that while annual accounts would reflect the sales of goods or services, the GST returns would reflect supplies.
3. Filing of annual return already exists in the prevailing laws. This return covers the minutest details of income and expenditure of the taxpayer, and thus the profit/ loss according to such return must tally with that in the



audited financial statement. The return provides for reconciliation of monthly tax payments and details of refunds or pending arrears along with their current status.

4. Annual Return has to be filed by every registered taxable person paying tax as a normal or a compounding taxpayer. Final Return has to be filed only by those registered taxable persons who have applied for cancellation of registration. This has to be filed within three months of the date of cancellation or the date of cancellation order.
5. Due date for filing Annual Return is on or before 31st December following the end of the financial year for which Annual return to be submitted. Every taxable person shall file annual return in FORM GSTR-9 (FORM GSTR-9A in case of person opted to pay tax under composition scheme under section 10) for every financial year electronically on or before 31st December following the end of such financial year

However, this provision shall not apply to,

- (i) Input Service Distributor
 - (ii) A person paying tax under Section 51 (TDS)
 - (iii) A person paying tax under Section 52 (TCS)
 - (iv) A casual tax Taxable person
 - (v) Non-resident taxable person
6. In case the registered person is required to get his accounts audited in accordance with the provisions of Section 35 (5) (whose aggregate turnover during the financial year exceeds Rs. One crores) shall file annual return FORM GSTR-9B electronically along with,
 - (i) A copy of audited annual accounts
 - (ii) Reconciliation statement reconciling the value of supplies as per annual return and as per audited financial statement
 7. Every registered person whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C, electronically.

As per Notification No. 49/2018 – Central Tax, dt 13.09.2018 - In terms of Rule 80(3) of CGST Rules, every registered person whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

13.3 REVISION OF RETURNS

The mechanism of filing revised returns for any correction of errors/ omissions has been done away with. The rectification of errors/ omissions is allowed in the subsequent returns. However, no rectification is allowed after furnishing the return for the month of September following the end of the financial year to which, such details pertain, or furnishing of the relevant annual return, whichever is earlier.

13.4 PENALTY/LATE FEE

- As per GST Act Late fee is Rs. 100 per day per Act. So it is 100 under CGST & 100 under SGST. Total will be Rs. 200/day. Maximum is Rs. 5,000. There is no late fee on IGST.
- Interest is 18% per annum. It has to be calculated by the tax payer on the amount of outstanding tax to be paid. Time period will be from the next day of filing to the date of payment.
- Late Fee for filing GSTR-1, GSTR-3B, GSTR-4, GSTR-5 & GSTR-6 after the due date has been reduced to Rs. 50 per day of delay.
- Late fee for filing NIL returns have been reduced to Rs. 20 per day of delay for taxpayers (i.e. having Nil tax)



liability for the month) for GSTR-1, GSTR-3B and GSTR-4 & GSTR-5.

Note : If the GSTR is not filed for a given quarter/month, then the taxpayer cannot file the next quarter's return either.

Procedure for furnishing return and availing input tax credit

A new section is being introduced in order to enable the new return filing procedure as proposed by the Returns Committee and approved by GST Council.

Section 43A

- (1) Notwithstanding anything contained in sub-section (2) of section 16, section 37 or section 38, every registered person shall in the returns furnished under sub-section (1) of section 39 verify, validate, modify or delete the details of supplies furnished by the suppliers.
- (2) Notwithstanding anything contained in section 41, section 42 or section 43, the procedure for availing of input tax credit by the recipient and verification thereof shall be such as may be prescribed.
- (3) The procedure for furnishing the details of outward supplies by the supplier on the common portal, for the purposes of availing input tax credit by the recipient shall be such as may be prescribed.
- (4) The procedure for availing input tax credit in respect of outward supplies not furnished under sub-section (3) shall be such as may be prescribed and such procedure may include the maximum amount of the input tax credit which can be so availed, not exceeding twenty per cent. of the input tax credit available, on the basis of details furnished by the suppliers under the said sub-section.
- (5) The amount of tax specified in the outward supplies for which the details have been furnished by the supplier under sub-section (3) shall be deemed to be the tax payable by him under the provisions of the Act.
- (6) The supplier and the recipient of a supply shall be jointly and severally liable to pay tax or to pay the input tax credit availed, as the case may be, in relation to outward supplies for which the details have been furnished under sub-section (3) or sub-section (4) but return thereof has not been furnished.
- (7) For the purposes of sub-section (6), the recovery shall be made in such manner as may be prescribed and such procedure may provide for non-recovery of an amount of tax or input tax credit wrongly availed not exceeding one thousand rupees.
- (8) The procedure, safeguards and threshold of the tax amount in relation to outward supplies, the details of which can be furnished under sub-section (3) by a registered person,-
 - (i) within six months of taking registration;
 - (ii) who has defaulted in payment of tax and where such default has continued for more than two months from the due date of payment of such defaulted amount,shall be such as may be prescribed.

13.5 HIGHLIGHTS OF PROPOSED NEW RETURNS

Background: GST Council in its 27th meeting held on 4th May, 2018 had approved the basic principles of GST return design. Now in its 28th meeting held on 21st July, 2018, GST Council approved the key features and new format of the GST returns. This brief note lists the salient features of the new return format.

Monthly Return and due-date:

All taxpayers excluding a few exceptions like small taxpayers, composition dealer, Input Service Distributor (ISD), Non resident registered person, persons liable to deduct tax at source under section 51 of CGST Act, 2017, persons liable to collect tax at source under section 52 of CGST Act, 2017, shall file one monthly return. Return filing dates shall be staggered based on the turnover of the taxpayer which shall be calculated based on the reported turnover in the last year i.e. 2017-18, annualized for the full year. It shall be possible for the taxpayer to check on the common portal whether he falls in the category of a small taxpayer. A newly registered taxpayer shall be classified on the basis of self-declaration of the estimated turnover. The due date for filing of return by a large taxpayer shall be 20th of the next month.

**Nil return:**

Taxpayers who have no purchases, no output tax liability and no input tax credit to avail in any quarter of the financial year shall file one NIL return for the entire quarter. In month one and two of the quarter, such taxpayer shall report NIL transaction by sending a SMS. Facility for filing quarterly return shall also be available by an SMS.

Small taxpayers:

Taxpayers who have a turnover upto Rs. 5 Cr. in the last financial year shall be considered small calculated in the manner explained in para 1 above. These small taxpayers shall have facility to file quarterly return with monthly payment of taxes on self-declaration basis. However, the facility would be optional and small taxpayer can also file monthly return like a large taxpayer. The scheme of filing of quarterly return is explained later.

Profile based return:

There are many kinds of supplies which can be made under GST and also there are many types of inputs using which input tax credit can be availed. Most of the taxpayers have only a few types of supplies to make and few types of inputs to report. Therefore, a questionnaire shall be used to profile the taxpayer and only such part of return shall be shown to him which are relevant to his profile. For example, a small manufacturer or trader, buying and selling locally may need to file a return consisting of only a few lines. Profiling would allow fields like export, supplies to and from SEZ to be blocked from return and make return adequate for his purpose.

Suspension of registration:

Concept of suspension of registration would be introduced when a registered person has applied for cancellation of registration or when the conditions in law for cancellation of registration are satisfied. From the date of suspension to the date of cancellation of registration, return would not be required to be filed and also invoice uploading shall not be allowed for the period beyond the date of suspension.



Study Note - 14

MATCHING CONCEPT UNDER GST



This Study Note includes

14.1 Matching, Reversal and Reclaim of Input Tax Credit

14.2 Matching, reversal and reclaim of reduction in output tax liability

14.1 MATCHING, REVERSAL AND RECLAIM OF INPUT TAX CREDIT

Matching, reversal and reclaim of input tax credit (Section 42 of the CGST Act, 2017):

Matching of input tax credit:

Section 42(1) of the CGST Act, 2017 the details of every inward supply furnished by a registered person (hereafter in this section referred to as the "recipient") for a tax period shall, in such manner and within such time as may be prescribed, be matched—

- (a) with the corresponding details of outward supply furnished by the corresponding registered person (hereafter in this section referred to as the "supplier") in his valid return for the same tax period or any preceding tax period;
- (b) with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him; and
- (c) for duplication of claims of input tax credit.

As per Rule 69 of the CGST Rules, 2017 the following details relating to the claim of input tax credit on inward supplies including imports, provisionally allowed under section 41, shall be matched under section 42 after the due date for furnishing the return in FORM GSTR-3

- (a) GSTIN of the supplier;
- (b) GSTIN of the recipient;
- (c) invoice or debit note number;
- (d) invoice or debit note date; and
- (e) tax amount;

Provided that where the time limit for furnishing FORM GSTR-1 specified under section 37 and FORM GSTR-2 specified under section 38 has been extended, the date of matching relating to claim of input tax credit shall also be extended accordingly:

Provided further that the Commissioner may, on the recommendations of the Council, by order, extend the date of matching relating to claim of input tax credit to such date as may be specified therein.

Explanation 1: The claim of input tax credit in respect of invoices and debit notes in FORM GSTR-2 that were accepted by the recipient on the basis of FORM GSTR-2A without amendment shall be treated as matched if the corresponding supplier has furnished a valid return.



Explanation 2: The claim of input tax credit shall be considered as matched where the amount of input tax credit claimed is equal to or less than the output tax paid on such tax invoice or debit note by the corresponding supplier.

Thus, where the amount of input tax credit is equal or less than the output tax paid on such tax invoices it shall be considered as matched.

The mismatch can be of the following nature

Situation	Remarks
All Transactions where Input credit details of recipient are matched for output tax as stated by supplier and recipient	The transaction is treated as matched
Transactions where the input tax credit is duplicated by the recipient	Shall be communicated to the registered person in FORM GST MIS 1
Transactions where the claim for input tax credit is higher than the output tax as declared by the supplier	Shall be added to the output tax liability of the recipient
Transactions where the claim for input tax credit is higher than the output tax as declared by the supplier because the supplier has not furnished a particular transaction	Shall be added to the output tax liability of the recipient

Matched Transactions

- (i) The details in a return of inward supplies of a recipient should be matched in prescribed time and manner
 - With Outward supplies furnished by corresponding taxable person in his return (supplier)
 - With IGST paid on goods imported under Section 3 of the Customs Tariff Act 1975 which represents the Additional Duty of Customs (for which Credit was available under the erstwhile Central Excise Act)
 - To identify any duplicate claims of input tax credit
- (ii) When the claim for input tax credit in respect of inward supplies matches with the corresponding outward supply or IGST in respect of goods imported, the same shall be finally accepted and communicated to the recipient in the prescribed manner.

(iii) Matching of claim of input tax credit

The following details relating to the claim of input tax credit on inward supplies including IGST claimed on imports shall be matched after the due date for furnishing the return in FORM GSTR-3B (Return with payment of tax to be filed on or before 20th of the following month). The matching is done for the following parameters based on the GSTIN of the Supplier and the recipient

- (a) GSTIN of the supplier;
- (b) GSTIN of the recipient;
- (c) Invoice/ or debit note number;
- (d) Invoice/ or debit note date;
- (e) taxable value; and
- (f) tax amount;

It may be noted that if the supplier has not paid the tax and/or not filed the return on or before the due date (or extended due date, if any), the return filed by him shall not be treated as a valid return for the purposes of the above matching exercise. The transactions between the parties interest, will be treated as unmatched

The rule provides for two specific circumstances, where the claims for input tax credit are treated as Matched



(a) Where the claim of input tax credit in respect of invoices and debit notes in FORM GSTR-2 that were accepted by the recipient on the basis of FORM GSTR-2A without amendment, if the corresponding supplier has furnished a valid return.

(b) Where the amount of input tax credit claimed is equal to or less than the output tax paid on such tax invoice or debit note by the corresponding supplier.

(iv) Final acceptance of input tax credit and communication thereof

The final acceptance of claim of input tax credit in respect of any tax period, shall be made available electronically in FORM GST MIS -1 through the Common Portal.

The claim of input tax credit in respect of any tax period which had been communicated as mismatched but is found to be matched after rectification by the supplier or recipient shall be finally accepted and made available electronically to the person making such claim in **FORM GST MIS - 1** through the Common Portal.

Form GSTR 2A: GSTR 2A is an auto-generated read only document which is for information purpose only. It will reflect the information as available in GSTR-2, but GSTR-2A cannot be edited. It takes information of goods and/or services which have been purchased in a given month from the returns filed by the suppliers.

For example - When a seller files his GSTR-1, the information is captured in purchaser's GSTR-2A.

Communication of discrepancy in the claim of input tax credit [Section 42(3) of the CGST Act, 2017 read with CGST Rules]:

As per Rule 71(1) of the CGST Rules, 2017 any discrepancy in the claim of input tax credit and addition to output tax liability on account of continuation of discrepancy in respect of tax period shall be communicated to person making claim in the form GST MIS-1 through common portal on or before the last date of the month in which the matching has been carried out. The discrepancies shall be communicated to the supplier in Form GST MIS-2.

Example 1

M/s X Ltd., being a registered person submitted the GSTR-3 for the month of January 2018 by 20th February 2018. After the last date of filing return (i.e. GSTR-3), matching of information will be made with the information furnished in GSTR-2 (i.e. by the recipient of supplies) on or before 15th February 2018. Discrepancy in matching will be communicated to persons in GST MIS-1 and/ GST MIS-2.

Ratification of Discrepancy:

As per Rule 71(2) of the CGST Rules, 2017 a supplier to whom any discrepancy is made available under sub-rule (1) of rule 71 may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.

As per Rule 71(3) of the CGST Rules, 2017 a recipient to whom any discrepancy is made available under sub-rule (1) of rule 71 may make suitable rectifications in the statement of inward supplies to be furnished for the month in which the discrepancy is made available.

If the recipient or the supplier has rectified the error, the inward supply and outward supply will match and credit will be finally accepted.

Discrepancy not rectified [section 42(5) of the CSGT Act, 2017 read with CGST Rules, 2017]:

As per Rule 71(4) of the CGST Rules, 2017 if the supplier or recipient does not rectify the discrepancy, the amount



to the extent of discrepancy shall be added to the output tax liability of the recipient in his return to be furnished in FORM GSTR-3 for the month succeeding the month in which the discrepancy is made available.

Explanation.—For the purposes of this rule, it is hereby declared that -

- (i) Rectification by a supplier means adding or correcting the details of an outward supply in his valid return so as to match the details of corresponding inward supply declared by the recipient;
- (ii) Rectification by the recipient means deleting or correcting the details of an inward supply so as to match the details of corresponding outward supply declared by the supplier.

Claim of input tax credit on the same invoice more than once [Section 42(4) of the CGST Act, 2017 read rule 72 of the CGST Rules, 2017]:

It means that the recipient has claimed credit second time. As per Rule 72 of the CGST Rules, 2017 duplication of claims of input tax credit in the details of inward supplies shall be communicated to the registered person in FORM GST MIS-1 electronically through the common portal.

Final acceptance of input tax credit and communication thereof [section 42(2) of the CGST Act, 2017]:

As per Rule 70 of the CGST Rules, 2017 the claim of input tax credit in respect of invoices or debit notes relating to inward supply received by the recipient is matched with the details of corresponding outward supply declared by supplier, the input tax credit is finally accepted and report shall be communicated electronically to the registered person making such claim in FORM GST MIS-1 through the Common Portal.

Section 42(6) of the CGST Act, 2017 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.

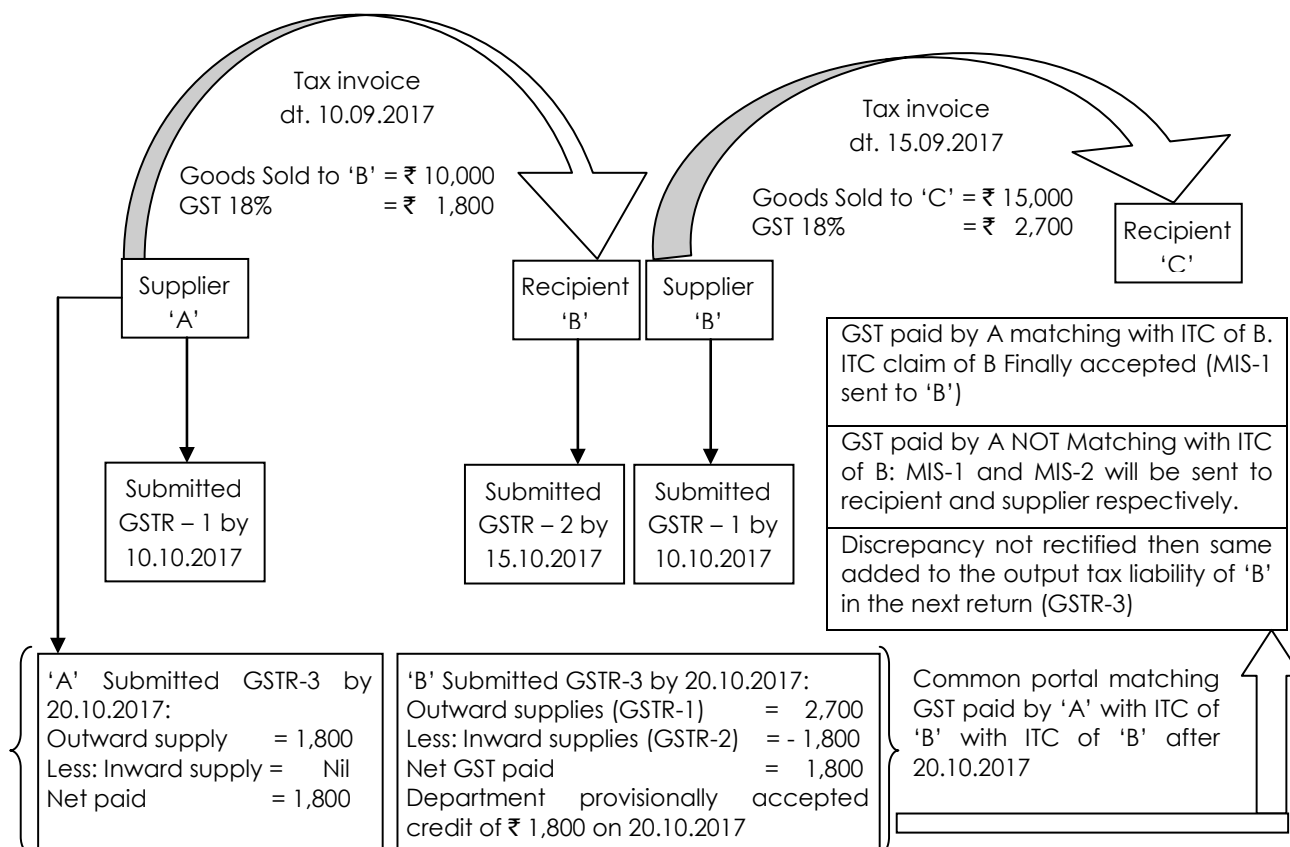
Section 42(7) of the CGST Act, 2017 the recipient shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5), if the supplier declares the details of the invoice or debit note in his valid return within the time specified in sub-section (9) of section 39.

Section 42(8) of the CGST Act, 2017 a recipient in whose output tax liability any amount has been added under sub-section (5) or sub-section (6), shall be liable to pay interest at the rate specified under sub-section (1) of section 50 on the amount so added from the date of availing of credit till the corresponding additions are made under the said sub-sections.

Section 42(9) of the CGST Act, 2017 where any reduction in output tax liability is accepted under sub-section (7), the interest paid under sub-section (8) shall be refunded to the recipient by crediting the amount in the corresponding head of his electronic cash ledger in such manner as may be prescribed:

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

Section 42(10) of the CGST Act, 2017 the amount reduced from the output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50.

Simplified approach:**Duplicate Transactions**

The duplication of claims of input tax credit shall be communicated to the recipient in such manner as stated below. Further, the amount claimed as input tax credit that is found to be in excess on account of such 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.

Input tax claim is higher than output tax for a tax period as declared

Where the credit claimed in respect of inward supplies is in excess when compared to the tax declared by the supplier or where the supplier has not at all declared the outward supply in his return, the discrepancies will be communicated to both parties

When discrepancies communicated to the outward supplier are not rectified by supplier in a valid return for the month (not by revision of return for the month in which the discrepancy occurred within 17th), the tax amount involved will be added to the output liability of the recipient for the month succeeding the month in which the discrepancy is communicated

The recipient shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5), if the supplier declares the details of the invoice or debit note in his valid return furnished for the month during which such omission or incorrect particulars are noticed and interest is paid as required under this Act

Interest on mismatched transactions

Recipient will be liable to payment of interest in every case when discrepancy is added for the period starting from the date of availing the credit till the corresponding additions are made.



If the supplier declares the details of invoice or debit note in his valid return filed within the time specified u/s 39(9) i.e. before the due date of filing of the return for the month of September of the subsequent financial year or filing of annual return whichever is earlier the recipient is eligible to reduce from his output tax liability the amount so added earlier.

In case of such reduction in output tax liability, he is entitled for refund of interest paid as per above. However this interest shall not exceed the amount of interest paid by the supplier.

14.2 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 is to be matched with the corresponding reduction in the claim for ITC by the corresponding taxable person in his return for the same/subsequent tax period, and also for duplication of claims for reduction in output tax liability.
 - (a) Where the output tax is reduced by outward supplier by issuing a credit note, details of every such credit note issued should be matched with the corresponding reduction in the credit by the recipient of the amount involved in the credit note in his valid return filed for the current or subsequent tax period. For example, a sale invoice at ₹ 1,50,000 was overstated by ₹ 50,000 for which a credit note was issued. This credit note should be accounted by the recipient in a valid return filed for the current or subsequent tax period
 - (b) Similarly where the supplier has raised say, two invoices and has paid out put tax twice, where a credit note has been raised, the same shall also be accounted by the recipient. However if the recipient has accounted for the invoice only once, he need not account for the credit note

2. The matching/ mismatch of the details have to be communicated. If the recipient accepts the discrepancy and rectifies the same by filing a valid return subsequently, then the tax amount involved will be excluded from the output liability of the supplier for the month in which the discrepancy is communicated.

In other words, as soon as discrepancy is communicated, the tax involved will be recovered from the supplier which will be readily reversed when the recipient admits and rectifies the discrepancy.

Discrepancies relating to duplicate claims for reduction of output tax liability will be added to the output liability of the supplier for the month in which the discrepancy is communicated.

3. The amount of discrepancy, which is communicated and 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 as prescribed, in the return for the month succeeding the month in which the discrepancy is communicated.
4. The supplier shall be eligible to reduce, from his output tax liability, the amount added for non-ratification and the recipient declares the details of the credit note in his valid return later on within the time specified.
5. Interest shall be chargeable for the amount added back for amount not ratification u/s 50.
6. Where any reduction in output tax liability is accepted for ratification, the interest paid initially shall be refunded by crediting the electronic ledger.
7. Assessee applying for cancellation of his registration shall furnish a final return within 3 months of the date of cancellation or date of cancellation order whichever is later.
8. Matching of claim of reduction in the output tax liability

The following details relating to the claim of reduction in output tax liability shall be matched under section 43 after the due date for furnishing the return in FORM GSTR-3B–

- (a) GSTIN of the supplier;
- (b) GSTIN of the recipient;
- (c) credit note number;
- (d) credit note date;
- (e) taxable value; and
- (f) tax amount;



9. Final acceptance of reduction in output tax liability and communication thereof
 - (1) The final acceptance of claim of reduction in output tax liability in respect of any tax period, specified in sub-section (2) of section 43, shall be made available electronically to the person making such claim in FORM GST MIS-3 through the Common Portal.
 - (2) The claim of reduction in output tax liability in respect of any tax period which had been communicated as mis-matched but is found to be matched after rectification by the supplier or recipient shall be finally accepted and made available electronically to the person making such claim in FORM GST MIS-3 through the Common Portal.
10. Communication and rectification of discrepancy in reduction in output tax liability and reversal of claim of reduction.
 - (1) Any discrepancy in claim of reduction in output tax liability, specified in sub-section (3) of section 43, and the details of output tax liability to be added under sub-section (5) of the said section on account of continuation of such discrepancy shall be made available to the registered person making such claim electronically in FORM GST MIS-3 and the recipient electronically in FORM GST MIS-4 through the Common Portal on or before the last date of the month in which the matching has been carried out.
 - (2) A supplier to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.
 - (3) A recipient to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of inward supplies to be furnished for the month in which the discrepancy is made available.
 - (4) Where the discrepancy is not rectified under sub-rule (2) or sub-rule (3), an amount to the extent of discrepancy shall be added to the output tax liability of the supplier and debited to tax liability register and also shown in his return in FORM GSTR-3 for the month succeeding the month in which the discrepancy is made available.

Explanation 1.-Rectification by a supplier means deleting or correcting the details of an outward supply in his valid return so as to match the details of corresponding inward supply declared by the recipient.

Explanation 2.-Rectification by the recipient means adding or correcting the details of an inward supply so as to match the details of corresponding outward supply declared by the supplier.

11. Claim of reduction in output tax liability more than once
Duplication of claims for reduction in output tax liability in the details of outward supplies shall be communicated to the registered person in FORM GST MIS – 3 electronically through the Common Portal.
12. Refund of interest paid on reclaim of reversals
The interest to be refunded under sub-section (9) of section 42 or sub-section (9) of section 43 shall be claimed by the registered person in his return in FORM GSTR-3 and shall be credited to his electronic cash ledger in FORM GST PMT-3 and the amount credited shall be available for payment of any future liability towards interest or the taxable person may claim refund of the amount under section 54.
13. Transactions through E-commerce Operators
Rule 78 deals with the matching of details furnished by the e-Commerce operator with the details furnished by the supplier
The following details relating to the supplies made through an e-Commerce operator, as declared in FORM GSTR-8, shall be matched with the corresponding details declared by the supplier in FORM GSTR-1-
 - (a) GSTIN of the supplier;
 - (b) GSTIN or UIN of the recipient, if the recipient is a registered person;
 - (c) State of place of supply;
 - (d) invoice number of the supplier;
 - (e) date of invoice of the supplier;



- (f) taxable value; and
- (g) tax amount:

Provided that for all supplies where the supplier is not required to furnish the details separately for each supply, the following details relating to such supplies made through an e- Commerce operator, as declared in FORM GSTR-8, shall be matched with the corresponding details declared by the supplier in FORM GSTR-1

- (a) GSTIN of the supplier;
- (b) State of place of supply;
- (c) total taxable value of all supplies made in the State through e-commerce portal; and
- (d) tax amount on all supplies made in the State:

ILLUSTRATION :

- 1) Matching of ITC: Mr. A, a registered supplier, supplies goods valuing ₹ 10,00,000 plus GST @ 12% to Mr. B on 09-07-2017, incorporating these supplies in the details of outward supplies for the month of July 2017 furnished by him on 10-08-2017. However, Mr. B claimed input tax credit @ 18% in respect of the said supplies and furnished his return for the said month. On matching being carried out the discrepancy was noticed and the same was communicated to both the parties on 31-08-2017. Mr. B did not rectify the same in the return for the month of August, 2017 i.e. upto 20-9-2017. In whose tax liability this mismatch will be added?

Solution : As per provisions of section 42(5) of CGST ACT, 2017, the amount in respect of which any discrepancy is communicated under section 42(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 his return for the month succeeding the month in which discrepancy is communicated.

Thus, the amount of ₹ 60,000 [₹ 1,80,000 - ₹ 1,20,000] will be added to the output tax liability of Mr. B in the return for the month of September, 2017. The return for the month of September 2017 is to be filled on 20-10-2017. Thus, he will be liable to pay the said amount along with interest @ 18% p.a for the period from the date of availing the credit till the date of furnishing the return for the month of September, 2017 i.e 20-10-2017.

- 2) ABC tea co. supplied 1000 bags to XYZ co. GST paid on such supply was ₹ 1,80,000,. Subsequently, XYZ Co. returned 400 bags. Resultantly, ABC Co. issued a credit note to XYZ Co. and disclosed it in GSTR – 1.

Solution : Accordingly, ABC Co. claimed reduction in output tax liability of ₹72,000 based on such credit note. Thus, there must be a corresponding reduction of ITC Claim by XYZ Co. also. In this Case, if XYZ Co. has claimed an ITC in respect of purchased from ABC Co. of (₹ 1,80,000- ₹72,000) ₹ 1,08,000 in his GSTR-2 for the said month, claim for reduction in output tax liability of ABC Ltd. Shall be considered as "MATCHED".

- 3) Mr. H returns the goods supplied by Mr. R on which GST of ₹ 18,000 is paid. Mr.R – the supplier – issues a credit note and furnishes the same in his FORM GSTR-1. Mr.H - the recipient reduces the corresponding amount of ITC Claim in his GSTR-2 by ₹16,000. Both the parties furnish their return GSTR -3 after which the mismatch was reported and the discrepancy to the effect that Mr.H has claimed excess input tax credit of ₹2000 is communicated to Mr. R and Mr. H in Form GST MIS-1 and Form GST MIS-2 respectively.

Solution : In this case, discrepancy has to be rectified by the recipient – Mr.H in his return for the month in which said discrepancy is made available.

- 4) Rectification of mistakes: Mr. X filed the return for outward supplies for the month of August, 2017 on 20-09-2017. Subsequently, while furnishing the return for December 2017, he noticed that he had omitted to consider certain transactions corresponding to the supplies of August, 2017. Can he rectify the return for August 2017 now? What remedial action can be taken by him?



Solution : As per Section 39(9) of the GST Act, 2017, subject to the provisions of Section 37 and 28, if any registered person, after furnishing the return under section 39(1)/(2)/(3)/(4)/(5) discovers any omission or any incorrect particulars therein, he shall rectify the same in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed.

Thus, there is no scope for filing of revised return but the rectification can be made in the month in which it is discovered. Herein, the rectification can be made in the return for the month of December.

However, time limit has been prescribed within which the rectification can be made, being earlier of –

- Due date for furnishing of return for the month of September or second quarter following the end of the financial year i.e. 20th October or
- The actual date of furnishing of relevant annual return

Here, the rectification can be made by 20-10-2018 being the due date for filing of the return for September 2018 or the date of filing of the annual return, whichever is earlier.

- 5) Deemed match transactions : The output tax liability of Mr.A, a registered supplier in respect of supplies made to Mr.B, for the month of July 2017 is ₹35,000 after considering his claim for reduction in his output tax liability on account of issuance of a credit note of ₹ 10,000. Whereas the corresponding input tax credit claimed by Mr.B in his valid return (after considering the reduction in ITC admitted and discharged on such credit note) is ₹ 32,000. What shall be impact of such transactions.

Solution : As per Explanation (ii) to Rule 69 of CGST Rule, 2017, claim of reduction in the output tax liability shall be considered as matched, where the amount of reduction claimed is equal to or less than the claim of reduction in ITC admitted and discharged on such credit note by the corresponding recipient in his valid return.

In the given case net output tax liability of Mr. A is ₹ 35,000 after taking into accounting the reduction claimed which is more than input tax credit by Mr. B in respect of same supply i.e ₹ 32,000 so, no output tax liability shall be added to the account of Mr.A as a result of such Mismatch.

- 6) Matching of Output tax liability : Mr. X, a registered supplier, supplied services valuing ₹ 10,00,000 plus GST @12% to Mr.Y on 09-10-2017, incorporating these supplies in the details of outward supplies furnished for the month of October 2017 on 10-11-2017. Mr.Y recorded the said supplies as his inward supplies and accordingly, claimed ITC on said inward supplies and furnished his return. There was disagreement regarding the quality of service and Mr.X issued a credit note on 15-12-2017 in favour of Mr.Y amounting ₹ 2,00,000 and reduced his output tax liability amounting to ₹ 24,000 in the return furnished for the month of December 2017 on 20th January 2018. However, Mr.Y did not reverse his ITC amounting to ₹ 24,000 in the return furnished for the month of December 2017. On matching being carried out the discrepancy was noticed and the same was communicated to both the parties on 31-01-2018. The said discrepancy was not corrected by Mr. Y in the return furnished for the month of January 2018, In whose tax liability this mismatch will be added ?

Solution : As per provision of Section 43(3) of CGST Act, 2017, where the reduction of output tax liability in respect of outward supplies exceeds the corresponding reduction in the claim for ITC or the corresponding credit note is not declared by the recipient in his valid return, the discrepancy shall be communicate to both such parties upto the end of the month in which such matching si carried out i.e 31st January 2018.

A recipient to whom any discrepancy is communicated may make suitable rectifications in the statement of inward supplies to be furnished for the month in which discrepancy is made available i.e upto 20th February 2018.

Where the discrepancy is not rectified by the recipient, an mount to the extend of discrepancy shall be added to the output tax liability of the supplier debited to the electronic liability register and also shown in his return in FORM GSTR-3 for the month succeeding the month in which the discrepancy is made available.



Thus, in this case since Mr. Y has not rectified the discrepancy in the return filed for the month of January 2018, i.e. upto 20th February 2018, therefore the said amount of ₹ 2,40,000 shall be added to the output tax liability of the supplier i.e. Mr. X in the return of the month of February 2018 which is filed on 20th March 2018.

In this case Mr. X will be liable to pay interest from 20th January 2018 to 20th March 2018 i.e. $\text{₹ } 24,000 \times 18\% \times 59/365 = \text{₹ } 698.3$

- 7) Mr. A supplied goods to Mr. B for ₹ 2,00,000 plus GST 18%, vide Invoice No. 99 dated 5th November 2017. Mr. B availed the ITC of ₹ 36,000 and confirmed in GSTR-2. However, invoice no. 99 dated 5th November 2017 not reflected in GSTR-1, of Mr. A.

You are required to answer the following:

- When matching will take through common portal of GSTN.
- To whom discrepancy will be informed.
- Time limit for rectification of discrepancy
- Whether ITC is allowed to Mr. B, if Mr. A is not paid tax till 20th January 2018.
- Mr. B communicated the problem to Mr. A, who looks into the issue and rectified the discrepancy and included invoice no. 99 in his GSTR-3 for January 2018 accordingly he paid tax on 20th Feb 2018. If so Mr. B can reduce his liability?

Solution :

- Matching will take place only after the due date of GSTR-3 for the month of November 2017. In the given case matching will take place after 20th December 2017.
- Discrepancy is to be communicated by the common portal GSTN to supplier (i.e. Mr. A) in the Form GST MIS-2.
- Time limit for rectification is 20th January 2018 (i.e. Due date of filing FORM GSTR-3 for the month succeeding the month in which the discrepancy is made available). Mr. A should pay tax on it (as per Rule 71(4) of the CGST Rules, 2017).
- Input tax credit of ₹ 36,000 shall be added to the output tax liability of Mr. B in his return to be furnished in
FORM GSTR-3 for the month succeeding the month in which the discrepancy is made available (i.e. 20th Feb 2018) with interest @18%.
- As per section 42(7) of the CGST Act, 2017 Mr. B can reduce the amount from his output tax liability and the interest paid will be refunded to his electronic cash ledger account under section 42(9) of the CGST Act, 2017.

Study Note - 15

EXPORTS, IMPORTS AND REFUND UNDER GST



This Study Note includes

- 15.1 Export of Goods and Services
- 15.2 Import of Goods and Services
- 15.3 Zero - Rated Supply
- 15.4 Deemed Exports
- 15.5 Refunds

15.1 EXPORT OF GOODS AND SERVICES

Export of Goods:

Provision relating to export of goods

Sub-Section 5 of section 2 of IGST Act, 2017 defines – “Export of Goods”, with its grammatical variations and cognate expressions, means taking out of India to a place outside India.

Supply of goods where supplier located in India and the place of supply outside India – Deemed to be Inter-State Supply- Supply of goods, when the supplier is located in India and the place of supply is outside India, shall be deemed to be a supply of goods in the course of inter-state trade or commerce [Section 7(5)(a)]

Following aspects need to be noted:

- (a) The movement of goods is alone relevant and not the location if the exporter/importer.
- (b) Unlike export of service which requires fulfilment of certain conditions for a supply to qualify as ‘export of service’ like the nature of currency in which payment is required to be made, location of the exporter etc, export of goods doesn’t require fulfilment of any such conditions.

Export of Services:

Provision relating to export of service

Export of Services as per 2(6) of IGST Act, 2017:

“export of services” means the supply of any service when,—

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

Explanation 1 of Section 8.—For the purposes of this Act, where a person has,—

- (i) an establishment in India and any other establishment outside India;
 - (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory;
- or



- (iii) an establishment in a State or Union territory and any other establishment registered within that State or Union territory,

then such establishments shall be treated as establishments of distinct persons.

Supply of service where supplier located in India and the place of supply outside India – Deemed to be Inter-State Supply- Supply of service, when the supplier is located in India and the place of supply is outside India, shall be deemed to be a supply of service in the course of inter-state trade or commerce [Section 7(5)(a)].

ILLUSTRATION:

Determination of POS and Export of Service:

A Ltd., a corn chips manufacturing company based in USA, intends to launch its products in India. However, the company wishes to know the taste and sensibilities of Indians before launching its products in India. For this purpose, A Ltd has approached ABC Consultants, Mumbai, to carry out a survey in India to enable it to make changes, if any, in its products to suit Indian taste.

The survey is to be solely based on oral replies of the surveyees; they will not be provided any sample by A Ltd, to taste. ABC Consultants will be paid in convertible foreign exchange for the assignment.

With reference to the provision of GST Law, determine the place of supply of the service. Also, explain whether the said supply will amount to export of service?

Solution :

As per Sec 13(2) of the IGST Act, 2017 in case where the location of the supplier of services or the location of the recipient of services is outside India, the place of supply of services except the services specified in sub-section (3) to (13) shall be the location of the recipient of services.

The given case does not fall under any of such specific situations and thus, the place of supply in this will be determine under sec 13(2). Thus, the place of supply of service in this case is the location of recipient of services i.e., USA.

As per sec 2(6) of the IGST Act, 2017 export of services means the supply of any services when –

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

Since all the above 5 conditions are fulfilled in the given case, the same will be considered as a n export of service.

15.2 IMPORT OF GOODS AND SERVICES

Import of goods

Provision relating to import of goods

Export of Services as per 2(10) of IGST Act, 2017: "import of goods" with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India;

Import of goods – Deemed to be intra-state supply – As per section 7(2) of IGST Act, 2017 Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.



Place of supply of goods imported into India.

The place of supply of goods,—

(a) imported into India shall be the location of the importer (Section 11 of IGST Act, 2017)

Import of services

Provision relating to import of services

(11) "import of services" means the supply of any service, where—

- (i) the supplier of service is located outside India;
- (ii) the recipient of service is located in India; and
- (iii) the place of supply of service is in India;

Thus, only where the location of supplier is outside India but the location of recipient and the place of supply is in India, it shall qualify as import of services.

As per Section 7(4) of IGST Act, 2017 - Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.

15.3 ZERO - RATED SUPPLY

Sub section 16(1) of the IGST Act defines 'Zero rated supply' as follows:

Zero rated supply means any of the following supplies of goods or services or both namely-

- (a) Export of goods or services or both or
- (b) Supply of goods or services or both to a Special Economic Zone (SEZ) developer or an SEZ unit.

Thus export of goods or services and supplies to a SEZ unit of its developer shall be treated as zero rated supply thereby entitles the said unit or developer for all benefits i.e. availment of input tax credit or refund of unutilized ITC.

Input tax credit eligible in respect of Zero-Rated Supply- As per 16(2) of IGST Act, 2017 : Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

Question:

Whether services of short-term accommodation, conferencing, banqueting etc. provided to a Special Economic Zone (SEZ) developer or a SEZ unit should be treated as an inter-State supply (under section 7(5)(b) of the IGST Act, 2017) or an intra-State supply (under section 12(3)(c) of the IGST Act, 2017)? – Circular 48/22/2018 - GST

Solution:

As per section 7(5) (b) of the IGST Act, the supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce. Whereas, as per section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply is in the same State/ Union territory, it would be treated as an intra-State supply. In the instant case, section 7(5)(b) of the IGST Act is a specific provision which states that such supplies shall be treated as interstate supplies.

Therefore it is clarified that services of short term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.

**Question:**

Whether the benefit of zero rated supply can be allowed to all procurements by a SEZ developer or a SEZ unit such as event management services, hotel and accommodation services, consumables etc? – Circular 48/22/2018 - GST

Solution:

As per section 16(1) of the IGST Act, "zero rated supplies" means supplies of goods or services or both to a SEZ developer or a SEZ unit. Whereas, section 16(3) of the IGST Act provides for refund to a registered person making zero rated supplies under bond/LUT or on payment of integrated tax, subject to such conditions, safeguards and procedure as may be prescribed. Further, as per the second proviso to rule 89(1) of the Central Goods and Services Tax Rules, 2017 (CGST Rules in short), in respect of supplies to a SEZ developer or a SEZ unit, the application for refund shall be filed by the:

- (a) supplier of goods after such goods have been admitted in full in the SEZ for authorised operations, as endorsed by the specified officer of the Zone;
- (b) supplier of services along with such evidences regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone.

2.2 A conjoint reading of the above legal provisions reveals that the supplies to a SEZ developer or a SEZ unit shall be zero rated and the supplier shall be eligible for refund of unutilized input tax credit or integrated tax paid, as the case may be, only if such supplies have been received by the SEZ developer or SEZ unit for authorized operations. An endorsement to this effect shall have to be issued by the specified officer of the Zone.

2.3 Therefore, subject to the provisions of section 17(5) of the CGST Act, if event management services, hotel, accommodation services, consumables etc. are received by a SEZ developer or a SEZ unit for authorised operations, as endorsed by the specified officer of the Zone, the benefit of zero rated supply shall be available in such cases to the supplier.

15.4 DEEMED EXPORTS

As per Section 2(39) of the CGST Act, 2017 "deemed exports" means such supplies of goods as may be notified under Section 147;

As per Section 147 of the CGST Act, 2017 The Government may, on the recommendations of the Council, notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.

As per Notification No. 48/2017-Central Tax, dated - 18th October, 2017, the Central Government, on the recommendations of the Council, hereby notifies the supplies of goods listed in column (2) of the Table below as deemed exports, namely:-

Sl. No.	Description of supply
1.	Supply of goods by a registered person against Advance Authorisation
2.	Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation
3.	Supply of goods by a registered person to Export Oriented Unit
4.	Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated the 30th June, 2017 (as amended) against Advance Authorisation.

Explanation –

For the purposes of this notification, –

1. "Advance Authorisation" means an authorisation issued by the Director General of Foreign Trade under Chapter 4 of the Foreign Trade Policy 2015-20 for import or domestic procurement of inputs on pre-import basis for physical exports.



2. Export Promotion Capital Goods Authorisation means an authorisation issued by the Director General of Foreign Trade under Chapter 5 of the Foreign Trade Policy 2015- 20 for import of capital goods for physical exports.
3. "Export Oriented Unit" means an Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-Technology Park Unit approved in accordance with the provisions of Chapter 6 of the Foreign Trade Policy 2015-20.

As per Circular No. 14/14 /2017, dated 6th November, 2017:

For supplies to EOU / EHTP / STP / BTP units in terms of Notification No. 48/2017- Central Tax dated 18.10.2017, the following procedure and safeguards are prescribed –

- (i) The recipient EOU / EHTP / STP / BTP unit shall give prior intimation in a prescribed proforma in "Form-A" bearing a running serial number containing the goods to be procured, as pre-approved by the Development Commissioner and the details of the supplier before such deemed export supplies are made. The said intimation shall be given to – (a) the registered supplier; (b) the jurisdictional GST officer in charge of such registered supplier; and (c) its jurisdictional GST officer.
- (ii) The registered supplier thereafter will supply goods under tax invoice to the recipient EOU / EHTP / STP / BTP unit.
- (iii) On receipt of such supplies, the EOU / EHTP / STP / BTP unit shall endorse the tax invoice and send a copy of the endorsed tax invoice to – (a) the registered supplier; (b) the jurisdictional GST officer in charge of such registered supplier; and (c) its jurisdictional GST officer.
- (iv) The endorsed tax invoice will be considered as proof of deemed export supplies by the registered person to EOU / EHTP / STP / BTP unit.
- (v) The recipient EOU / EHTP / STP / BTP unit shall maintain records of such deemed export supplies in digital form, based upon data elements contained in "Form-B". The software for maintenance of digital records shall incorporate the feature of audit trail. While the data elements contained in the Form-B are mandatory, the recipient units will be free to add or continue with any additional data fields, as per their commercial requirements. All recipient units are required to enter data accurately and immediately upon the goods being received in, utilized by or removed from the said unit. The digital records should be kept updated, accurate, complete and available at the said unit at all times for verification by the proper officer, whenever required.

A digital copy of Form – B containing transactions for the month, shall be provided to the jurisdictional GST officer, each month (by the 10th of month) in a CD or Pen drive, as convenient to the said unit.

The above procedure and safeguards are in addition to the terms and conditions to be adhered to by a EOU / EHTP / STP / BTP unit in terms of the Foreign Trade Policy, 2015- 20 and the duty exemption notification being availed by such unit.

15.5 REFUND

Circumstance in which registered person can claim refund:

The various circumstances in which refund will arise has been explained in section 54 of the CGST Act, 2017 read with Chapter X of CGST Rules, 2017 are as follows:

- (a) Refund of pre-deposit for filing appeal
- (b) Export of goods or services
- (c) Special Economic Zones (SEZ's)/Developer of SEZ units.
- (d) Deemed exports
- (e) Duty structure
- (f) Finalisation of provision assessment
- (g) Excess payment of tax due to mistake etc.

**(a) Refund of pre-deposit for filing appeal:**

As per section 107 (1) of the CGST Act 2017 any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within 3 months from the date on which the said decision or order is communicated to such person.

As per Section 107(6) no appeal shall be filed under sub-section (1) of Section 107, unless the appellant has paid—

- (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
- (b) a sum equal to 10% of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed.

In case the appellate authority decide the case in favor of the assessee and ordered to refund of tax.

In the above situation the amount of pre-deposit becomes refundable to the assessee. The assessee is required to file the refund claim within a period of 2 Years from the date of receipt of the order (section 54(9) of the CGST Act, 2017)

(b) Export of goods or services:

Refund on account of export of goods or services can be granted in the following two methods:

- (i) refund of un-utilized credit when exports of goods or services are made without payment of tax (Section 54(3) of the CGST Act, 2017).
- (ii) refund of taxes paid on export of goods or services.

As per Rule 89(5) of Chapter X of the CGST Rules, 2017 the quantum of input tax credit shall be determined as per the following formula:

$$\text{Refund Amount} = \frac{\text{Turnover of zero rated supply of goods + services}}{\text{Adjusted total turnover}} \times \text{Net Input Tax Credit}$$

Where

- (A) "Refund amount" means the maximum refund that is admissible;
- (B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period;
- (C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking;
- (D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

- (E) "Adjusted Total turnover" means the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the value of exempt supplies other than zero-rated supplies, during the relevant period;

**Practical theory:****Example 4:**

How soon will refund in respect of export of goods or services be granted during the GST regime?

Answer:

(a) In case of refund of tax on inputs used in exports:

- Refund of 90% will be granted provisionally within seven days of acknowledgement of refund application.
- Remaining 10% will be paid within a maximum period of 60 days from the date of receipt of application complete in all respects.
- Interest @ 6% is payable if full refund is not granted within 60 days.

(b) In the case of refund of IGST paid on exports:

Upon receipt of information regarding furnishing of valid return in Form GSTR-3 by the exporter from the common portal, the Customs shall process the claim for refund and an amount equal to the IGST paid in respect of each shipping bill shall be credited to the bank account of the exporter.

Example 5:

M/s X Ltd. manufacture of exempted excisable goods for export. Company availed input stage rebate (ITC on inputs) used in the manufacture of exported goods. Whether the company is eligible for refund of ITC on inputs?

Answer:

Under IGST law a person engaged in export of goods which is an exempt supply is eligible to avail input stage credit for zero rated supplies. Once goods are exported, refund of unutilized credit can be availed under Section 16(3)(a) of IGST Act, 2017 and Section 54 of the CGST Act, 2017 and the rules made there under.

Example 6:

What do you mean refund under section 54 of CGST Act, 2017?

Answer:

As per explanation to section 54 of the CGST Act 2017 refund includes refund of tax paid on zero-rated supplies of goods or services or both

OR

on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilized input tax credit as provided under section 54(3) of the CGST Act, 2017.

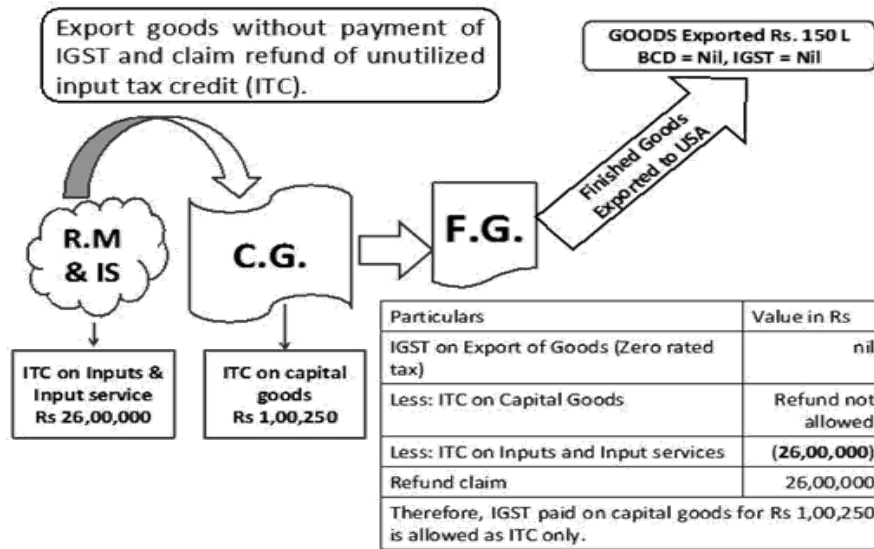
Example 7:

Under what circumstances it may be beneficial to claim refund of un-utilized credit when exports of goods or services are made without payment of tax (Section 54(3) of the CGST Act, 2017).

Answer:

If assessee has negligible balance of tax in Capital Goods Input Tax Credit Account, and more credit in inputs and input services it is advisable to claim refund of un-utilized credit when exports of goods or services are made without payment of tax (Section 54(3) of the CGST Act, 2017).

Simplified approach: assume X Ltd purchased goods by paying GST for manufacture. After manufacture supplied goods to an importer located in USA in the following manner.



Note: In general all our exports free from Basic Customs Duty unless law specifically stated otherwise.

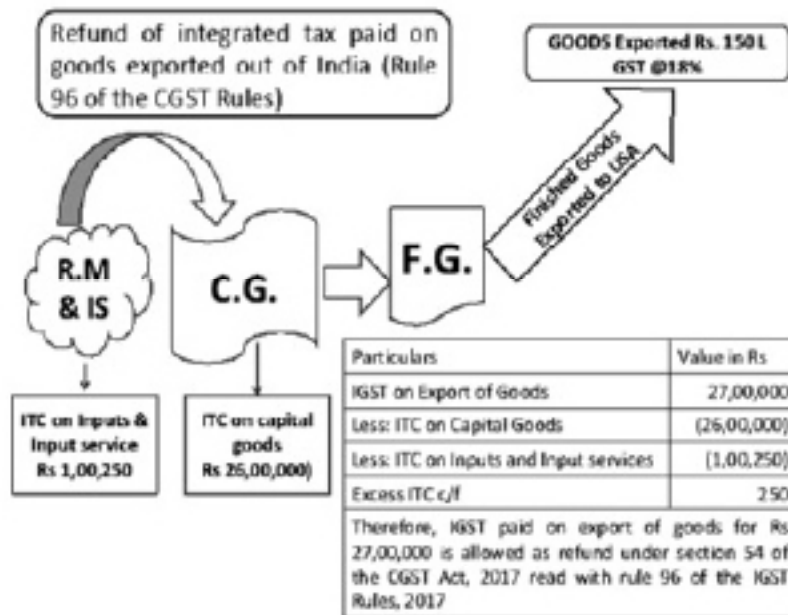
Example 8:

Under what circumstances it may be beneficial to pay IGST on export of goods and claim rebate (i.e. Refund) under rule 96 of the CGST Rules, 2017.

Answer:

If assessee has balance of tax in Capital Goods Input Tax Credit Account, it is advisable to pay duty (i.e. IGST) on export and claim refund, as balance in Capital Goods Input Tax Credit Account is never refundable.

Simplified approach: assume X Ltd purchased goods by paying GST for manufacture. After manufacture supplied goods to an import located in USA in the following manner.



**Example 9:**

How to execute Bond required for exporting without payment of IGST?

Answer:

Following are the instructions on how to execute Bond required for exporting without payment of IGST.

Step 1: Bond has to be executed when your turnover in the previous year is less than ₹ 1,00,00,000/- (now please refer master circular CBEC Circular No . 8/8 /2017 - GST dated 4th October 2017 with regard to export given above).

Step 2: Bond of amount equivalent to the tax liability (usually annual liability) has to be executed on non-judicial stamp paper in the favour of President of India, through the concerned Assistant Commissioner.

Step 3: In the bond, exporter has to mention the Bank Guarantee amount which is equivalent to 15% of the bond value (or lesser if allowed by Assistant Commissioner).

Step 4: Stamp Paper for Bond can be of value ₹ 500/- or more (or as prescribed by concerned Assistant Commissioner). Stamp paper should be purchased from your own State (same jurisdiction) i.e. where the concerned Range Office is located. It should be purchased in the name of exporter (with address).

Bond-Language does not fit well on single page, so you have to use second page. Second page can be any blank page to print the extra content.

Step 5: Exporter has to self-sign the bond on first page as well as on second page. Second page has to be signed by two witnesses. Then, Bond has to be attested by a Notary.

Step 6: Exporter has to submit self-signed copy of own ID-Proof (Like Aadhar Card). You also have to submit the copies of ID-Proofs (Like Aadhar Card) of witnesses, which has to be self-signed by him.

(c) Special Economic Zones (SEZ's)/Developer of SEZ units.**Example 10:**

X Ltd., a unit in SEZ, received services from various service providers in relation to authorized operations in SEZ during the month July, 2017. The following details are furnished for the month July, 2017:

- (i) Value of Taxable services used exclusively for authorised operations within SEZ: ₹ 5,00,000 (exemption from GST availed).
- (ii) Value of Taxable Services used by SEZ units and DTA units: ₹ 8,00,000. GST paid @18%.
- (iii) Value of Taxable Service used wholly for DTA units: ₹ 3,00,000. GST paid @18%.
- (iv) Export Turnover of SEZ Unit: ₹1,00,00,000
- (v) Turnover of DTA Unit: ₹60,00,000

Compute the ITC and amount of refund if any?

Note: All input services used by SEZ for its authorized operations only.

Answer:

Statement showing ITC & refund of X Ltd. (a unit of SEZ)

S. No.	Particulars	Value of input services ₹	ITC ₹	Refund Amount ₹	Remarks
1	Input services	5,00,000	Nil	Since, no tax paid on inputs no refund is allowed	Input services used exclusively for authorized operations
2	DTA as well as Zero rated supply	8,00,000	54,000	90,000	(₹ 8L×18%)× 100L/160L
3	Input services only for DTA	3,00,000	54,000	Nil	
	Total		1,08,000	90,000	



Deemed exports

As per Section 2(39) of the CGST Act, 2017 "deemed exports" means such supplies of goods as may be notified under Section 147;

As per Section 147 of the CGST Act, 2017 The Government may, on the recommendations of the Council, notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.

Deemed exports are likely to be considered for purpose of GST to claim refund. Presently deemed supply attract GST.

As per Notification No. 48/2017-Central Tax, dated - 18th October, 2017, the Central Government, on the recommendations of the Council, hereby notifies the supplies of goods listed in column (2) of the Table below as deemed exports, namely:-

S. No.	Description of supply
1.	Supply of goods by a registered person against Advance Authorisation
2.	Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation
3.	Supply of goods by a registered person to Export Oriented Unit
4.	Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated the 30th June, 2017 (as amended) against Advance Authorisation.

(e) Duty structure:

As per Section 54(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

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

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

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

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

Question:

Whether independent fabric processors (job workers) in the textile sector supplying job work services are eligible for refund of unutilized input tax credit on account of inverted duty structure under section 54(3) of the CGST Act, 2017? – Circular 48/22/2018 - GST

Solution:

Notification No. 5/2017-Central Tax (Rate) dated 28.06.2017 specifies the goods in respect of which refund of unutilized input tax credit (ITC) on account of inverted duty structure under section 54(3) of the CGST Act shall not be allowed. However, in case of fabric processors, the output supply is the supply of job work services and not of goods (fabrics).

Hence, it is clarified that the fabric processors shall be eligible for refund of unutilized ITC on account of inverted duty structure under section 54(3) of the CGST Act even if the goods (fabrics) supplied to them are covered under notification No. 5/2017-Central Tax (Rate) dated 28.06.2017.



Clarification on the removal of the restriction on refund of accumulated Input Tax Credit on fabrics [Circular 56/30/2018 –GST]

1. It is clarified that the restriction on refund of accumulated ITC on account of inverted duty structure will not be allowed on inputs. But there is no restriction on the refund of the ITC on input services and capital goods. It is only on the accumulated ITC on inputs.
2. The input tax credit on account of inverted duty structure lying in the balance after payment of GST for the month of July (on the purchases made on or before the 31st July, 2018) shall lapse.
3. Adding to it, the ITC on the zero rated supplies shall not lapse.

(f) Finalisation of provision assessment

As per section 60 of the CGST Act, 2017 makes provisions for provisional assessment of taxes paid on supply of goods or services by a taxable person.

The section further provides that the proper officer shall within a period of 6 months from the date of communication of the order shall finalize the assessment after taking into account such information as may be required for finalization.

As per 60(5) of the CGST Act, 2017, where the registered person is entitled to a refund consequent to the order of final assessment under sub-section (3), subject to the provisions of sub-section (8) of section 54, interest shall be paid on such refund as provided in section 56.

(g) Excess payment of tax due to mistake etc. then registered person is entitled to claim refund of such excess payment.

Refund GST to specialized agencies like UNO, Multilateral Financial Institutions and Organisation notified under the UN or consulate or Embassy of Foreign countries etc., are allowed.

(h) Refund of excess balance in the Electronic Cash Ledger

As per Section 49(6), the balance in the electronic cash ledger may be refunded in accordance with the provisions of Section 54. Further, as per proviso to section 54(1), a registered person, may claim refund of any balance in the electronic cash ledger through the return for the relevant tax period in Form GSTR-3, Form GSTR-4 or Form GSTR-7, as the case may be.

Form of Application and Procedure for Refund of Balance in Cash Ledger

- As per proviso to section 54(1), refund of balance in electronic cash ledger may be claimed in the return furnished under section 39 in such manner as may be prescribed.
- As per Rule 61(4), a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in Part B of the return in Form GSTR-3 and such return shall be deemed to be an application filed under section 54.
- Further as per 1st proviso to Rule 89(1), any claim for refund relating to balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 may be made through the return furnished for the relevant tax period in Form GSTR-3 or Form GSTR-4 or Form GSTR-7.
- As per Rule 89(2)(k), a statement showing the details of the amount of claim on account of excess
- payment of tax is required to be furnished to establish that a refund is due to the applicant.

As per section 54(1) of the CGST Act, any person claiming refund of any tax and interest, if any paid on such tax or any other amount paid by him, may make an application before the expiry of 2 Years from the relevant date in such form and manner as may be prescribed.



Explanation (2), to section 54 of the CGST Act, 2017 "relevant date" means—

- (a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,—
 - (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or
 - (ii) if the goods are exported by land, the date on which such goods pass the frontier; or
 - (iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;
- (b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;
- (c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of—
 - (i) receipt of payment in convertible foreign exchange, where the supply of services had been completed prior to the receipt of such payment; or
 - (ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;
- (d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;
- (e) in the case of refund of unutilised input tax credit under sub-section (3), the end of the financial year in which such claim for refund arises;
- (f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;
- (g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and
- (h) in any other case, the date of payment of tax

BASICS FOR EXPORT

Drawback – "Drawback" in relation to any goods manufactured in India and exported, means the rebate of duty, tax or cess chargeable on any imported inputs or on any domestic inputs or input services used in the manufacture of such goods – section 2(42) of CGST Act.

In case of refund of tax on inputs used in exports:

- Refund of 90% will be granted provisionally within seven days of acknowledgement of refund application.
- Remaining 10% will be paid within a maximum period of 60 days from the date of receipt of application complete in all respects.
- Interest @ 6% is payable if full refund is not granted within 60 days.

In the case of refund of IGST paid on exports: Upon receipt of information regarding furnishing of valid return by the exporter from the common portal, the Customs shall process the claim for refund and an amount equal to the IGST paid in respect of each shipping bill shall be credited to the bank account of the exporter.

An exporter will be required to pay GST in case of goods procured from unregistered persons (including unregistered job workers under reverse charge mechanism. However the exporter can avail ITC of such GST paid and either utilise the ITC or claim refund of the same.

**Letter of Undertaking (LUT)**

It is a type of bank guarantee, under which a bank allows its customer to raise money from another Indian bank's foreign branch as a short-term credit.

The purpose of such undertakings is to ensure that owner of the ship or aircraft would:

- employ security on the vehicle;
- enter an appearance acknowledge ownership;
- pay any final decree entered against the vehicle whether it is lost or not.

Bonds

It is a financial instrument in which the issuer of bond owes the holders a debt and is obliged to pay them interest or to repay the principal at a later date. It is a highly secured and highly liquid financial instrument which is mostly negotiable. This means that the ownership of the bond can be transferred. The most common types of bonds are municipal bonds and corporate bonds.

In case of furnishing bonds for exports, the general parlance is B-1 Surety / Security (General Bond) is furnished. These kinds of bonds have a surety (another person) who guarantees the performance on the part of the obligor (person furnishing the bond).

Treatment of Exports under GST

As per the provisions contained under IGST law, export of goods or services or both are to be regarded as "zero-rated supplies" and a person being a registered taxable person exporting such goods or services or both shall be allowed to claim the refund of the GST paid under one of the following two options:

- Export of goods or services or both under bond or letter of undertaking (LUT) without paying any Integrated Tax and can claim the refund of unutilized input credit.
- Export of goods and service or both on the payment of Integrated Tax and the exporter can claim the refund of the GST paid on such goods and services so exported. The above-mentioned refunds will be subject to certain rules, procedures, and safeguards as may be prescribed.

Option 1: Export of goods or services or both under bond or letter of undertaking (LUT), subject to certain rules, procedures and safeguards as may be prescribed, without payment of integrated tax, and then claim a refund of unutilized input credit.

The registered taxable person (or exporter) is required to file an application for the refund on the common portal either through the facilitation center notified by the GST commissioner or can do so directly. An export manifest is required to be filed under the existing Customs Act before filing an application for refund.

Option 2: Any exporter or Embassy or United Nations or other organisations/ bodies/ agencies as specified in section 55 who supplies goods or services, or both, after satisfying all the conditions, rules, procedures and safeguards as may be prescribed; and paying the IGST, can claim the refund of such GST paid on the supplied goods or services, or both. The applicant seeking the refund has to apply for the refund as per the provisions contained U/s 54 of the CGST Act.

An exporter needs to file a shipping bill for the goods being exported to a place outside India. Under this case, the shipping bill so filed is treated as a "deemed application" for the refund of the tax paid. The deemed application shall be deemed to have been filed only if the person in charge of the shipment files the export manifest or report, mentioning the number and date of the shipping bills.



Procedural Part of Refund :

A. Refund of integrated tax paid on goods or service exported out of India.-

Refund of integrated tax paid on goods or services exported out of India (Rule 96 of CGST Act, 2017)

- (1) **Shipping Bill- deemed to be Refund Claim:** The shipping bill filed by an exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:-

- (a) the person in charge of the conveyance carrying the export goods duly files an export manifest or an export report covering the number and the date of shipping bills or bills of export; and
- (b) the applicant has furnished a valid return in FORM GSTR-3 or FORM GSTR-3B, as the case may be;

- (2) Details of exports invoices to be transmitted electronically to Customs Portal: The details of the relevant export invoices in respect of export of goods contained in FORM GSTR-1 shall be transmitted electronically by the common portal to the system designated by the Customs and the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.

Provided that where the date for furnishing the details of outward supplies in FORM GSTR-1 for a tax period has been extended in exercise of the powers conferred under section 37 of the Act, the supplier shall furnish the information relating to exports as specified in Table 6A of FORM GSTR-1 after the return in FORM GSTR-3B has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs:

Provided further that the information in Table 6A furnished under the first proviso shall be auto-drafted in FORM GSTR-1 for the said tax period.

- (3) Processing of refund claim and crediting in bank account of Applicant: Upon the receipt of the information regarding the furnishing of a valid return in FORM GSTR-3 or FORM GSTR-3B, as the case may be from the common portal, the system designated by the Customs or the proper officer of Customs, as the case may be, shall process the claim of refund in respect of export of goods and an amount equal to the integrated tax paid in respect of each shipping bill or bill of export shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.
- (4) Cases where refund can be withheld: The claim for refund shall be withheld where,-
- (a) a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of sub-section (10) or sub-section (11) of section 54; or
 - (b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.
- (5) Intimation of withholding of refund: Where refund is withheld in accordance with the provisions of clause (a) of sub-rule (4), the proper officer of integrated tax at the Customs station shall intimate the applicant and the jurisdictional Commissioner of central tax, State tax or Union territory tax, as the case may be, and a copy of such intimation shall be transmitted to the common portal.
- (6) Order for withholding of Refund : Upon transmission of the intimation under sub-rule (5), the proper officer of central tax or State tax or Union territory tax, as the case may be, shall pass an order in Part B of FORM GST RFD-07.
- (7) Sanction of withheld refund and passing of Refund Order : Where the applicant becomes entitled to refund of the amount withheld under clause (a) of sub-rule (4), the concerned jurisdictional officer of central tax, State tax or Union territory tax, as the case may be, shall proceed to refund the amount after passing an order in FORM GST RFD-06.
- (8) Bhutan Exports : The Central Government may pay refund of the integrated tax to the Government of Bhutan



on the exports to Bhutan for such class of goods as may be notified in this behalf and where such refund is paid to the Government of Bhutan, the exporter shall not be paid any refund of the integrated tax.

- (9) Refund form in respect of Services : The application for refund of integrated tax paid on the services exported out of India shall be filed in FORM GST RFD-01 and shall be dealt with in accordance with the provisions of rule 89".
- (10) Ineligible Supplies : The persons claiming refund of integrated tax paid on exports of goods or services should not have -
- (a) received supplies on which the benefit of the Government of India, Ministry of Finance notification No. 48/2017-Central Tax, dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E), dated the 18th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme or notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rd October, 2017 has been availed; or
 - (b) availed the benefit under notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E), dated the 13th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme.

Note : For period from 23.10.2017 to 08.10.2018***

The persons claiming refund of integrated tax paid on export of goods or services should not have –

- (a) received supplies by availing the following benefits :
 - Notification No. 48/2017-CT, dated the 18th October, 2017: It covers domestic supplies made against advance authorization, supply of capital goods against EPCG authorization, supply of goods to EOU & supply of gold by a bank or PSU against advance authorization.
 - Notification No. 40/2017-CT (Rate), dated the 23rd October or Notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017: This notification covers supplies made to merchant exporter at the rate of 0.1% in case of IGST or 0.05% each in case of CGST & SGST.
- (b) availed the benefit under following notifications:
 - Notification No. 78/2017-Customs, dated the 13th October, 2017: This notification provides exemption from Customs Duty & IGST under Customs on goods imported or procured from Public or Private Warehouse or from International Exhibition by Hundred per cent EOU, STP or EHTP units.
 - Notification No. 79/2017- Customs, dated the 13th October, 2017: This notification provides exemption from Customs Duty & IGST under Customs on imports under EPCG, Advance Authorization, Advance Authorization for Annual Requirements, Advance Authorization for Deemed Export, Advance Authorization for export of Prohibited Goods and Narrow Woven Fabrics, etc.

***- Further, Notification No. 54/2018 dated 9th October, 2018 has been issued effective from 09.10.2018 to restrict the refund in case he has availed the benefits as mentioned aforesaid except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme.

B. Refund of integrated tax paid on export of goods or services under bond or Letter of Undertaking.-

As per Rule 96A of CGST Rules, 2017 - Refund of integrated tax paid on export of goods or services under bond or



Letter of Undertaking

- (1) **Furnishing of bond or Letter of Undertaking for Export of Goods or Services :**Any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in FORM GST RFD-11 to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest specified under sub-section (1) of section 50 within a period of -
 - (a) fifteen days after the expiry of three months, 2[or such further period as may be allowed by the Commissioner,] from the date of issue of the invoice for export, if the goods are not exported out of India; or
 - (b) fifteen days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange.
- (2) **Details of export invoices to be transmitted electronically to Custom Portal :**The details of the export invoices contained in FORM GSTR-1 furnished on the common portal shall be electronically transmitted to the system designated by Customs and a confirmation that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from the said system.

Provided that where the date for furnishing the details of outward supplies in FORM GSTR-1 for a tax period has been extended in exercise of the powers conferred under section 37 of the Act, the supplier shall furnish the information relating to exports as specified in Table 6A of FORM GSTR-1 after the return in FORM GSTR-3B has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs:

Provided further that the information in Table 6A furnished under the first proviso shall be auto-drafted in FORM GSTR-1 for the said tax period
- (3) **Recovery of bond amount in case of failure to export goods within Specified Time Limit :**Where the goods are not exported within the time specified in sub-rule (1) and the registered person fails to pay the amount mentioned in the said sub-rule, the export as allowed under bond or Letter of Undertaking shall be withdrawn forthwith and the said amount shall be recovered from the registered person in accordance with the provisions of section 79.
- (4) **Restoration on payment of dues by registered person :**The export as allowed under bond or Letter of Undertaking withdrawn in terms of subrule
- (3) shall be restored immediately when the registered person pays the amount due.
- (5) **Furnishing of Letter of Undertaking instead of bond :**The Board, by way of notification, may specify the conditions and safeguards under which a Letter of Undertaking may be furnished in place of a bond.
- (6) **Applicability to supplies of goods or services to SEZ:** The provisions of sub rule (1) shall apply, mutatis mutandis, in respect of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit without payment of integrated tax.

CBEC Circular No. 8/8 /2017 - GST dated 4th October 2017:

(1) Eligibility to export under LUT:

The facility of export under LUT has been now extended to all registered persons who intend to supply goods or services for export without payment of integrated tax except those who have been prosecuted for any offence under the CGST Act or the Integrated Goods and Services Tax Act, 2017 or any of the existing laws and the amount of tax evaded in such cases exceeds ` 250 lakh (i.e. two hundred and fifty lakh rupees) vide Circular No. 8/8/2017 - GST dated 4th October 2017.



(2) Validity of LUT:

The LUT shall be valid for the whole financial year in which it is tendered. However, in case the goods are not exported within the time specified in sub - rule (1) of rule 96A of the CGST Rules and the registered person fails to pay the amount mentioned in the said sub - rule, the facility of export under LUT will be deemed to have been withdrawn. If the amount mentioned in the said sub - rule is paid subsequently, the facility of export under LUT shall be restored.

As a result, exports, during the period from when the facility to export under LUT is withdrawn till the time the same is restored, shall be either on payment of the applicable integrated tax or under bond with bank guarantee.

(3) Form for bond/ LUT:

Till the time FORM GST RFD - 11 is available on the common portal, the registered person (exporters) may download the FORM GST RFD - 11 from the website of the Central Board of Excise and Customs (www.cbec.gov.in) and furnish the duly filled form to the jurisdictional Deputy/Assistant Commissioner having jurisdiction over their principal place of business. The LUT shall be furnished on the letter head of the registered person, in duplicate, and it shall be executed by the working partner, the Managing Director or the Company Secretary or the proprietor or by a person duly authorised by such working partner or Board of Directors of such company or proprietor. The bond, wherever required, shall be furnished on non-judicial stamp paper of the value as applicable in the State in which the bond is being furnished.

(4) Documents for LUT:

Self - declaration to the effect that the conditions of LUT have been fulfilled shall be accepted unless there is specific information otherwise. That is, self - declaration by the exporter to the effect that he has not been prosecuted should suffice for the purposes of Notification No. 37 /2017 - Central Tax dated 4 th October, 2017. Verification, if any, may be done on post - facto basis.

Authority or the State Tax Authority till the administrative mechanism for assigning of taxpayers to the respective authority is implemented.

Note: Circular No. 2/2/2017 – GST dated 5 th July, 2017, Circular No. 4/4/2017 – GST dated 7 th July, 2017 and Circular No. 5/5/2017 – GST dated 11 th August, 2017 are hereby rescinded except as respects things already done or omitted to be done .

Notification 26/2018- Central Tax

- (i) With effect from 01st July, 2017, in rule 95, in sub-rule (3), for clause (a), the following shall be substituted, namely:-

“(a) the inward supplies of goods or services or both were received from a registered person against a tax invoice;”

Refund of tax paid by the applicant was available only if the price of supply covered under a single tax invoice exceeded Rs. 5000. Now, this condition has been omitted from the said rule therefore, no condition of amount of invoice to claim refund. The above change has been given a retrospective effect from 01.07.2017.

- (ii) 50% of the amount of Cess shall also be deposited in the Consumer Welfare Fund to make the payment for the refund under GST

Manner of calculating the maximum amount of refund in case of

- (1) Refund in case of Zero rated supplies [Rule 89(4)] : In the case of zero-rated supply of goods or services or both



without payment of tax under bond or letter of undertaking in accordance with the provisions of subsection (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula –

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover

Where, -

- (A) "Refund amount" means the maximum refund that is admissible;
- (B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;
- (C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;
- (D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

- (E) "Adjusted Total Turnover" means the sum total of the value of-
 - (a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and
 - (b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services,excluding-
 - (i) the value of exempt supplies other than zero-rated supplies; and
 - (ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any,during the relevant period.
- (F) "Relevant period" means the period for which the claim has been filed.

(2) Refund incase of Inverted Duty Structure[Rule 89(5)]: In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.

Explanation:- For the purposes of this sub-rule, the expressions –

- (a) Net ITC shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and
- (b) Adjusted Total turnover shall have the same meaning as assigned to it in sub-rule (4).

(3) Refund of ITC on inputs and input services other than those for which benefit of Deemed Export claimed [Rule 89(4A)]: In the case of supplies received on which the supplier has availed the benefit notification No.



48/2017-Central Tax dated the 18th October, 2017, refund of input tax credit, availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both, shall be granted.

(4) Refund of Input tax credit in Specified Situations[Rule 89(4B)]: Where the person claiming refund of unutilised input tax credit on account of zero rated supplies without payment of tax has –

- (a) received supplies on which the supplier has availed the benefit of the notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, or
- (b) availed the benefit of notification No. 78/2017-Customs, dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017,

the refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted.

Manual filing and processing [Rule 107A]

Notwithstanding anything contained in the rules relating to refunds, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules.

Manual Processing of Refund Application

Due to the non-availability of the refund module on the common portal, it has been decided by the competent authority, on the recommendations of the Council, that the applications/ documents/ forms pertaining to refund claims on account of zero-rated supplies shall be filed and processed manually till further orders. [Para 1 of Circular 17/17/2017 dated 15-11-2017]

Refund Forms

Form	Related Provision	Particulars
Form-GST-RFD-01	Rule 89(1)	Application for Refund
Form GST RFD-01A	Rules 89(1) and 97A	Application for Refund (Manual)
Form RFD-01B	Rules 91(2), 92(1), 92(3), 92(4), 92(5) and 97A	Refund Order details
GST GST-RFD-02	Rules 90(1), 90(2) and 95(2)	Acknowledgment
Form-GST-RFD-03	Rule 90(3)	Deficiency Memo
Form GST RFD-04	Rule 91(2)	Provisional Refund Order
Form-GST-RFD-05	Rules 91(3), 92(4), 92(5) & 94	Payment Advice
Form GST-RFD-06	Rule 92(1), 92(3), 92(4), 92(5) & 96(7)	Refund Sanction/Rejection Order
Form-GST-RFD-07	See rule 92(1), 92(2) & 96(6)	Part A-Order for Complete adjustment of sanctioned Refund Part B- Order for withholding the refund
Form-GST-RFD-08	Rule 92(3)	Notice for rejection of application for refund
Form-GST-RFD-09	Rule 92(3)]	Reply to show cause notice



Form GST RFD-10	Rule 95(1)	Application for Refund by any specialized agency of UN or any Multilateral Financial Institution and Organization, Consulate or Embassy of foreign countries, etc.
Form GST RFD-11	Rule 96A	Furnishing of bond or Letter of Undertaking for export of goods or services

CBEC Circular Relating to Refund:**a) Circular No. 59/33/2018-GST dt 04.09.2018 – Clarification on refund related issues.****1. Submission of invoices for processing of claims of refund:**

It was clarified that the refund claims were being filed in a semi-electronic environment and the processing was completely based on the information provided by the claimants, it becomes necessary that invoices are scrutinized. Accordingly, it was clarified that the invoices relating to inputs, input services and capital goods were to be submitted for processing of claims for refund of integrated tax where services are exported with payment of integrated tax; and invoices relating to inputs and input services were to be submitted for processing of claims for refund of input tax credit where goods or services are exported without payment of integrated tax and refund claim shall be accompanied by a print-out of FORM GSTR-2A of the claimant for the relevant period for which the refund is claimed. The proper officer shall rely upon FORM GSTR-2A as an evidence of the account of the supply by the corresponding supplier in relation to which the input tax credit has been availed by the claimant. It may be noted that there may be situations in which FORM GSTR-2A may not contain the details of all the invoices relating to the input tax credit availed, possibly because the supplier's FORM GSTR-1 was delayed or not filed. In such situations, the proper officer may call for the hard copies of such invoices if he deems it necessary for the examination of the claim for refund. It is emphasized that the proper officer shall not insist on the submission of an invoice (either original or duplicate) the details of which are present in FORM GSTR-2A of the relevant period submitted by the claimant.

2. System validations in calculating refund amount

The GST Council clarify the ambiguity in relation to the process through which an application in FORM GST RFD-01A is generated.

In case of refund of unutilized input tax credit (ITC for short), the common portal calculates the refundable amount as the least of the following amounts:

- The maximum refund amount as per the formula in rule 89(4) or rule 89(5) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules") [formula is applied on the consolidated amount of ITC, i.e. Central tax + State tax/Union Territory tax + Integrated tax + Cess (wherever applicable)];
- The balance in the electronic credit ledger of the claimant at the end of the tax period for which the refund claim is being filed after the return for the said period has been filed; and
- The balance in the electronic credit ledger of the claimant at the time of filing the refund application.

After calculating the least of the three amounts, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the claimant in the following order:

- Integrated tax, to the extent of balance available;
- Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, Central tax),



the differential amount is to be debited from the other electronic credit ledger (i.e., State tax/Union Territory tax, in this case).

The procedure described above, however, is not presently available on the common portal, so the taxpayers are advised to follow the order as explained above for all refund applications filed. However, for applications already filed and pending with the tax authorities, where this order is not adhered to by the claimant, no adverse view may be taken by the tax authorities.

3. Re-credit of electronic credit ledger in case of rejection of refund claim:

It was clarified that in case of rejection of claim for refund of unutilized input tax credit on account of ineligibility of the said credit under sub-sections (1), (2) or (5) of section 17 of the CGST Act, or under any other provision of the Act and rules made thereunder the proper officer shall order for the rejected amount to be re-credited to the electronic credit ledger of the claimant using FORM GST RFD-01B. For recovery of this amount, a demand notice shall have to be simultaneously issued to the claimant under section 73 or 74 of the CGST Act, as the case may be. In case the demand is confirmed by an order issued under sub-section (9) of section 73, or sub-section (9) of section 74 of the CGST Act, as the case may be, the said amount shall be added to the electronic liability register of the claimant through FORM GST DRC-07. Alternatively, the claimant can voluntarily pay this amount, along with interest and penalty, if applicable, before service of the demand notice, and intimate the same to the proper officer in FORM GST DRC-03 in accordance with sub-section (5) of section 73 or sub-section (5) of section 74 of the CGST Act, as the case may be, read with sub-rule (2) of rule 142 of the CGST Rules. In such cases, the need for serving a demand notice will be obviated. And in case of rejection of claim for refund of unutilized input tax credit, on account of any reason other than the eligibility of credit, the rejected amount shall be re-credited to the electronic credit ledger of the claimant using FORM GST RFD-01B only after the receipt of an undertaking from the claimant to the effect that he shall not file an appeal against the said rejection or in case he files an appeal, the same is finally decided against the claimant, as has been laid down in rule 93 of the CGST Rules.

Consider an example where against a refund claim of Rs 100, only Rs 80 is sanctioned (Rs.15 is rejected on account of ineligible ITC and Rs 5 is rejected on account of any other reason). As described above, Rs 15 would be re-credited with simultaneous issue of notice under section 73 or 74 of the CGST Act for recovery of ineligible ITC. Rs 5 would be re-credited (through FORM GST RFD-01B) only after the receipt of an undertaking from the claimant to the effect that he shall not file an appeal or in case he files an appeal, the same is finally decided against the claimant.

4. Scope of rule 96(10) of the CGST Rules:

It is clarified that the restriction under rule 96(10) of the CGST Rules, as amended retrospectively by notification No. 39/2018-Central Tax, dated 04.09.2018, which provides registered persons, including importers, who are directly purchasing/importing supplies on which the benefit of reduced tax incidence or no tax incidence under certain specified notifications has been availed, shall not be eligible for refund of integrated tax paid on export of goods or services. It applies only to those purchasers/importers who are directly purchasing/importing supplies on which the benefit of certain notifications, as specified in the said sub-rule, has been availed.

For example, an importer (X) who is importing goods under the benefit of Advance Authorization/EPCG, is directly purchasing/importing supplies on which the benefit of reduced/Nil incidence of tax under the specified notifications has been availed. In this case, the restriction under rule 96(10) of the CGST Rules is applicable to X. However, if X supplies the said goods, after importation, to a domestic buyer (Y), on payment of full tax, then Y can rightfully export these goods under payment of integrated tax and claim refund of the integrated tax so paid. However, in the said example if Y purchases these goods from X after availing the benefit of specified notifications, then Y also will not be eligible to claim refund of integrated tax paid on export of goods or services.

5. Disbursal of refund amount after sanctioning by the proper officer:



It is clarified that the remedy for correction of an incorrect or erroneous sanction order lies in filing an appeal against such order and not in withholding of the disbursement of the sanctioned amount. If any discrepancy is noticed by the disbursing authority, the same should be brought to the notice of the counterpart refund sanctioning authority, the concerned counterpart reviewing authority and the nodal officer, but the disbursal of the refund should not be withheld. It is hereby clarified that neither the State nor the Central tax authorities shall refuse to disburse the amount sanctioned by the counterpart tax authority on any grounds whatsoever, except under sub-section (11) of section 54 of the CGST Act. It is further clarified that any adjustment of the amount sanctioned as refund against any outstanding demand against the claimant can be carried out by the refund disbursing authority if not already done by the refund sanctioning authority.

6. Status of refund claim after issuance of deficiency memo:

It is clarified that show-cause-notices are not required to be issued where deficiency memos have been issued. A refund application which is re-submitted after the issuance of a deficiency memo shall have to be treated as a fresh application. No order in FORM GST RFD-04/06 can be issued in respect of an application against which a deficiency memo has been issued and which has not been resubmitted subsequently.

7. Treatment of refund applications where the amount claimed is less than rupees one thousand:

It is clarified that the limit of rupees one thousand shall be applied for each tax head separately and not cumulatively. The limit would not apply in cases of refund of excess balance in the electronic cash ledger. All field formations are requested to reject claims of refund from the electronic credit ledger for less than one thousand rupees and re-credit such amount by issuing an order in FORM GST RFD-01B.

b) Circular No. 60/34/2018-GST dt 04.09.2018 -Processing of refund applications filed by Canteen Stores Department (CSD).

1. It is clarified that CSD will apply for the refund with the central/ state authorities to whom CSD has been assigned. The payment of the sanctioned amount under central and state tax will be made by the central tax authority and state tax authorities respectively.
2. It is necessary to produce the refund order issued by the proper officer to the concerned authority within 7 days for the payment of the sanctioned amount.

c) Circular No. 63/37/2018-GST dt 14.09.2018 - Clarification regarding processing of refund claims filed by UIN entities.

The delay in the refund claims filed by the UIN entities i.e Embassy/Mission/Consulate/UNO has been clarified. Refund processing officers can ask for the statement of invoices and hard copies of those in order to determine the eligibility for grant of refund in accordance with the reciprocity letter issued by MEA. Also, the following provisions are clarified :

1. UIN entities must submit the copy of the 'Prior Permission letter' and mention the same in the covering letter while applying for GST refund on purchase of vehicles to avoid delay in processing of refunds.
2. The eligibility of refund for the personnel and officials posted in the Embassy/Mission/Consulate shall be determined based on the principle of reciprocity.
3. A one-time waiver is hereby given from recording the UIN on the invoices issued by the suppliers pertaining to the refund claims filed for the quarters from April, 2018 to March, 2019, subject to the condition that the copies of such invoices which are attested by the authorized representative of the UIN entity shall be submitted to the jurisdictional officer.
4. A monthly report to be furnished to the Principal Director General of Goods and Services Tax by the 30th



of the succeeding month.

Also, a checklist for processing UIN refunds is provided.

d) Circular No. 70/44/2018 –GST dt 26.10.2018 - Clarification on certain issues related to refund.

1. Status of refund claim after issuance of deficiency memo and re-credit of electronic credit ledger:

This Circular No 70/44/2018- GST dated 26.10.2018 further provides clarification on Circular No 59/33/2018- GST Dated 04.09.2018 in which it was clarify that once a deficiency memo has been issued against an application for refund, the amount of Input Tax Credit debited under sub-rule (3) of rule 89 of the Central Goods and Services Tax Rules, 2017 is required to be re-credited to the electronic credit ledger of the applicant by using FORM GST RFD-01B and the taxpayer is expected to file a fresh application for refund but it was observed that the common portal does not allow a taxpayer to file a fresh application for refund once a deficiency memo has been issued against an earlier refund application for the same period. Accordingly, it was clarified that till the time such facility is developed, taxpayers would be required to submit the rectified refund application under the earlier Application Reference Number (ARN) only. Thus, it is reiterated that when a deficiency memo in FORM GST RFD-03 is issued to taxpayers, re-credit in the electronic credit ledger (using FORM GST RFD-01B) is not required to be carried out and the rectified refund application would be accepted by the jurisdictional tax authorities with the earlier ARN itself. It is further clarified that a suitable clarification would be issued separately for cases in which such re-credit has already been carried out.

2. Allowing exporters who have received capital goods under EPCG to claim refund of IGST paid on exports:

It clarifies that exporters who have received capital goods under the Export Promotion Capital Goods Scheme (hereinafter referred to as "EPCG Scheme"), should be allowed to avail the facility of claiming refund of the IGST paid on exports and it shall continue to be eligible to claim refund of IGST paid on exports and would not be hit by the restrictions provided in the said sub-rule.



Study Note - 16

ASSESSMENT, INSPECTION, SEARCH & SEIZURE



This Study Note includes

- 16.1 Self-Assessment
- 16.2 Final Assessment
- 16.3 Re-Assessment
- 16.4 Provisional Assessment
- 16.5 Best Judgement
- 16.6 Meaning of Inspection, Search and Seizure

ASSESSMENT

MEANING

In terms of Section 2(11) of the Act, "assessment" means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgement assessment.

TYPES OF ASSESSMENT

The CGST Act contemplates several types of assessments as under:

1. Self-assessment (Section 59)
2. Provisional Assessment (Section 60)
3. Summary Assessment in certain special cases (Section 64)

Additionally, the CGST Act also provides for determination of the tax liability by:

1. Scrutiny of tax returns filed by registered taxable persons (Section 61)
2. Assessment of registered taxable person who have failed to file the tax returns (Section 62)
3. Assessment of unregistered persons (Section 63)

Section 59 refers to the assessment made by the taxable person himself while all other assessments are undertaken by tax authorities.

Provisional assessment under Section 60 is an Assessment undertaken at the instance of the assessee. It is later followed by a final assessment. Section 61 which deals with scrutiny of returns is basically a pre-assessment procedure for the purpose of determination of tax liability and passing of an order under Section 73 of the Act. Assessments under Sections 62 and 63 are assessments undertaken by tax authorities on the principles governing best judgment assessment. Assessment under Section 64 refers to a protective assessment based on information gathered from intelligence wing of the tax authorities in a particular case.

Self-assessment means an assessment by the tax payer himself and not an assessment by the Proper Officer. The GST regime continues to promote the scheme of self-assessment. Hence, every registered taxable person would be required to assess his tax dues in accordance with the provisions of GST Act and report the basis of calculation of tax dues to the tax administrations, by filing periodic tax returns.

Although the definition includes 'reassessment' there is no provision permitting 're-examination' of an assessment (of any kind) conducted earlier by the same or any other officer. This drafting anomaly is yet to be corrected. Power to reassess cannot be inherent in the power to assess (of any kind) permitted in the Act.



16.1 SELF-ASSESSMENT

Self-assessment (Section 59 of the CGST Act, 2017)

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

The registered person is required to compute his output, take the available input credit and pay the balance amount and file the returns in the prescribed forms. Prima- Facie the department shall accept such self-assessed returns and declarations, subject to scrutiny and other modes of assessment in the selected cases and in the prescribed manner.

Self-assessment means an assessment by the registered person himself and not an assessment conducted or carried out by the Proper Officer. The GST regime continues to promote the scheme of self-assessment. Hence, every registered person would be required to assess his tax dues in accordance with the provisions of GST Act and report the basis of calculation of tax dues to the tax administrators, by filing periodic tax returns. The provisions of the law permit a registered person to rectify any incorrect particulars furnished in the returns. In terms of Section 39(9), if a registered person discovers any omission or incorrect particulars furnished in a return, he is required to rectify such omission or incorrect particulars in the return to be furnished for the tax period during which such omission or incorrect particulars are noticed (on payment of due interest), unless the same is as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, or such rectification is time barred (i.e., after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier).

16.2 FINAL-ASSESSMENT

If the department accept the self-assessment it will become final assessment.

16.3 RE-ASSESSMENT

If department noticed any discrepancies it will become re-assessment.

16.4 PROVISIONAL-ASSESSMENT

Provisional assessment (Section 60 of the CGST Act, 2017 read with Rule 98 of CGST Rules, 2017):

As per section 60(1) of the CGST Act, 2017 where the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis.

The proper officer (i.e. The Asst. Commissioner/Dy. Commissioner of Central Tax) shall pass an order, within a period not later than 90 days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.

The Asst. Commissioner/Dy. Commissioner of Central Tax provisionally determines the amount of tax payable by the supplier and is subject to final determination.

On provisional assessment, the supplier can pay tax on provisional basis but only after he executes a bond with security, binding them for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed (Section 60(2) of the CGST Act, 2017).

Time limit to finalise provisional assessment [section 60(3) of the CGST Act, 2017]:

The proper officer shall, within a period not exceeding 6 months from the date of the communication of the order issued under section 60(1), pass the final assessment order after taking into account such information as may be required for finalizing the assessment.

**Extention of time limit:**

Proviso to section 60(3) of the CGST Act, 2017 on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Joint Commissioner or Additional Commissioner for a further period not exceeding 6 months and by the Commissioner for such further period not exceeding 4 years.

On finalization of the provisional assessment, any amount that has been paid on the basis of such assessment is to be adjusted against the amount that has been finally determined as payable. In case of short payment, the same has to be paid with interest and in case of excess payment, the same will be refunded with interest (section 60(4)/(5) of the CGST Act, 2017).

Interest liability:

In case any tax amount becomes payable subsequent to finalization of the provisional assessment, then interest at the specified rate will also be payable by the supplier from the first day after the due date of payment of the tax till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

In case any tax amount becomes refundable subsequent to finalization of the provisional assessment, then interest (subject to the eligibility of refund and absence of unjust enrichment) at the specified rate will be payable to the supplier.

Example 1:

M/s Ram Ltd. manufacture and cleared goods under provisional assessment, in the month of July, 2017, by paying tax of ₹ 50,000 on the 20th August, 2017 [i.e. due date of filing GSTR-3], a further tax of ₹ 90,000 is paid on the 15th November, 2017, and on the same day the documents for final assessment are submitted by the assessee. Final assessment order is issued on the 18th November, 2017, assessing the tax payable on goods as ₹ 1,50,000, and consequently the assessee paid a tax of ₹ 10,000 on the 30th November, 2017. Find the total interest payable by the assessee?

Answer:

No interest shall be payable on ₹ 50,000.

Interest shall be payable on ₹ 90,000 from the 21st August 2017 to 15th November 2017.

Therefore No. of days delay = 87 days.

Interest shall be payable on ₹ 10,000 from the 21st August 2017 to 30th November 2017 as due date for payment of duty of ₹ 1,50,000 is the 20th August 2017.

Therefore, No. of days delay = 102 days.

$$₹ 90,000 \times \frac{18}{100} \times \frac{87}{365} = ₹ 3,861$$

$$₹ 10,000 \times \frac{18}{100} \times \frac{102}{365} = ₹ 503$$

$$\text{Total interest payable} = ₹ 4,364$$

PROCEDURE

- (i) In terms of Rule 98(1), the process of provisional assessment commences on furnishing of an application by the registered person along with the necessary supporting documents in FORM GST ASMT-01, electronically through the common portal. The provisional assessment cannot be resorted to by the proper officer on a suo-motu basis.
- (ii) The proper officer will thereafter issue a notice in FORM GST ASMT-02. As per ASMT-02, reply is required to be given within 15 days to the registered person and if required seek additional information or documents. At this stage the proceedings are deemed to have commenced and the applicant is required to file his objections/ make submissions in FORM GST ASMT – 03. The registered person can also appear in person and be heard.



provided he makes a specific request for a personal hearing.

- (iii) On due consideration of the reply so filed, and after providing a reasonable opportunity of being heard the proper officer must issue an order in FORM GST ASMT-04, by allowing payment of tax on provisional basis, indicating the value or rate or both on the basis of which assessment is allowed on a provisional basis. The proper officer, in the normal course, cannot pass an order rejecting the application of provisional assessment. Since section 60(1) employs the term 'shall' pass order 'allowing' payment of tax provisionally. The word "shall" in this circumstance cannot be construed as "may".
- (iv) The order so passed should also indicate the amount for which bond has to be executed in Form GSMT – 05 by the applicant. The security has to be furnished in the form of bank guarantee not exceeding 25% of the bond 'amount' which shall include IGST, CGST, SGST or UTGST and cess (if any) payable in respect of the transaction. A bond furnished to the proper officer under State Goods and Services Tax Act or Integrated Goods and Services Tax Act shall be deemed to be a bond furnished under the provisions of Central Goods and Service Tax Act and the rules made thereunder.

As per ASMT-5, if the bond and security is not provided within the period specified in notice, the provisional assessment shall lapse.

Finalization of provisional assessment

Once the above process is complete the proper officer by issue of a notice in FORM GST ASMT-06, will call for information and records required for finalization of assessment. On conclusion of the due process of hearing, a final assessment order shall be passed by the proper officer in FORM GST ASMT-07, specifying the amount payable or refundable to the registered person within a period of 6 months from the date of communication of provisional assessment order. However, on sufficient cause being shown and for reasons to be recorded in writing, this period can be extended by Joint / Additional Commissioner or by the Commissioner for such further period as mentioned below:

Additional / Joint Commissioner	Maximum of 6 months
Commissioner	Maximum of 4 years

It may be noted that, in the statement of outward supply to be furnished by a registered person under section 37(1) i.e. in Form GSTR-1, the invoices in respect of which tax is paid under provisional assessment is required to be mentioned.

SCRUTINY OF TAX RETURNS FILED BY REGISTERED TAXABLE PERSONS (Section 61 read with Rule 99 of CGST Rule, 2017)

When a return furnished by a registered person is selected for scrutiny, the proper officer scrutinizes the same with reference to the information available with him, and in case of any discrepancy, he shall issue a notice to the said person in FORM GST ASMT-10, under Rule 99(1), informing him of such discrepancy and seeking his explanation thereto. The proper officer shall quantify the amount of tax, interest and any other amount payable in relation to such discrepancy, wherever possible. An explanation shall be furnished by the registered person, in reply to the aforesaid notice, within a maximum period of thirty days from the date of service of the notice or such further period as may be permitted by the proper officer. The registered person may accept the discrepancy mentioned in the notice issued under Rule 99(1), and pay the tax, interest and any other amount arising from such discrepancy and inform the same OR furnish an explanation for the discrepancy in FORM GST ASMT- 11 to the proper officer. Where the explanation furnished by the registered person or the information submitted under Rule 99(2) is found to be acceptable, the proper officer shall inform the registered person in FORM GST ASMT-12.

In case, explanation is not furnished OR explanation furnished is not satisfactory, OR after accepting discrepancies, the registered person fails to take corrective measures, in his return for the month in which the discrepancy is accepted by him, the proper officer, may, take recourse to any of the following provisions:

- Initiate departmental audit as per section 65 of the Act; or
- Initiate Special Audit as per section 66



- Initiate inspection, search and seizure as per section 67 of the Act
- Issue show cause notice u/s 73 & 74 of the CGST Act.

The first stage in return scrutiny denotes a prima facie scrutiny, in order to ascertain whether the information furnished by the assessee in returns is prima facie valid and not inadequate or internally inconsistent. The second stage appears to be a detailed assessment calling for records and determination of tax liability under sections 73 to 75. While doing so, the proper officer, is entitled to exercise the powers vested in him under section 67 of the Act, which deals with power of inspection, search and seizure. From the language employed in section 67, it appears that, these powers are required to be exercised not in routine manner, but only under circumstances when there is reasonable belief regarding probable suppression or intention to evade tax. It's important to note that, section 61(3) empathetically provides that, in case the explanation given by the tax payer in response to discrepancies informed by the proper officer, if found acceptable, the registered person shall be informed accordingly in FORM GST ASMT-12 and no further action shall be taken in this regard.

16.5 BEST JUDGEMENT ASSESSMENT

As per Section 62 of the CGST Act, 2017 (i.e. assessment of non-filers of return) provides for best judgment assessment where a registered person fails to furnish the return even after the service of a notice and pass order taking into account all the relevant material which is available or which he has gathered within a period of five years from the due date of filing annual return. Similar provision exist for unregistered persons under Section 63 of the CGST Act, 2017.

1. Section 62 of the Act can be invoked only in case of registered taxable persons who have failed to file returns, as required, under section 39 or as the case may be, or final return on cancellation of registration under section 45 of the Act. Issuing notice under section 46 appears to be a pre-condition for initiating proceedings under Section 62 of the Act.
2. Non-compliance with the notice under Section 46 paves the way for intimating the proceedings under this section. If the assessee fails to furnish the return, the Proper Officer may after serving him notice under section 46 proceed to assess the tax liability in accordance with the provision of Rule 100 to the best of his judgment, taking into account all the relevant material available on record, and issue an assessment order. This is also known as 'best judgment assessment'. It can be completed without giving notice of hearing to the assessee.
3. It may be noted that a return filed under Section 39 can be revised not later than the due date of furnishing of return for the month of September following the end of the financial year or actual date of filing annual return under Section 44, whichever is earlier.
4. Therefore, issuance of notice under Section 46 is a necessity for commencing proceedings under Section 62. Non-issuance of notice under Section 46 closes the door on invoking Section 62 although other provisions are available to recover the tax dues.
5. If, however, a registered person furnishes a 'valid return' within 30 days of the service of assessment order, the said assessment order shall be deemed to be withdrawn. 'Valid return' is defined in Section 2(117) to mean a return filed under Section 39(1) of the Act on which self-assessed tax has been paid in full. In order to avail the facility of withdrawal of the assessment order passed, filing of a valid return is required, including payment of taxes declared therein.
6. Time limit of 5 years (extended period for cases covered under Section 73), is also applicable for issuing order under section 62.
7. Consequence of late fee under Section 47 and interest under Section 50 will both be applicable in cases of conclusion of best judgement assessment made under this Section.
8. An order passed under this section shall be communicated to the registered person in FORM GST ASMT 13.



ASSESSMENT OF UNREGISTERED PERSONS

Section 63 is applicable to unregistered persons i.e., persons who are liable to obtain registration under Section 22 and have failed to obtain registration will come within scope of operation of this Section. This provision also covers the cases whose registration was cancelled as per section 29 (2) claiming of the GST Act. section 29(2) of the Act covers 5 instances as follows:

1. A person who contravenes the provisions of this Act or Rules made thereunder;
2. A composition person who fails to furnish returns for 3 consecutive tax periods.
3. A person other than composition person who fails to furnish returns for 6 consecutive months.
4. A person who has sought voluntary registration but has failed to commence business within 6 months.
5. Where registration has been obtained by way of fraud, wilful misstatement or suppression of facts.

This Section is applicable to unregistered taxable persons. In such cases, the proper officer is required to give a reasonable opportunity of being heard to such persons before proceeding to assess such person. The section begins with the phrase "Notwithstanding anything to the contrary contained in section 73 or section 74". It therefore appears that, assessment under section 63 can be completed independent of section 73 and Section 74, however, procedures contained in section 73 or 74 to the extent they are not inconsistent with section 63 need to be followed, while completing the assessment on principles governing best judgment assessment. Even though no return would have actually been filed in such cases, the authority to pass such assessment order is extinguished on the expiry of 5 years from due date applicable for filing annual return for the year to which tax not paid relates.

SUMMARY ASSESSMENT IN CERTAIN SPECIAL CASES

As per Section 64, the summary assessment can be undertaken in case all of the following conditions are satisfied:

1. The Proper Officer must have evidence that there may be a tax liability.
2. The Proper Officer has obtained prior permission of Additional/Joint Commissioner to assess the tax liability summarily. The proper officer must have sufficient ground to believe that any delay in passing assessment order would result in loss of revenue.

Mere possibility of non-payment cannot be a grounds for resorting to summary assessment, unless there are factors indicating that such non-payment pertains to admitted or undisputed tax liability. However, it is important to note that upon grant of permission by the Additional/Joint Commissioner, it appears that the evidence available with the proper officer or his apprehension of possible loss of revenue, cannot be called into question. As per the provision of Rule 100(3) The summary assessment order should be in FORM GST ASMT-16.

16.6 MEANING OF INSPECTION, SEARCH AND SEIZURE

Inspection: "Inspection" is a new provision under the Act. It is a softer provision than search to enable officers to access any place of business of a taxable person and also any place of business of a person engaged in transporting goods or who is an owner or an operator of a warehouse or godown.

Search: 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 finding 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.

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

Difference between Search and Inspection

'Search' involves an attempt to find something. Search, in tax/legal parlance, is an action of a government official (a tax officer or a police officer, depending on the case) to go and look through or examine carefully a place, person, object etc. in order to find something concealed or to discover evidence of a crime. The search can only be done under the proper and valid authority of law.



'Inspection' is the act of examining something, often closely. In tax/legal language, it is a softer provision than search. It enables officers to access any place of business of a taxable person and also any place of business of a person engaged in transporting goods or who is an owner/operator of a warehouse or godown.

ORDER FOR INSPECTION, SEARCH, SEIZURE UNDER GST LAW [Sec 67 under CGST ACT]

1. A Joint Commissioner (or an officer of higher rank) may have "reasons to believe" that in order to evade tax, any person has done the following-

- Suppressed any transaction of supply
- Suppressed stock in hand
- Claimed input tax credit in excess
- Violated of any of the provisions
- Any transporter or owner/operator of a warehouse has kept goods which have escaped tax payment or has kept accounts and/or goods in such a way as to evade tax

Then he can authorize any officer in FORM GST INS-01 to inspect places of businesses of:

- the taxable person or
- the transporter or
- owner/operator of warehouse

He can also examine any other place if he sees fit.

2. The power can also be exercised when there is a reason to believe that any person engaged in the business of transportation of goods or an owner or operator of a warehouse or godown or any other place is storing goods, which have escaped tax payment or has kept his accounts or goods in a manner likely to cause tax evasion.

3. "Reason to believe" means having knowledge of facts (although does not mean having direct knowledge), that would make any reasonable person, knowing the same facts, to reasonably conclude the same thing.

As per the Indian Penal Code, 1860, "A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise."

Reason to believe is a determination based on intelligent examination and evaluation. It is different from a purely subjective consideration, i.e., an opinion. It is based on facts rather than an interpretation of facts

4. Under such circumstances, he may authorize another officer in writing to:

- (a) Inspect any place of business of the taxable person who has evaded tax or of the transporter who transported such tax evading goods or godown/warehouse in which such tax evaded goods or accounts relating thereto have been stored.
- (b) Search and seize the goods or any documents or books or things which are liable for confiscation including anything concealed and which will be useful or relevant in the proceedings under this Act.
- (c) Seal or break open the door of any premises, storage, box, electronic device or receptacle where goods, books of accounts etc. are suspected to be concealed and when access to the same is denied to the officer.
- (d) If it is not practicable to seize the goods, then the Officer may serve an order on owner or custodian of the goods for not removing, part or deal with the goods without his prior permission.
- (e) The said officer shall return the documents, books or things seized or produced by a taxable or any other person on which no reliance has been placed for issuing notice, within a period of 30 days from the issue of notice. However, the documents books or things relied upon while issuing the notice will be retained.
- (f) The person from whose custody documents are seized is entitled to take photocopy or extract of such documents in the presence of an authorized GST officer at the place and time as predetermined. Copies or extracts may be denied if he is of the opinion that such an act will prejudicially affect the investigation.



- (g) The goods so seized can be released on a provisional basis upon execution of Bond in Form GST INS -04 and furnish security in form of Bank Guarantee equal to amount of tax, interest and penalty
- (h) If no notice has been issued within 6 months or an extended period of another 6 months, the seized goods/ exhibits ought to be returned.
- (i) The officer can dispose of certain notified goods immediately after the seizure, if those goods are of perishable or hazardous nature, or would depreciate in value by passage of time or there are constraints of storage space or any other relevant considerations as may be prescribed.
- (j) The officer who seizes the goods is liable to maintain the inventory of the said goods.
- (k) The provisions of Code of Criminal Procedure, 1973 relating to search and seizure shall be applicable to the GST Laws and in section 165(2) thereof, the word 'Magistrate' should be read as 'Commissioner '.
- (l) The officer can even seize accounts, registers or documents of any person; in case he has a reason to believe that the said person has evaded or is attempting to evade the taxes. However, he has to record the reasons in writing and also shall grant receipt of such seizure. There is no time limit prescribed for such retention by the officer. Further, where any goods, documents, book or things are liable for seizure then proper officer shall make an order of seizure in Form GST INS-02 or where it is not practically possible to seize goods then an order of prohibition in Form GST -03 shall be issued with a condition that goods shall not be removed without permission of such officer.
- (m) The Commissioner or officer authorized by him can authorize any person for purchase of any goods/ services to check issue of tax invoices/bills of supply. The goods so purchased by such person through appointed person, if returned, the taxable person from whom the goods were purchased shall refund the amount so paid and cancel the tax invoice. There is no time limit prescribed for return of the goods. It should be noted that this provision deals only with return of goods so purchased and there is no provision of return of services so purchased.
- (n) The seized goods may be released on a provisional basis upon execution of a bond for the value of the goods in FORM GST INS-04 and furnishing of a security in the form of a bank guarantee equivalent to the amount of applicable tax, interest and penalty payable.

As per Notification No. 27/2018 central Tax, dated 13.06.2018 - After the seizure, the specified goods shall be disposed off by the proper officer due to the considerations of being perishable or hazardous nature, depreciation in value with the passage of time, constraints of storage space

The goods or the class of goods which can be disposed of after seizure by the proper officer, having regard to the perishable or hazardous nature, depreciation in value with the passage of time, constraints of storage space or any other relevant considerations of the said goods are:

- (1) Salt and hygroscopic substances
 - (2) Raw (wet and salted) hides and skins
 - (3) Newspapers and periodicals
 - (4) Menthol, Camphor, Saffron
 - (5) Re-fills for ball-point pens
 - (6) Lighter fuel, including lighters with gas, not having arrangement for refilling
 - (7) Cells, batteries and rechargeable batteries
 - (8) Petroleum Products
 - (9) Dangerous drugs and psychotropic substances
 - (10) Bulk drugs and chemicals (read notification)
 - (11) Pharmaceutical products (read notification)
 - (12) Fireworks
 - (13) Red Sander
 - (14) Sandalwood
 - (17) All unclaimed/abandoned goods which are liable to rapid depreciation in value on account of fast change in technology or new models etc.
- and few more.



5. Section 68 enables prescription of documents and devices to be carried by the transporter and production for verification thereof.
6. Section 69 deals with power of arrest when one commits any of the following offences which is punishable under clause (i) or (ii) of sub-section (1), or under sub-section (2) of sec 132 of CGST Act which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said Section..
 - (a) Supplies any goods or services or both without issue of invoice with the intention to evade tax
 - (b) Issues any invoice or bill without supplies leading to wrongful availment or utilisation of input tax credit or refund of tax
 - (c) Avails input tax credit using invoice or bill referred to in b) above
 - (d) Collects any amount as tax but fails to pay the same beyond the period of 3 months from the due date
7. The Commissioner is vested with the power to authorise, by an order, any Officer to arrest a person, where there is a reason to believe that such person has committed the specified offences. The person committing any offence under clauses (a) or (b) or (c) or (d) u/s 132(1) cited supra and punishable under Section 132(1)(i) or 132(1)(ii) or 132(2) can be arrested by the authorised officer.
8. Section 132(1) clause (i) tax evasion above ₹500 Lakhs attracting imprisonment for a term upto 5 years and fine, or clause (ii) tax evasion above ₹200 Lakhs attracting imprisonment upto 3 years and fine or offence or section 132(2) [repeated offence – second and subsequent offence attracting imprisonment upto 5 years with fine]
9. Such person is required to be informed about the grounds of arrest and be produced before the Magistrate within 24 hours in case of cognizable offences and in case of non-cognizable and bailable offences the Assistant/Deputy Commissioner can grant the bail and is conferred powers of an officer-in-charge of a police station subject to the provisions of Code Of Criminal Procedure, 1973.
10. All arrests should be made as per the provisions of Code of Criminal Procedure, 1973.
11. Section 70 deals with exercise of powers to issue summons for giving evidence and for production of documents
12. In any inquiry which such officer is making for any of the purposes of this Act, the Proper officer shall have power to summon any person, whose attendance is considered necessary, either to give evidence or to produce a document or any other thing.
13. Every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial proceeding" within the meaning of section 193 and section 228 of the Indian Penal Code.
14. Section 71 empowers any officer authorised by the officer not below the rank of Joint Commissioner to have access to any place of business of a registered person to inspect books of account, documents, computers, computer programmes, computer software and such other things as may be required and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.
15. Such an authorized officer shall have access to any place of business of registered person to inspect books of account, documents, computers, computer programs, computer software (whether installed in a computer or otherwise) and such other things as he may require as available at such premises.
16. The object is to carry out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.
17. The person in charge of the premises should make available the following :
 1. Records maintained by the registered person and declared to proper officer;
 2. Trial balance;
 3. Audited financial statements wherever required;



4. Cost audit report, if any;
5. Income Tax audit report, if any;
6. Other relevant records.

The documents/records should be made available within 15 working days or such extended period as may be allowed.

The documents/records can be called for by the Audit officer or Chartered Accountant or Cost Accountant nominated by the department.

18. Section 72 requires all officers of Police, Railways, Customs and those officers engaged in the collection of land revenue including village officers, officers of state and union territory tax to assist the proper officers in the implementation of this Act.

Below officers are empowered and required when called upon, to assist the proper officer in execution of this act:

1. All officers of Police,
 2. Railway Officer,
 3. Customs Officer
 4. Officer of State & Union Territory tax.
 5. Officers engaged in the collection of land revenue including village officers,
19. Even the Government may issue notification empowering and requiring any other class of officer to assist the proper officers, if required by the Commissioner.

CLARIFICATION

Circular No. 49/23/2018-GST dt 21.06.2018:- Clarification on issues related to INSPECTION, SEARCH, SEIZURE AND ARREST- under GST Law

Issue 1: Modifications to the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances

The GST Council issued Circular No 49/23/2018 dated 21.06.2018 in order to amend Circular No – 41/15/2018 dated 13.04.2018 so as to ensure uniform implementation of the provision of the CGST Act, 2017 across all the field formations.

Accordingly, it clarifies that in regard of E- Way bill that where the physical verification of goods being transported on any conveyance has been done during transit at one place within a State or Union territory or in any other State or Union territory, no further physical verification of the said conveyance shall be carried out again in the State or Union territory, unless a specific information relating to evasion of tax is made available subsequently. Since the requisite FORMS are not available on the common portal currently, any action initiated by the State tax officers is not being intimated to the central tax officers and vice-versa, doubts have been raised as to the procedure to be followed in such situations and that the hard copies of the notices/orders issued in the specified FORMS by a tax authority may be shown as proof of initiation of action by a tax authority by the transporter/registered person to another tax authority as and when required.

Further, it is clarified that only such goods and/or conveyances should be detained/confiscated in respect of which there is a violation of the provisions of the GST Acts or the rules made thereunder.

Synopsis

1. The hard copies of the notices/orders issued in the specified FORMS by a tax authority may be shown as proof of initiation of action by a tax authority by the transporter/registered person to another tax authority as and when required.
2. Only such goods or conveyances will be confiscated or detained where there will be violation of the GST laws.



Issue 2: Modification of the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances, as clarified in Circular Nos. 41/15/2018-GST dated 13.04.2018 and 49/23/2018-GST dated 21.06.2018

The above mentioned issue has been clarified vide Circular No. 64/38/2018-GST dt 14.09.2018:

The GST Council clarifies issues regarding the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances.

It has been clarified that if a consignment of goods is accompanied with an invoice or any other specified document and an e-way bill then the proceedings may not be initiated in the following situations :

1. Spelling mistakes in the name of the consignor or the consignee but the GSTIN whichever is applicable, is correct.
2. Error in the address of the consignee to the extent that the locality and other details of the consignee are correct.
3. Error in one or two digits of the document number mentioned in the e-way bill.
4. Error in one or two digits of the vehicle number.
5. Error in 4 or 6 digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct.
6. Error in the pin-code but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill. A penalty of Rs. 1000 under IGST act will be levied in Form GST DRC -07 for every consignment which is incomplete or erroneous in above terms. Also, a record of all these consignments will have to be sent to the proper officer to his controlling officer on a weekly basis

Circular No. 64/38/2018-GST dt 14.09.2018 - Modification of the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances, as clarified in Circular Nos. 41/15/2018-GST dated 13.04.2018 and 49/23/2018-GST dated 21.06.2018-

The GST Council clarifies issues regarding the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances.

It has been clarified that if a consignment of goods is accompanied with an invoice or any other specified document and an e-way bill then the proceedings may not be initiated in the following situations :

1. Spelling mistakes in the name of the consignor or the consignee but the GSTIN, whichever is applicable, is correct.
2. Error in the address of the consignee to the extent that the locality and other details of the consignee are correct.
3. Error in one or two digits of the document number mentioned in the e-way bill.
4. Error in one or two digits of the vehicle number.
5. Error in 4 or 6 digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct.
6. Error in the pin-code but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill. A penalty of Rs. 1000 under IGST act will be levied in Form GST DRC -07 for every consignment which is incomplete or erroneous in above terms. Also, a record of all these consignments will have to be sent to the proper officer to his controlling officer on a weekly basis.



Study Note - 17

AUDIT UNDER GST



This Study Note includes

17.1 Meaning

17.2 Types of Audit

17.1 MEANING

"Audit" has been defined in section 2(13) of the CGST Act, 2017 and it means the examination of records, returns and other documents maintained or furnished by the registered person under the GST Acts or the rules made there under or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of the GST Acts or the rules made thereunder.

17.2 TYPES OF AUDIT

GST envisages three types of Audit.

1. **By a Chartered Accountant or a Cost Accountant** - The first type of audit is to be done by a chartered accountant or a cost accountant u/s 35(5) where turnover exceeds certain threshold specified in Rule 80(3) i.e. 2 crores;
2. **By Tax Authorities** - Second type of audit is to be done by the commissioner or any officer authorised by him in terms of Section 65 of the CGST Act, 2017 read with Section 20(xiv) of the IGST Act, 2017 and Section 21 (xv) of UTGST Act, 2017.
3. **Special Audit** - The third type of audit is called the Special Audit and is to be conducted under the mandate of Section 66 of CGST Act, 2017 read with Rule 102 of CGST Rules, 2017

1. Audit by Chartered Accountant or a Cost Accountant:

Every registered person, whose turnover during the financial year exceeds the prescribed "GST audit turnover limit" i.e., 2 crore rupees, shall get the accounts audited by a Chartered Accountant (CA) or a Cost and Management Accountant (CMA). Registered person who is required to get his accounts audited in accordance with section 35(5) shall submit electronically the Annual Return as per Section 44 along with a copy of the audited statement of accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year. He shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in Form GSTR-9C along with annual return.

Every registered person, for facilitating the audit, shall keep and maintain his accounts to show the correct value in regards to:

- Production or manufacture of goods
- Inward supply of goods or services or both
- Outward supply of goods or services or both
- Stock of goods



- Input tax credit availed
- Output tax payable and paid
- Books of accounts point can be added

AMENDMENT

The section 35(5) OF CGST Act, 2017 has been amended vide THE CENTRAL GOODS AND SERVICES TAX (AMENDMENT) ACT, 2018 which states that any department of the Central or State Government / local authority which is subject to audit by CAG need not get their books of account audited by a CA/ CMA

2. Audit by Tax Authorities (section 65 of the CGST Act, 2017):

The Commissioner or any officer authorised by him, can undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.

Section 65(3) of the CGST Act, 2017 the registered person shall be informed by way of a notice not less than fifteen working days prior to the conduct of audit in such manner as may be prescribed.

Section 65(4) of the CGST Act, 2017 the audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit:

Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.

Explanation.—For the purposes of this sub-section, the expression “commencement of audit” shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

Section 65(5) of the CGST Act, 2017 during the course of audit, the authorised officer may require the registered person,—

- (i) to afford him the necessary facility to verify the books of account or other documents as he may require;
- (ii) to furnish such information as he may require and render assistance for timely completion of the audit

Section 65(6) of the CGST Act, 2017 on conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.

Section 65(7) of the CGST Act, 2017 where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilized, the proper officer may initiate action under section 73 or section 74.

Explanation

The Commissioner or any officer authorised by him, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed in a general or a specific order (Section 65 of CGST Act). The officers may conduct audit at the place of business of the registered person or in their office. The registered person shall be informed by way of a notice of not less than fifteen working days before the conduct of audit in Form GST ADT-01. The audit shall be completed within a period of three months from the date of commencement of the audit and can be further extended by a period not exceeding six months, by the Commissioner if he has a reason to believe that the audit cannot be completed in the given duration.

During the course of audit, the authorised officer may require the registered person,—

- to provide him the necessary facility to verify the books of account or other documents as he may require



- to furnish such information as he may require and render assistance for timely completion of the audit

On conclusion of audit, the proper officer will inform, the registered person, within 30 days, about the findings, his rights and obligations and the reasons for such findings in Form ADT-02.

The officer along with his team will verify:

- Documents on the basis of which the books of account are maintained and the returns and statements furnished under the provisions of the Act and the rules made there under
- Correctness of the turnover
- Exemptions and deductions claimed
- Rate of tax applied in respect of the supply of goods or services or both
- Input tax credit availed and utilised
- Refund claimed
- Other relevant issues.

In cases where tax liability is identified during the audit or input tax credit wrongly availed or utilized by the auditee, the procedure laid down under Section 73 or 74 is to be followed. Audit cannot conclude automatically resulting in a demand. Independent application of mind is necessary for a valid demand to be raised.

The term 'commencement of audit' is important because audit has to be completed within a given time frame in reference to this date of commencement. Commencement of audit means the later of the following:

- (a) the date on which the records/accounts called for by the audit authorities are made available to them, or
- (b) the actual institution of audit at the place of business of the taxpayer.

Example: A notice for audit was served to M/s. X Ltd, on 06.07.2019. The required information was furnished by M/s. ABC Ltd, on 22.08.2019. The audit officers visited the place of business on 15.09.2019. What is the last date within which the audit is to be completed?

Audit is to be completed within 3 months from 22.08.2019, viz., 21.11.2019 or within an extended period of 6 months, if extended by the Proper Officer. The extended period would be 21.02.2020.

The law provides that audit may be directed irrespective of any other audit under any other provision of this Act or any other law for the time being in force or otherwise. It may mean that if an audit has been conducted by tax authorities under section 65 of CGST Act, special audit under section 66 of CGST Act can still be directed.

If at any stage of scrutiny, inquiry, investigation or any other proceedings, any officer not below the rank of Assistant Commissioner, is of the opinion that

- the value has not been correctly declared or
- the credit availed is not within the normal limits,

He may, with the prior approval of the Commissioner, direct such registered person to get his records including books of account examined and audited by a Chartered Accountant or a cost accountant as may be nominated by the Commissioner. The officer will issue direction in Form GST ADT-03 to the registered person in this regard. The Chartered Accountant or Cost Accountant so nominated shall submit a report of such audit duly signed and certified by him to the said Assistant Commissioner, within the period of ninety days, which can be further extended by ninety days. Special audit can be conducted even if accounts of the registered person have been audited under any other provisions of this Act or any other law for the time being in force. The expenses of the examination and audit of records, including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner. On conclusion of the special audit, the registered person shall be informed of the findings of the special audit in FORM GST ADT-04.

As in the case of audit under section 65, no demand of tax, even ad interim, is permitted on completion of the special audit under this section. In case any possible tax liability is identified during the audit, procedure under



section 73 or 74 as the case may be is to be followed.

Based on the findings/observations of the special audit, action can be initiated under Section 51 of the GST act.

Departmental Audit can be undertaken even if a taxable person is not registered. As there is no condition specifically mentioned for audit of registered or unregistered taxable person under section 65.

The Deputy/ Assistant Commissioner can direct the taxable person to get his books of accounts audited u/s 65 by a nominated Chartered Accountant or Cost Accountant, only after the approval of the Commissioner.

However, the taxable person will be given an opportunity of being heard for the use of any information, document or any relevant material obtained during Special Audit in any further proceedings.

Section 2(91) defines 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 Commissioner in the Board.

3. Special Audit [Section 66 of the CGST Act, 2017]:

The law provides that Special audit under section 66 may be directed irrespective of any other audit have been conducted under any other provision of this Act or any other law for the time being in force or otherwise.

Example: If an audit has been conducted by tax authorities under section 65 of The GST act, special audit under section 66 can still be directed irrespective of any Audit covered under any provisions of this Act or under any Act. The audit of accounts under any other provision or law will not have any relevance in conduct of special audit.

Example: Suppose Tax Audit of a Company u/s 44AB of the Income Tax Act, 1961 was concluded. But if Assistant/ Deputy Commissioner during the course of scrutiny or investigation comes across any doubt regarding the nature and complexity of the case in respect to the Interest of Revenue, then also irrespective of any Audit covered under any provisions of this Act or under any Act, Special Audit u/s 66 of the CGST Act can be directed.

Difference between Section 65 and Section 66:-

Components	Section 65	Section 66
Nature of Audit	In this section, we have a departmental audit	In this section, we have a special audit
Conducted by	It is conducted by officers of the department authorised by the commissioner	It is conducted by Chartered accountant/cost accountant nominated by the commissioner
Prior Notice	Prior notice of 15 days is required	No such notice/intimation is required
Time for conclusion of the audit	The conclusion of the audit is given in 3 months, further extension of 6 months is allowed	The conclusion of the audit is given in 90 days, further extension of 90 days is allowed
Audit Findings/ Report	Audit reports should be intimated soon upon completion of the audit	Audit reports should be shown to deputy/ assistant commissioner
The opportunity of being heard	No specific provision	Yes, where material gathered during the audit is to be used in any proceedings against the auditee
Action based on a report	Yes, under section 73 by the issuance of SCN (Show Cause Notice)	Yes, under section 73 by the issuance of SCN (Show Cause Notice)


THE PROCEDURAL PART OF ASSESSMENTS & AUDIT IS GUIDED BY THE ASSESSMENTS & AUDIT RULES AS FOLLOWS-
Rule 101- Audit.-

- (1) The period of audit to be conducted under sub-section (1) of section 65 shall be a financial year or multiples thereof.
- (2) Where it is decided to undertake the audit of a registered person in accordance with the provisions of section 65, the proper officer shall issue a notice in FORM GST ADT-01 in accordance with the provisions of sub-section (3) of the said section.
- (3) The proper officer authorised to conduct audit of the records and the books of account of the registered person shall, with the assistance of the team of officers and officials accompanying him, verify the documents on the basis of which the books of account are maintained and the returns and statements furnished under the provisions of the Act and the rules made thereunder, the correctness of the turnover, exemptions and deductions claimed, the rate of tax applied in respect of the supply of goods or services or both, the input tax credit availed and utilised, refund claimed, and other relevant issues and record the observations in his audit notes.
- (4) The proper officer may inform the registered person of the discrepancies noticed, if any, as observed in the audit and the said person may file his reply and the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.
- (5) On conclusion of the audit, the proper officer shall inform the findings of audit to the registered person in accordance with the provisions of sub-section (6) of section 65 in FORM GST ADT-02.

Rule 102- Special Audit.-

- (1) Where special audit is required to be conducted in accordance with the provisions of section 66, the officer referred to in the said section shall issue a direction in FORM GST ADT-03 to the registered person to get his records audited by a chartered accountant or a cost accountant specified in the said direction.
- (2) On conclusion of the special audit, the registered person shall be informed of the findings of the special audit in FORM GST ADT 04.

HIGHLIGHTS OF FORM GSTR-9 - UNDER GST AUDIT

Sl no	Parts of the GSTR-9	Information required
1	Part-I	Basic details of the taxpayer. This detail will be auto-populated.
2	Part-II	Details of Outward and Inward supplies declared during the financial year(FY). This detail must be picked up by consolidating summary from all GST returns filed in previous FY.
3	Part-III	Details of ITC declared in returns filed during the FY. This will be summarised values picked up from all the GST returns filed in previous FY.
4	Part-IV	Details of tax paid as declared in returns filed during the FY.
5	Part-V	Particulars of the transactions for the previous FY declared in returns of April to September of current FY or up to the date of filing of annual returns of previous FY whichever is earlier. Usually, the summary of amendment or omission entries belonging to previous FY but reported in Current FY would be segregated and declared here.
6	Part-VI	Other Information comprising details of:
		-GST Demands and refunds,
		-HSN wise summary information of the quantity of goods supplied and received with its corresponding Tax details against each HSN code,
		-Late fees payable and paid details and
		-Segregation of inward supplies received from different categories of taxpayers like Composition dealers, deemed supply and goods supplied on approval basis.



HIGHLIGHTS OF FORM GSTR-9C - UNDER GST AUDIT

The GSTR-9C consists of two main parts:

Part-A: Reconciliation Statement

Part-B: Certification

Part-A: Reconciliation Statement

The figures in the audited financial statements are at PAN level. Hence, the turnover, Tax paid and ITC earned on a particular GSTIN(or State/UT) must be pulled out from the audited accounts of the organisation as a whole.

The Reconciliation Statement is divided into five parts as follows:

Part-I: Basic details: Consists of FY, GSTIN, Legal Name and Trade Name. The taxpayer must also mention if he is subject to audit under any other law

Part-II: Reconciliation of turnover declared in the Audited Annual Financial Statement with turnover declared in Annual Return (GSTR-9)-

This involves reporting the gross and taxable turnover declared in the Annual return with the Audited Financial Statements. One must note that mostly the Audited Financial statement is at a PAN level. This might require the break up of the audited financial statement at GSTIN level for reporting in GSTR-9C.

Part-III: Reconciliation of tax paid-

This section requires GST rate-wise reporting of the tax liability that arose in FY 2017-18 as per the accounts and paid as reported in the GSTR-9 respectively with the differences thereof. Further, it requires the taxpayers to state the additional liability due to unreconciled differences noticed upon reconciliation.

Part-IV: Reconciliation of Input Tax Credit (ITC)-

This part consists the reconciliation of input tax credit availed and utilised by taxpayers as reported in GSTR-9 and as reported in the Audited Financial Statement. Further, it needs a reporting of Expenses booked as per the Audited Accounts, with a breakup of eligible and ineligible ITC and reconciliation of the eligible ITC with that amount claimed as per GSTR-9. This declaration will be after considering the reversals of ITC claimed, if any.

Part-V: Auditor's recommendation on additional Liability due to non-reconciliation-

Here, the Auditor must report any tax liability identified through the reconciliation exercise and GST audit, pending for payment by the taxpayer. This can be non-reconciliation of turnover or ITC on account of :

- Amount paid for supplies not included in the Annual Returns(GSTR-9)
- Erroneous Refund to be paid back
- Other Outstanding demands to be settled

Lastly, the instructions to the format of GSTR-9C specifies that an option will be given to taxpayers to settle taxes as recommended by the auditor at the end of the reconciliation statement.

Part-B: Certification

The GSTR-9C can be certified by the same CA who conducted the GST audit or it can be also certified by any other CA who did not conduct the GST Audit for that particular GSTIN.

The difference between both is that in case the CA certifying the GSTR-9C did not conduct the GST audit, he must have based an opinion on the Books of Accounts audited by another CA in the reconciliation statement. The format for certification report will vary depending on who the certifier is.

Study Note - 18

GOODS AND SERVICES TAX (COMPENSATION TO STATE) ACT, 2017



This Study Note includes

- 18.1 GST Compensation Cess
- 18.2 Need of GST Compensation Cess
- 18.3 Goods Covered under GST Compensation Cess
- 18.4 Rate of GST compensation Cess
- 18.5 How to Calculate GST Compensation Cess

18.1 GST COMPENSATION CESS

Cess under GST is a compensation cess that will be levied on certain goods and services under section 8 of the GST (Compensation to States) Act, 2017. It is levied on inter-State and intra-State transactions of goods and services to compensate the revenue losses occurred to the States because of the implementation of GST in the country. It means Under GST, in addition to tax on supply (which are CGST + SGST/UTGST on intrastate supplies and IGST on interstate supplies), a GST Cess is to be levied on supply of certain goods.

18.2 NEEDS OF GST COMPENSATION CESS

It is levied to compensate states who may suffer any loss of revenue due to the implementation of GST. As GST is a consumption based tax, the state in which consumption of goods or services happens will be eligible for the revenue on supplies. As a result, manufacturing states like Maharashtra, Tamil Nadu, Gujarat, Haryana and Karnataka are expected to face a decrease in revenue from indirect taxes. In order to compensate these states for this loss of revenue, GST Cess will be levied on supply of certain goods, which will be distributed to these states. This Cess will be levied for 5 years from the date of implementation of GST.

According to the GST cess (Compensation to State) Act, 2017, a compensation cess would be levied on specific items and services for compensation to the States for the loss of revenue on account of implementation of the goods and services tax in pursuance of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016.

GST cess levied this way would be credited to the GST compensation fund, from where it will be used to compensate the tax revenue losses of the States caused by GST implementation. The unutilized funds, if any, would be distributed among the Centre and the States equally. The state governments would receive cess in the ratio of the indirect tax revenues generated by them in the last year before the implementation of GST.

18.3 GOODS COVERED UNDER GST COMPENSATION CESS

- Pan Masala
- Tobacco and tobacco products
- Cigarettes
- Coal, briquettes, ovoids and similar solid fuels manufactured from coal, lignite excluding jet and peat.
- Aerated waters
- Motor vehicles

**18.4 RATE OF GST COMPENSATION CESS**

Items	GST Rate Applicable	GST Cess Range	GST Cess Ceiling
Coal	5%	INR 400 / tonne	INR 400 / tonne
Pan Masala	28%	60%	135%
Tobacco	28%	61% – 204%	INR 4170 / thousand
Aerated Drinks	28%	12%	15%
Motor Vehicles	28%	1% – 22%	22%

18.5 HOW TO CALCULATE GST COMPENSATION CESS

The GST cess on an eligible product will be calculated according to the rate specified in the GST cess rate schedule and on the actual taxable value (transaction value) of the supply, not on the GST tax.

For cess applicable imports, the GST cess amount will be calculated on the taxable value + customs duty, i.e. the same value on which IGST is levied.

Example 1:

M/s X Ltd. being a dealer in new cars sold a Petrol Car on which applicable GST rate is 28% and GST Cess rate is 1%. Transaction value is ₹ 5,00,000/. Find the GST liability?

Answer:

		₹
Transaction value	=	5,00,000
CGST 14%	=	70,000 (i.e. ₹ 5,00,000 x 14%)
SGST 14%	=	70,000 (i.e. ₹ 5,00,000 x 14%)
Cess 1%	=	<u>5,000</u> (i.e. ₹ 5,00,000 x 1%)
Invoice price of the car	=	6,45,000

Example 2:

Can input credit be availed on Cess paid on inward supply of these goods?

Answer:

Yes, input credit can be availed on Cess paid on inward supplies. However, credit of Cess paid can be utilized only towards payment of Cess liability.

CLARIFICATION

Notifications issued under CGST Act, 2017 applicable to Goods and Services Tax (Compensation to States) Act, 2017 has been clarified vide Circular No. 68/42/2018-GST dt 05.10.2018

The GST Council has provided a clarification regarding the entitlement of UN and specified international organizations, foreign diplomatic mission or consular posts, diplomatic agents and consular offices post therein to refund of Compensation Cess payable on intra-State and inter-State supply of goods or services or both received by them.

Accordingly, it is clarified that UN and specified international organizations, foreign diplomatic missions or consular posts in India, or diplomatic agents or career consular officers posted therein, having being specified under section 55 of the CGST Act, 2017, are entitled to refund of Compensation Cess payable on intra-State and inter-State supply of goods or services or both received by them subject to the same conditions and restrictions, mutatis mutandis, as prescribed in Notification No. 16/2017-Central Tax(Rate) dated 28.06.2017 which specify UN and specified international organizations, foreign diplomatic missions or consular posts in India, or diplomatic agents or career consular officers posted therein for the purposes of the said section.

Study Note - 19

ADVANCE CONCEPTS UNDER GST



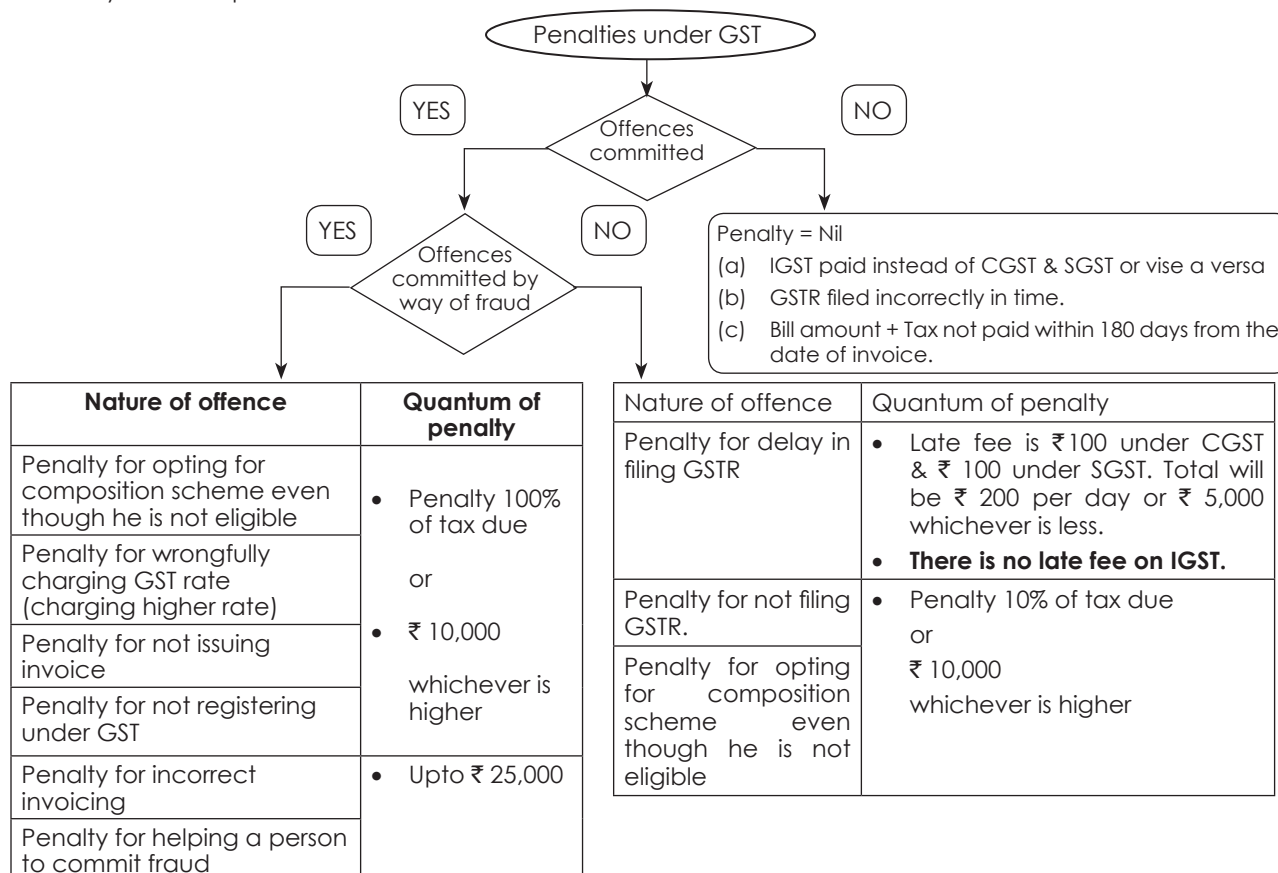
This Study Note includes

- 19.1 Offences and Penalties
- 19.2 Arrest, Prosecution and Compounding of Offence
- 19.3 Demand and Adjudication
- 19.4 Recovery of Tax
- 19.5 Appeals and Revisions
- 19.6 Advance Ruling
- 19.7 GST Practitioner

19.1 OFFENCES AND PENALTIES

An offence under GST is a breach of the provisions of GST Act and GST Rules and hence penalty can be imposed. A penalty is a punishment imposed by law for committing an offence or failing to do something that was the duty of a registered person to do.

Section 122 to 131 contained in Chapter XIX of CGST Act, 2017 makes provisions relating to offence and penalties. Summary of these provisions are as follows:



**19.2 ARREST, PROSECUTION AND COMPOUNDING OF OFFENCE**

The person committing the offence will be punishable depending on the amount involved which is as follows;

Prosecution is the conducting of legal proceedings against someone in respect of a criminal charge.

Any person committing the following offences (i.e., deliberate intention of fraud) becomes liable to prosecution, i.e., face criminal charges Section 132(1) of the CGST Act, 2017:

The following are cognizable offences if the tax evaded > Rs 500 lakh (section 132(5) of the CGST Act, 2017):

Whoever commits any of the following offences, namely (Section 132(1) of the CGST Act, 2017):—

- (a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;
- (b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;
- (c) avails input tax credit using such invoice or bill referred to in clause (b);
- (d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

Note: all the above offences shall be non-cognizable and bailable where tax evaded $\leq$ ₹ 500 lakh (Section 132(4) of the CGST Act, 2017).

The following are non-cognizable and bailable offences irrespective of the tax amount evaded (Section 132(4) of the CGST Act, 2017):

Whoever commits any of the following offences, namely (Section 132(1) of the CGST Act, 2017):—

- (e) evades tax, fraudulently avails input tax credit or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);
- (f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;
- (g) obstructs or prevents any officer in the discharge of his duties under this Act;
- (h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
- (i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
- (j) tampers with or destroys any material evidence or documents;
- (k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or
- (l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section,

Cognizable or non-cognizable:

Section	Tax amount involved	Quantum of punishment by imprisonment	Cognizable Or non-cognizable	Bailable or non-bailable
132(1)(i)	> ₹ 500 lakhs	Upto 5 years with fine	Cognizable	Non-bailable
132(1)(ii)	> ₹ 200 lakhs $\leq$ ₹ 500 lakhs	Upto 3 years with fine	Non-cognizable	Bailable
132(1)(iii)	> ₹ 100 lakhs $\leq$ ₹ 200 lakhs	Upto 1 years with fine	Non-cognizable	Bailable
132(1)(iv)	Offence specified in clauses (f),(g) or (j) of Section 132(1) of the CGST Act, 2017	Upto 6 months or with fine or with both	Non-cognizable	Bailable

**Second and subsequent offence:**

Section 132(2) of the CGST Act, 2017 where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with **imprisonment for a term which may extend to five years and with fine.**

Minimum imprisonment is 6 months:

Section 132(3) of the CGST Act, 2017 the imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.

Prior permission from the Commissioner:

Section 132(6) of the CGST Act, 2017 a person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

Explanation.— For the purposes of this section, the term “tax” shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.

Example 1:

Discuss the prosecution, arrest and bail implications, if any, in respect of the following cases pertaining to the period November 2017:

- (i) 'Ram' avails input tax credit of ₹162 lakh without actual receipt of excisable goods. However, he is yet to utilize the same (i.e. Yet to confirm this credit in his GSTR-2A return).
- (ii) 'Rahim' willfully evades payment of tax of ₹275 lakh.
- (iii) 'Robert' fails to supply information sought by the Central Tax Officer. The amount of GST involved is ₹ 8 lakh.
- (iv) 'Lakshman' collects ₹585 lakh as tax from its clients but deposits only ₹ 25 lakh with the Central Government.
- (v) 'Karthik' collects ₹ 265 lakh as IGST from its clients and deposits ₹ 261 lakh with the Central Government by falsifies or substitutes financial records or produces fake accounts or documents.

What will be the prosecution implications, if Rahim, Robert, Lakshman and Karthik are convicted for subsequent offences?

Answer:

Person	Offence	Prosecution	Arrest	Bail
'Ram'	No offence. Because utilization of ITC not confirmed in his return GSTR-2A	Not applicable	Not applicable	Not applicable
'Rahim'	Non-cognizable offence [Section 132(1)(e)]	Upto 3 years with fine [Section 132(1)(ii)]	Arrest can be ordered by Commissioner of Central Tax.	Bailable offence [Section 132(4)]
'Robert'	Non-cognizable offence [Section 132(1)(k)]	Not applicable [since, tax evasion not exceeds ₹ 100 lakh]	No Arrest can be ordered by Commissioner of Central Tax.	Not applicable
'Lakshman'	Cognizable offence [Section 132(1)(a)]	Upto 5 years with fine [Section 132(1)(i)]	Arrest can be ordered by Commissioner of Central Tax without arrest warrant	Non-Bailable Offence [Section 132(5)]
'Karthik'	Non-cognizable offence [Section 132(1)(f)]	Upto 6 months or with fine or with both [section 132(1)(iv)]	Arrest can be ordered by Commissioner of Central Tax.	Bailable Offence [Section 132(4)]



If Rahim, Robert, Lakshman and Karthik are convicted for subsequent offences:

Person	Prosecution for subsequent offences [Section 132(2) of the CGST Act, 2017]
'Rahim'	Imprisonment upto 5 years with fine
'Robert'	Imprisonment upto 5 years with fine
'Lakshman'	Imprisonment upto 5 years with fine
'Karthik'	Imprisonment upto 5 years with fine

19.3 DEMAND AND ADJUDICATION

Adjudicating Authority:

As per Section 2(4) of the CGST Act, 2017 "adjudicating authority" means any authority, appointed or authorised to pass any order or decision under this Act, but does not include

- the Central Board of Excise and Customs,
- the Revisional Authority,
- the Authority for Advance Ruling,
- the Appellate Authority for Advance Ruling,
- the Appellate Authority and
- the Appellate Tribunal;

Officers under Section 3 of the CGST Act, 2017:

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


Demand and Adjudication:

Show Cause Notice can be issued by proper officer to a registered person where it appears to him that tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized, asking him to show cause as to why the said tax be not demanded and recovered from him.

Where it appears to the proper officer that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for reason, other than of fraud or any willfull misstatement or suppression of facts to evade tax, he can issue show cause notice upto 3 months prior to normal period of demand within 3 years from the due date for furnishing of annual return for the financial year to which said demand pertains (i.e. show cause notice to be issued within 2 years and 9 months) as per section 73(1) and (2) read with section 73(10) of the CGST Act, 2017.

Where it appears to the proper officer that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for reason, by reason of fraud or any willfull misstatement or suppression of facts to evade tax, he can issue show cause notice upto 6 months prior to extended period of demand within 5 years from the due date for furnishing of annual return for the financial year to which said demand pertains (i.e. show cause notice to be issued within 4 years and 6 months) as per section 74(1) and (2) read with section 74(10) of the CGST Act, 2017.

Time limit for Show Cause Notice (SCN) and Adjudication (Order):

Nature of transaction	Time for issuance of SCN	Time of issuance of order
Other than fraud	Within 2 years and 9 months from the due date of filing Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund. Section 73(2) of the CGST Act, 2017	Within 3 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund. Section 73(10) of the CGST Act, 2017
Fraud case	Within 4 years and 6 months from the due date of filing Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund. Section 74(2) of the CGST Act, 2017	Within 5 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund. Section 74(10) of the CGST Act, 2017
Any amount collected as tax but not paid Section 76(1) and (2) of the CGST Act, 2017.	No time limit	Within 1 Year from the date of issue of notice. Section 76(6) of the CGST Act, 2017
Non-payment of self-assessed tax	No need to issue a show cause notice	Recovery proceedings can be started directly.

Dispensation of SCN (i.e. SCN not required to issue):

- Once a SCN has been issued, where for normal period or extended period, for subsequent demand period, a statement showing details demand can be served if grounds of demand are same. It means for subsequent period no separate show cause notice is required to issue as per section 73(6) or 74(6) of the CGST Act, 2017.
- In a normal demand case (other than fraud), where assessee on the basis of his own ascertainment or ascertainment of the proper officer pays the tax short levied or short paid etc. along with interest and informs the proper officer in writing, then no SCN will be issued.



- (c) In an extended period demand case (i.e. fraud case), where assessee on the basis of his own ascertainment or ascertainment of the proper officer pays the tax short levied or short paid etc., along with interest with 15% of the amount as penalty and informs the proper officer in writing, then no SCN will be issued.

Waiver or reduction of Penalties and Dispensation of Adjudication:

Nature of offence	Time limit	Quantum of penalty
Person liable to pay Tax if the same: - not paid, or - short paid, or - erroneously refunded, or - input tax wrongly availed, or utilized for any reason other than fraud or wilful misstatement or suppression of facts to evade tax.	Time Limit for issue of Show Cause Notice (sec 73(2)): 3 months prior to the time limit for issuance of order as per section 73(10) Time Limit for issuance of Order (sec 73(10)): 3 years from the due date of furnishing of Annual return for the relevant FY, or 3 years from the date of erroneous refund	(1) Nil (Zero) if amount due is paid with interest prior to or within 30 days of issuance of SCN (Section 73(8) of the CGST Act, 2017). Hence, the case would be concluded without resorting to adjudication proceedings and without imposing penalty. For this purpose, the assessee shall intimate the proper officer of such payment in Form GST DRC-03 and the proper officer shall issue an order in Form GST DRC-05 concluding the proceedings in respect of the said notice. (2) 10% of tax amount due or ₹ 10,000/- whichever is higher as per the adjudication order (section 73(9) of the CGST Act, 2017). (3) 10% of tax amount due or ₹ 10,000/- whichever is higher if self assessed tax or amount collected as tax has not been paid within period of 30 days from the due dates of payment of such tax (section 73(11) of the CGST Act, 2017).
Person liable to pay Tax if the same: - not paid, or - short paid, or - erroneously refunded, or - input tax wrongly availed, or utilized by reason of fraud or any wilful misstatement or suppression of facts to evade tax.	Time Limit for issue of Notice (sec 74(2)): 6 months prior to the time limit for issuance of order as per section 74(10)). Time Limit for issuance of Order (sec 74(10)): 5 years from the due date of furnishing of Annual return for the relevant FY, or 5 years from the date of erroneous refund	(1) 15% if tax amount due is paid with interest prior to issuance of SCN (section 74(5) of the CGST Act, 2017). (2) 25% of tax amount if the same is paid with interest within 30 days of issuance of SCN (section 74(8) of the CGST Act, 2017). Hence, the case would be concluded without resorting to adjudication proceedings. For this purpose, the assessee shall intimate the proper officer of such payment in Form GST DRC-03 and the proper officer shall issue an order in Form GST DRC-05 concluding the proceedings in respect of the said notice. The proper officer shall issue an acknowledgement, accepting the payment made by the said person in Form GST DRC-04. (3) 50 % of tax amount if the same is paid with interest within 30 days of issuance of adjudication order (section 74(11) of the CGST Act, 2017). Adjudicating proceedings will be concluded as stated above. (4) 100% of tax amount due (section 74(1) of the CGST Act, 2017)

General provisions relating to determination of tax [Section 75 of the CGST Act, 2017]:

- (1) **Period of Stay:** Period of stay on issuance of SCN ordered by Court or Tribunal to be excluded for determining limitation (i.e. 3 years or 5 years).
- (2) **Deemed Notice:** Where any Appellate Authority or Appellate Tribunal or court concludes that the notice



issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.

- (3) **Order issued in pursuance of the Court:** Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within **two years** from the date of communication of the said direction.
- (4) **Opportunity of hearing:** An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.
- (5) **Adjournment not more than 3 times:** The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:
Provided that no such adjournment shall be granted for more than **three times** to a person during the proceedings.
- (6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.
- (7) **Order should not be passed more than the demand mentioned in SCN:** The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.
- (8) **Court findings final:** Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.
- (9) **Interest mandatory:** The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.
- (10) **Time barred Orders:** The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.
- (11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.
- (12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79 (i.e. recovery of tax from various modes).
- (13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

Important points:

- (a) A summary of demand has to be furnished electronically in Form GST DRC-01 along with SCN simultaneously. In case of extended period a summary of demand has to be furnished electronically in Form GST DRC-02.
- (b) the assessee will reply/make representation against SCN in Form GST DRC-06 within the prescribed time or time as extended.



- (c) A summary of the order issued shall be uploaded electronically in Form GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax. This order shall be treated as Recovery Notice.
- (d) Cross empowerment between CGST and SGST/UTGST officers has been done so as to ensure that if a proper officer of one Act (say CGST Act, 2017) passes an order with respect to a transaction, he will also act as the proper officer of SGST for the same transaction and issue the order with respect to the CGST as well as the SGST/UTGST component of the same transaction.

Rule 142 of CGST Rules – Notice and order for demand of amounts payable under the Act:

- 1) The proper officer shall serve, along with the
 - (a) notice under sub-section (1) of section 73 or sub-section (1) of section 74 or subsection (2) of section 76, a summary thereof electronically in FORM GST DRC-01,
 - (b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in FORM GST DRC-02, specifying therein the details of the amount payable.
- 2) Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section (5) of section 74, he shall inform the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in FORM GST DRC-04.
- (3) Where the person chargeable with tax makes payment of tax and interest under sub-section (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a notice under sub-rule (1), he shall intimate the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an order in FORM GST DRC-05 concluding the proceedings in respect of the said notice.
- (4) The representation referred to in sub-section (9) of section 73 or sub-section (9) of section 74 or sub-section (3) of section 76 shall be in FORM GST DRC-06.
- (5) A summary of the order issued under sub-section (9) of section 73 or sub-section (9) of section 74 or sub-section (3) of section 76 shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.
- (6) The order referred to in sub-rule (5) shall be treated as the notice for recovery.
- (7) Any rectification of the order, in accordance with the provisions of section 161, shall be made by the proper officer in FORM GST DRC-08.

1. Amendment Vide Notification No. 28/2018 – Central Tax, dt 19.6.2018

– The following Rule 142 sub-rule (5) has been amended so as to provide an order in Form DRC-07 shall be issued under section 125 for general penalty or under section 129 - Detention, seizure and release of goods and conveyances in transit or section 130 - Confiscation of goods or conveyances and levy of penalty, also

2. Following Insertion was made in Rule 142 sub rule (5) vide Notification No. 48 /2018 – Central Tax, dt 10.09.2018 namely

Rule 142 relates to notice and order for demand of amounts payable under the Act, the following sub-rule (5) has been amended so as to provide a summary of order issued under section 125- General penalty, also.

**AMENDMENT VIDE Notification No. 60/2018 – Central Tax, dt 30.11.2018**

A summary order of demand of tax, interest, penalty, or any other dues which became recoverable under existing laws after the proceedings will be uploaded in FORM GST DRC-07A and also demand of the order will be posted in part 2 of electronic liability register in FORM GST PMT-01.

If the demand uploaded in FORM GST PMT-01 is rectified, modified or quashed in any proceedings, then the summary of the same will be uploaded in FORM GST DRC-08A and part 2 of electronic liability register in FORM GST PMT-01.

Tax collected but not paid to Government (Section 76 of the CGST Act, 2017):

Every person who has collected any amount as representing the GST and has not paid same to the Government, is required to pay said amount with interest, irrespective of whether the supplies in respect of which such amount was collected are taxable or not (as per section 76(1) of the CGST Act, 2017).

In case of failure, proper officer can issue a SCN to him proposing recovery and imposition of penalty equalent to the amount specified in the notice (as per section 76(2) of the CGST Act, 2017)

As per section 76(3) of the CGST Act, 2017, the proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person and thereupon such person shall pay the amount so determined.

As per section 76(4) of the CGST Act, 2017, the person referred to in sub-section (1) shall in addition to paying the amount referred to in sub-section (1) or sub-section (3) also be liable to pay **interest** thereon at the rate specified under section 50 *from the date such amount was collected by him to the date such amount is paid by him to the Government*.

As per section 76(5) of the CGST Act, 2017, an opportunity of hearing shall be granted where a request is received in writing from the person to whom the notice was issued to show cause.

As per section 76(6) of the CGST Act, 2017, the proper officer shall issue an order within **one year** from the date of issue of the notice and such order issued in Form GST DRC-07. This order shall be treated as Recovery Notice.

As per section 76(7) of the CGST Act, 2017, where the issuance of order is stayed by an order of the court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of **one year**.

As per section 76(8) of the CGST Act, 2017, the proper officer, in his order, shall set out the relevant facts and the basis of his decision.

As per section 76(9) of the CGST Act, 2017, the amount paid to the Government under sub-section (1) or sub-section (3) shall be adjusted against the tax payable, if any, by the person in relation to the supplies referred to in sub-section (1).

As per section 76(10) of the CGST Act, 2017, where any surplus is left after the adjustment under sub-section (9), the amount of such surplus shall either be credited to the Fund or refunded to the person who has borne the incidence of such amount.

As per section 76(11) of the CGST Act, 2017, the person who has borne the incidence of the amount, may apply for the refund of the same in accordance with the provisions of section 54.

Tax wrongly collected and paid to Central Government or State Government (Section 77 of the CGST Act, 2017):

- (1) In case of wrong charging and deposit of tax considering it to be intra-State supply which is later found to be inter-State supply, the tax paid shall be refunded.
- (2) However, in case of payment of tax considering the supply as inter-State which is later found to be intra-State supply, no interest shall be payable on the amount of Central and State/UT tax paid.

Initiation of recovery proceedings (Section 78 of the CGST Act, 2017):



The adjudication order passed by proper officer in pursuant to demand SCN is to be treated as recovery notice.

Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of **three months** from the date of service of such order failing which recovery proceedings shall be initiated:

Provided that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him.

19.4 RECOVERY OF TAX

Recovery of Tax (Section 79 of the CGST Act, 2017):

- (1) Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely:—

(a) Recovery by defucting form any money owed:

The proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other specified officer. For this purpose, the proper officer shall issue Form GST DRC-09.

(b) Recovery by sale of goods under the control of proper officer:

The proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the proper officer or such other specified officer. The sale will be by auction including e-auction by issuing a notice in Form GST DRC-10.

Perishable or hazardous goods can be auctioned immediately, but in other cases a 15 days notice is required. The successful bidder will be informed in Form GST DRC-11 requiring him to make the payment within a period of 15 days from the date of auction. On payment of full bid amount, the proper officer shall transfer the possession of the said goods by issuing a certificate in Form GST DRC-12.

(c) Recovery from a third person:

- (i) the proper officer may, by a notice in writing, require any other person

- from whom money is due or may become due to such person or
- who holds or may subsequently hold money for or
- on account of such person,

to pay to the Government either forthwith upon the money becoming due or being held, or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;

- (ii) every person to whom the notice is issued under sub-clause (i) shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;
- (iii) in case the person to whom a notice under sub-clause (i) has been issued, fails to make the payment in pursuance thereof to the Government, he shall be **deemed to be a defaulter** in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder



shall follow;

- (iv) the officer issuing a notice under sub-clause (i) may, at any time, amend or revoke such notice or extend the time for making any payment in pursuance of the notice;
- (v) any person making any payment in compliance with a notice issued under sub-clause (i) shall be deemed to have made the payment under the authority of the person in default and such payment being credited to the Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the person in default to the extent of the amount specified in the receipt;
- (vi) any person discharging any liability to the person in default after service on him of the notice issued under sub-clause (i) shall be personally liable to the Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest and penalty, whichever is less;

Recovery of defaulted money can be undertaken from such third person by issuing him a notice in Form GST DRC-13 directing him to deposit the amount specified in the notice. On payment by such person, the proper officer shall issue a certificate in Form GST DRC-14 indicating the details of the liability so discharged.
- (vii) where a person on whom a notice is served under sub-clause (i) proves to the satisfaction of the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person or be held for or on account of such person, nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the Government any such money or part thereof;

(d) Recovery by sale of movable or immovable property:

The proper officer may, in accordance with the rules to be made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of **30 days** next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person. The Proper Officer shall issue an order of attachment or distraint and a notice for sale in Form GST DRC-16.

(e) Recovery through land revenue authority:

The proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue;

(f) Recovery through court:

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application to the appropriate Magistrate and such Magistrate shall proceed to recover from such person the amount specified thereunder as if it were a fine imposed by him.

- (2) Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.
- (3) Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, may recover the amount from the said



person as if it were an arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government.

- (4) Where the amount recovered under sub-section (3) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government.

Note - Following explanation has been inserted of the above mentioned Section 79(4) of CGST Act vide CGST (Amendment) Act, 2018 namely:

For the purposes of this section, the word person shall include "distinct persons" as referred to in sub-section (4) or, as the case may be, sub-section (5) of section 25

Recovery in installments (Section 80 of the CGST Act, 2017):

- Commissioner can allow payment with interest by defaulter in monthly installments not exceeding 24 installments.
- In case of default in payment of any one installment on its due date, the whole outstanding balance payable on such date shall become due.
- For seeking installment facility, taxable person can file application electronically in Form GST DRC-20.

The installment facility will not be allowed if:

- The taxable person has already defaulted on the payment of any amount under GST law and recovery process is already undergoing;
- The taxable person has not been allowed to make payment in installments in the preceding financial year under GST law; and
- The amount for which instalment facility is sought is **less than ₹ 25,000/-**.

Transfer of property to be void in certain cases (Section 81 of the CGST Act, 2017):

Where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person:

Creation of any charge on any property belonging to defaulter, after tax has become due from him, shall be void.

Provided that, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

Tax to be first charge on property (Section 82 of the CGST Act, 2017)

Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.

Provisional attachment to protect revenue in certain cases (Section 83 of the CGST Act, 2017)

- (1) Where assessment or adjudication are pending under
- Section 62 Assessment of non-filers of returns;
 - Section 63 assessment of unregistered persons;
 - Section 64 summary assessment in certain special cases;



Section 73 determination of tax not paid other than fraud;

Section 74 determination of tax not paid by reason of fraud;

The Commissioner for protecting the interest of the Government revenue, by order in writing in Form GST DRC-22 can attach provisionally any property, including bank account, belonging to the taxable person.

- (2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

Continuation and validation of certain recovery proceedings (Section 84 of the CGST Act, 2017):

If adjudicated dues are enhanced or reduced in appeal, revision or other proceedings in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of such appeal etc. will continue. The order for the reduction or enhancement of any demand under Section 84 shall be issued in Form GST DRC-25.

19.5 APPEALS AND REVISIONS

A person who is aggrieved by a decision or order passed against him by an adjudicating authority, can file an appeal to the Appellate Authority (i.e. Commissioner (Appeals) also in short called as AA). 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.

It is to be noted that no appeals whatsoever can be filed against the following orders:-

- Board can fix monetary limits below which no departmental appeal would be filed with respective authorities.
- An order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer;
- An order pertaining to the seizure or retention of books of account, register and other documents; or
- An order sanctioning prosecution under the Act; or
- An order passed under section 80 (payment of tax in instalments).

Important definitions:

As per Section 2(4) of the CGST Act, 2017 "**adjudicating authority**" means any authority, appointed or authorised to pass any order or decision under this Act, but does not include

- the Central Board of Excise and Customs,
- the Revisional Authority,
- the Authority for Advance Ruling,
- the Appellate Authority for Advance Ruling,
- the Appellate Authority and
- the Appellate Tribunal;

Section 2(8) of the CGST Act, 2017 "**Appellate Authority**" means an authority appointed or authorised to hear appeals as referred to in section 107;

Section 2(9) of the CGST Act, 2017 "**Appellate Tribunal**" means the Goods and Services Tax Appellate Tribunal constituted under section 109;

Section (24) of the CGST Act, 2017 "**Commissioner**" means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act;

Section 2(99) of the CGST Act, 2017 **“Revisional Authority”** means an authority appointed or authorised for revision of decision or orders as referred to in section 108;

Right to appeal against an adverse decision or order is a statutory right available with all assessees under any law and GST law also. However, this right is not an absolute right and is conditioned by fetters of timely filing of appeal and mandatory payment of part dues as pre-deposit. Under GST regime the taxable supplies of goods or services are attracting the levy which is being leviable by both Central Tax and State Tax.

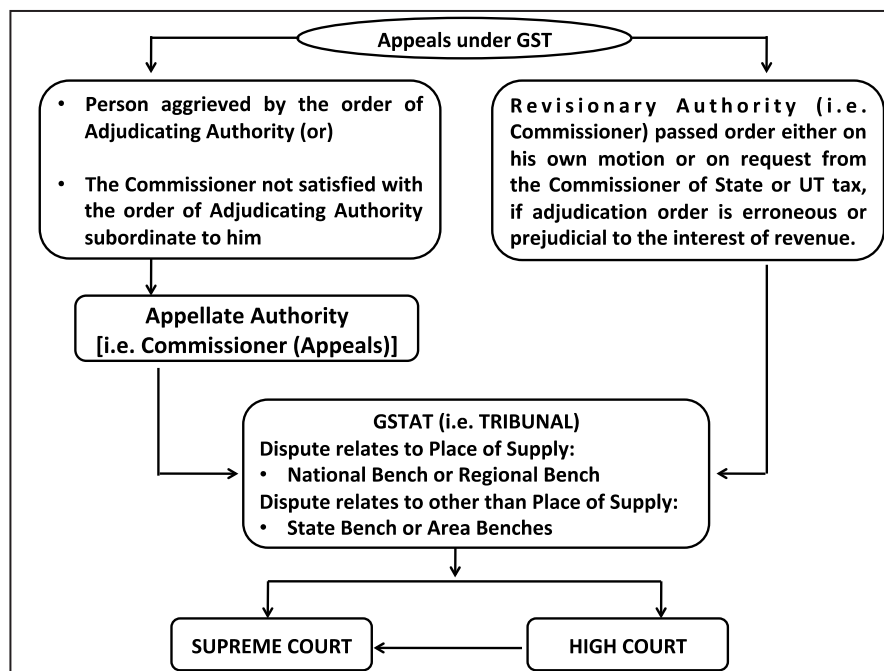
Person aggrieved should approach both the authorities of Central and State for exercising the right of appeal?

Answer: As per CBEC clarification the answer to this question is NO.

The Act makes provisions for cross empowerment between CGST and SGST/UTGST officers so as to ensure that if a proper officer of one Act (say CGST) passes an order with respect to a transaction, he will also act as the proper officer of SGST for the same transaction and issue the order with respect to the CGST as well as the SGST/UTGST component of the same transaction. The Act also provides that where a proper officer under one Act (say CGST) has passed an order, any appeal/review/revision/rectification against the said order will lie only with the proper officers of that Act only (CGST Act).

So also if any order is passed by the proper officer of SGST, any appeal/review/revision/rectification will lie with the proper officer of SGST only.

Hierarchy of appeals under GST:



Mandatory pre-deposit for entertaining appeal:

As per section 107(6) of the CGST Act, 2017 No appeal shall be filed under sub-section (1) of Section 107 i.e. Appeals to Appellate Authority ('AA'), unless the appellant has paid—

- 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
- a sum equal to **10%** of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed.

**Amendment:****Section 107(6) of CGST Act has been amended vide CGST Amendment Act, 2018, that**

No appeal shall be filed under sub-section (1), unless

the appellant has paid—

- (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
- (b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order **subject to a maximum of twenty-five crore rupees**, in relation to which the appeal has been filed.

As per Section 112(8) of the CGST Act, 2017 No appeal shall be filed under sub-section (1), unless the appellant has paid—

- (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and
- (b) a sum equal to 20% of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order, **subject to a maximum of fifty crore rupees** in relation to which the appeal has been filed.

Note: Pre-deposit will be **refunded with Interest @ 6%** where said amount becomes refundable on account of order in favor of assessee.

Example 2:

X Ltd. received a protective demand notice from the department Assistant Commissioner of Central Tax on 1.9.2017 under Section 73 of the CGST Act, 2017 where

	<i>Amount ₹</i>
CGST & SGST due	= 5,00,000
Interest	= @15% p.a. for no. of days delay.
Penalty	= 10% of tax due or ₹ 10,000 whichever is higher

The assessee went for appeal and filed the case in the Appellate Authority on 25.9.2017. This appeal has been taken up for hearing on 06-10-2017.

Case 1: How much has to pay as pre-deposit of duty under section 107(6) of the CGST Act, 2017 and date of pre-deposit of duty by X Ltd. to entertain appeal by the Appellate Authority (i.e. Commissioner (Appeals)).

Case 2: Whether your answer is different if the assessee appeals only part of the amount say ₹ 3,00,000 is in dispute arising from the said order.

Answer:

Case 1: Pre-deposit is ₹ 50,000 (5,00,000 x 10%) is to deposit on or before 6th October 2017.

Case 2: Disputed amount ₹ 3,00,000:

Pre-deposit is ₹ 2,00,000 plus ₹ 30,000 (₹ 3,00,000 x 10%) together is ₹ 2,30,000. It should be deposited on or before 6th October 2017.



Example 3:

Considered the example 1 where Appellate Authority passed the order against the assessee, if so how much has to pay as pre-deposit of duty under section 112(8) of the CGST Act, 2017 to entertain appeal by the Goods and Services Tax Appellate Tribunal (GSTAT).

Answer:

Pre-deposit is ₹ 1,00,000 ($5,00,000 \times 20\%$) it is in addition to pre-deposit of ₹ 50,000.

Case 2: Disputed amount ₹ 3,00,000:

Pre-deposit is ₹ 2,00,000 plus ₹ 60,000 ($₹ 3,00,000 \times 20\%$) together is ₹ 2,30,000, it is in addition to pre-deposit of ₹ 30,000.

Appeals to Appellate Authority [i.e. Commissioner (Appeals)] [Section 107 of the CGST Act, 2017]:

Step by step approach:

1. Any person aggrieved by any decision or order passed by an adjudicating authority may appeal to Appellate Authority (AA).
2. Time limit for filing appeal is 3 months from the date on which the decision or order is communicated. However, the Commissioner (Appeals) namely Appellate Authority is empowered to condone delay of 30 days if sufficient cause is shown.
3. Appeal has to be filed in Form GST APL-01. A provisional acknowledgement shall be issued to the appellant immediately on filing appeal.
4. A hard copy of the appeal then shall be submitted in triplicate and shall be accompanied by a certified copy of the decision or order appealed against along with the supporting documents within 7 days of filing electronic appeal. Acknowledgment shall be issued by the Department in Form GST APL-02.
5. The date of filing will be issuance of provisional acknowledgement if the hard copy is submitted after 7 days, then relevant date would be this date of submission.
6. As per section 107(2) of the CGST Act, 2017 the Commissioner of Central Tax or State Tax or UT Tax may call for and examine the records of any proceedings in which the authority subordinate to him has passed any decision or order under this Act, or SGST or UTGST Act. In case he is not satisfied about the legality or propriety of the said decision or order, then he shall direct any GST Officer subordinate to him to apply to the Appellate Authority (AA) for determination of points arising out of the said decision or order as may be specified by the Commissioner.
7. In case of Department appeal has to be filed within 6 months from the date of communication of the said decision or order by the Commissioner. The authorised officer can file an appeal in Form GST APL-03 electronically and also submit hard copies thereof accompanied by a certified copy of the decision or order appealed against along with the supporting documents within 7 days.
8. The Appellate Authority will grant an opportunity of hearing to appellant. The hearing can be adjourned for maximum 3 occasions by recording reasons in writing.
9. The Appellate Authority can also allow to add/include grounds of appeal if satisfied that their omission was not willful or unreasonable.
10. The Appellate Authority as far as possible within ONE year of appeal, shall pass such order in writing, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed.
11. The Appellate Authority shall not remand the matter back to the adjudicating authority. Accordingly AA shall also issue a summary of the order in Form GST APL-04 clearly indicating the final amount of demand confirmed.



Revisionary proceedings by Commissioner against Adjudication Orders:

As per section 108 of the CGST Act, 2017 provides revisionary powers to the Commissioner. It provides that the Commissioner shall examine the records of any proceedings passed under the Act by officers subordinate to him. If he considers that any decision or order passed under the Act is not proper or legal and it is prejudicial to the interest of the revenue, the Commissioner can stay the operation of such decision or order for such period as it is deemed fit. It is further provided that the Commissioner can after giving the person an opportunity of being heard and after making such further inquiry, he can pass such order as it thinks just and proper.

As per Section 108(2) of the CGST Act, 2017, the Revisional Authority shall not exercise any power under sub-section (1) of Section 108, if—

- (a) the order has been subject to an appeal under section 107 or section 112 or section 117 or section 118; or
- (b) the period specified under sub-section (2) of section 107 has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised; or
- (c) the order has already been taken for revision under this section at an earlier stage; or
- (d) the order has been passed in exercise of the powers under sub-section (1):

Provided that the Revisional Authority may pass an order under sub-section (1) of Section 108 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.

In the following cases Appellate Authority has no power to enhance or modify or annul the decision or order of adjudicating authority subordinate to him:

- (a) if the assessee has filed the appeal to the AA, the Commissioner GST (i.e. Revisionary Authority) cannot make the review of such order u/s 108 of the CGST Act, 2017.
- (b) If the appeal against any Order is pending before the appellate Tribunal u/s 112 of the CGST Act or before the High Court u/s 117 of the CGST Act, or before the Supreme Court u/s 118 of the CGST Act, 2017, the Commissioner GST (i.e. Revisionary Authority) cannot make the review of such order u/s 108 of the CGST Act, 2017.
- (c) The Commissioner cannot exercise the powers u/s 108(1) of the CGST Act, 2017 if the appeal period (i.e. 3 months for filing the appeal has not expired or more than 3 years have expired after passing the decision or Order sought to be reviewed.
- (d) If the Order has already been taken up for revision earlier and certain decision has been taken, the order cannot be again taken up for revision by the Commissioner.
- (e) The order has already been passed u/s 108 of the CGST Act, 2017. Therefore, the Commissioner cannot take the order again for revision.

Exceptions:

- (i) proviso to Sec 108(2) provides revisionary powers to the Commissioner to pass the order on any point which has not been raised and decided in any appeal filed either before the Appellate Authority u/s 107 or Appellate Tribunal u/s 112 or High Court u/s 117 or Supreme Court u/s 118, before the expiry of the period of ONE year from the date of order in such appeal or before the expiry period of 3 years after the passing of the decision or order whichever is later.

Appeal to Appellate Tribunal [Section 112 of the CGST Act, 2017]

The Tribunal is the second level of appeal, where appeals can be filed against the orders-in-appeal passed by the AA or order in revision passed by revisional authority, by any person aggrieved by such an Order-in-Appeal/ Order-in-Revision.

The law envisages constitution of a two tier Tribunal namely



- (1) The National Bench/Regional Benches and
- (2) The State Bench/ Area Benches.

Jurisdiction of the two constituents of the GST Tribunal is also defined. If place of supply is one of the issues in dispute, then the National Bench/ Regional benches of the Tribunal will have jurisdiction.

Step by step approach:

- The National bench or regional Benches shall have jurisdiction to hear appeals against the orders passed by the appellate authority i.e., Commissioner (Appeals) or the Revisional Authority in the cases where one of the issues involved relates to the place of supply
- Other matters will fall in jurisdiction of State bench or Area Bench
- Appellate Tribunal can refuse to admit any appeal where the amount involved does not exceed fifty thousand rupees
- Time limit of three months from the date of communication is available to aggrieved person for filing appeal. Tribunal can condone delay for another three months.
- The appeal has to be filed electronically, in FORM GST AL-05, on the common portal and a provisional acknowledgement shall be issued to the appellant immediately.
- A hard copy of the appeal then shall be submitted in triplicate and shall be accompanied by a certified copy of the decision or order appealed along with the supporting documents within seven days of filing electronic appeal.
- A final acknowledgement, indicating appeal number shall be issued FORM GST APL-02 to appellant.
- The date of filing will be issuance of provisional acknowledgement if the hard copy as above is submitted within time. If hard copy is submitted after 7 days, then relevant date would be the date of submission.
- Department can also file appeal to Tribunal against order passed by an Appellate or Revisionary Authority.
- For this purpose, the Commissioner can call for and examine the records for the purpose of satisfying himself as to the legality or propriety of the said decision or order.
- If not satisfied he may pass an order directing any officer subordinate to him to apply to the appellate tribunal.
- The appeal has to be filed within six months from the date of communication of the said decision or order. Delay in filing can be condoned by Tribunal by another three months .
- Authorized officer will file appeal in FORM GST AP-07 electronically and also submit hard copies thereof accompanied by a certified copy of the decision or order appealed against along with the supporting documents within seven days.
- Cross-objection can be filed in prescribed Memorandum by the opposite party to the appeal within forty five days of the receipt of notice of appeal. Such memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal.

Procedure before Appellate Tribunal

- Appellate Tribunal will grant an opportunity of hearing to appellant.
- The hearing can be adjourned for maximum three occasions by recording reasons in writing.
- Appellate Tribunal can also allow to add/Include grounds of appeal if satisfied that their omission was not willful or unreasonable.
- The Appellate Tribunal, as far as possible within one year of appeal, shall pass such order in writing, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against.
- The Appellate Tribunal can also remand the case back to the Appellate or Provisional Authority.



- The Appellate Tribunal has the power to rectify any error apparent on the face of records, if such error is noticed by it on its own accord, or is brought to its notice by the appellant or department within a period of three months from the date of the order.
- Rectification 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 can only be done after the party has been given an opportunity of being heard.
- The Appellate Tribunal shall have power to regulate its own procedures.
- It shall be guided by the principles of natural justice.
- The Tribunal has same powers as are vested in a Civil court for summoning or seeking the attendance of any person and examining him on oath or requiring the discovery and production of documents or receiving evidence on affidavits or setting aside any order of dismissal of any representation for default or any order passed by it ex parte etc.

Fee for filing Appeal

Fee for filing Appeal to Appellate tribunal is one thousand rupees for every lakh rupees of tax or input credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to maximum of twenty five thousand rupees.

Appeal to High Court [Section 117 of the CGST Act, 2017]

Appeal against orders passed by the State Bench or Area Bench of the Appellate Tribunal shall lie 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 and doesn't not involve any issue relating to place of supply.

This appeal in FORM GST APL-08 shall be filed within a period of one hundred and eighty days (180 days) from the date on which the order appealed against is received by aggrieved party.

High court can condone delay in filing appeal without any limit.

The Appeal shall be heard by a bench of not less than two judges.

Appeal to Supreme Court [Section 118 of the CGST Act, 2017]

An Appeal shall lie to the supreme court from any order passed by the National Bench or Regional Benches of the Appellate Tribunal where on the issues involved relates to place of supply.

Appeal would also lie to supreme court from any judgment or order passed by the High Court in an appeal in any case which the High Court certifies to be a fit case for appeal to the supreme court.

19.6 ADVANCE RULING

It means **knowing the law in advance**.

Section 95 of CGST Act, 2017 deals with the provisions of Advance ruling.

In this Chapter, unless the context otherwise requires,—

- "advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;
- "Appellate Authority" means the Appellate Authority for Advance Ruling referred to in section 99;
- "applicant" means any person registered or desirous of obtaining registration under this Act;
- "application" means an application made to the Authority under sub-section (1) of section 97;



(e) "Authority" means the Authority for Advance Ruling referred to in section 96.

Authority in respect of State and Union Territory

As per Section 96 of CGST Act, 2017 Subject to the provisions of this Chapter, for the purposes of this Act, the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory.

Application to Authority [Section 97 of CGST Act, 2017]

- (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.
- (2) The question on which the advance ruling is sought under this Act, shall be in respect of,—
 - classification of any goods or services or both;
 - applicability of a notification issued under the provisions of this Act;
 - determination of time and value of supply of goods or services or both;
 - admissibility of input tax credit of tax paid or deemed to have been paid;
 - determination of the liability to pay tax on any goods or services or both;
 - whether applicant is required to be registered;
 - whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

Advance ruling can be sought only on the above mentioned aspects

Procedure of Authority with respect to Application

Section-98 of CGST Act, 2017-

- (1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records
Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.
- (2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application
Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act
Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant.
Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.
- (3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the concerned officer.
- (4) Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or his authorised representative as well as to the concerned officer



or his authorised representative, pronounce its advance ruling on the question specified in the application.

- (5) Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.
- (6) The Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application
- (7) A copy of the advance ruling pronounced by the Authority duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.

Appellate Authority for Advance ruling

As per Section 99 of CGST Act, 2017 -Subject to the provisions of this Chapter, for the purposes of this Act, the Appellate Authority for Advance Ruling constituted under the provisions of a State Goods and Services Tax Act or a Union Territory Goods and Services Tax Act shall be deemed to be the Appellate Authority in respect of that State or Union territory.

Appeal to Appellate Tribunal [Section 100 of CGST Act, 2017]

- (1) The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.
- (2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant:

Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.

- (3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

Orders of Appellate Authority-

Section 101 of CGST Act, 2017-

- (1) The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.
- (2) The order referred to in sub-section (1) shall be passed within a period of ninety days from the date of filing of the appeal under section 100 or a reference under sub-section (5) of section 98.
- (3) Where the members of the Appellate Authority differ on any point or points referred to in appeal or reference, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.
- (4) A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer, the jurisdictional officer and to the Authority after such pronouncement.

Rectification of Advance Ruling

Section 102 of CGST Act, 2017-

The Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant within a period of six months from the date of the order:



Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard

Ruling Applicability

Section-103 of CGST Act, 2017

- (1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only-
 - (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling
 - (b) on the concerned officer or the jurisdictional officer in respect of the applicant.
- (2) The advance ruling referred to in sub-section (1) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

Advance ruling to be void

Section 104 of CGST Act, 2017

- (1) Where the Authority or the Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 has been obtained by the applicant or the appellant by
 - fraud or
 - suppression of material facts or
 - misrepresentation of facts,

it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made there under shall apply to the applicant or the appellant as if such advance ruling had never been made

Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.

- (2) A copy of the order made under sub-section (1) shall be sent to the applicant, the concerned officer and the jurisdictional officer.

Powers of Authority or Appellate Authority

Section 105 of CGST Act, 2017

- (1) The Authority or the Appellate Authority shall, for the purpose of exercising its powers regarding—
 - (a) discovery and inspection;
 - (b) enforcing the attendance of any person and examining him on oath
 - (c) issuing commissions and compelling production of books of account and other recordshave all the powers of a civil court under the Code of Civil Procedure, 1908.
- (2) The Authority or the Appellate Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.

Section-106 of CGST Act, 2017, The Authority or the Appellate Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure.



19.7 GST PRACTITIONER

1. Who can be a GST Practitioner?

- a. He is a retired officer of the Commercial Tax Department of any State Government or of the Central Board of Excise and Customs, Department of Revenue, Government of India, who, during his service under the Government, had worked in a post not lower in rank than that of a Group-B Gazetted officer for a period of not less than two years; OR
- b. He has enrolled as a sales tax practitioner or tax return preparer under the existing law for a period of not less than five years;
- c. He has passed,
 - He is a Graduate or Post-graduate degree or its equivalent examination having a degree in Commerce, Law, Banking including Higher auditing, or business administration from any Indian University established by any law for the time being in force; OR
 - A degree examination of any Foreign University recognized by any Indian University as equivalent to the degree examination mentioned in sub-clause (i) OR
 - Any other examination notified by the Government for this purpose OR
 - Any degree examination of an Indian University or of any Foreign University recognized by any Indian University as equivalent of the degree examination and has also passed any of the following examinations, namely:-
 - (i) Final examination of the Institute of Chartered Accountants of India; OR
 - (ii) Final examination of the Institute of Cost Accountants of India; OR
 - (iii) Final examination of the Institute of Company Secretaries of India.

2. Roles and Responsibilities of a GST Practitioner

- The government by virtue of section 48 of CGST Act, 2017 permits GST practitioners, upon authorization from taxpayers, to:
- Filing GSTR-1 and GSTR-2 with the details of outward and inward supplies
- Filing of GST monthly, quarterly or annual returns on behalf of his clients
- Representing the clients before GST authorities
- Filing refund claims, upon confirmation from clients
- Making deposits for credit in the electronic ledger
- Filing applications in case of any for changes (amendment) or cancellation the registration

GST practitioners are entrusted by the government to help common people with the work/ activity related to compliance of GST laws. With this provision of the Act, it becomes the responsibility of the GST practitioner to ensure that returns are filed correctly and on timely basis.

Further, provisions of CGST Act, 2017 requires CGST Practitioners to follow the principle of due diligence while preparing the statements of return and verify such statements. Verification can be done:

- Electronically by Electronic Verification Code (EVC); or
- By way of affixing Digital Signature Certificate.



3. GST Practitioner Exam Date

The National Academy of Customs, Indirect Taxes and Narcotics (NACIN) has been authorized for conducting the examination for the enrollment of GST Practitioners (GSTP), vide Notification No. 24/2018-Central Tax dated 28.5.2018.

As per the Ministry of Finance, a person can be enrolled as GST Practitioner only after passing the examination. A person seeking registration as a GST Practitioner have to clear the GST Practitioner examination.

4. Conditions for becoming a GST practitioner

As per Rule 83, an application in FORM GST PCT-01 may be made electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner for enrolment as goods and services tax practitioner by any person who is:

1. The applicant must be an Indian Citizen
2. The applicant should be a person of sound mind
3. The applicant should be not be adjudged as an insolvent
4. The applicant should be not be convicted by a court for an offence with imprisonment of a period exceeding 2 years

5. Validity of GST Practitioner License

The GST practitioner license would be valid until it's cancelled by the relevant authority.

A person seeking for GST practitioner license through tax return preparer or the sales tax practitioner route are required to pass the examination conducted by the GST Authority within one year from the implementation of GST.

6. Documents required for registration as a GST practitioner

- Enrolment type (Central or State application),
- Bar Council Membership Proof – For Advocates
- Date of enrolment,
- Photograph(jPEG-100kb),
- date of enrolment,
- Valid e-mail id,
- Valid Phone number,
- Membership number and valid up to
- Name of university/institute and
- Office address proof,
- A digital signature, and
- Year of passing
- Qualification proof: Certificate of Practice – For Chartered Accountant, Company Secretary, Cost and Management Accountant, Bar Council Membership Proof – For Advocates

7. Difference between taxpayer and GST practitioner

A taxpayer is a person registered under GST law for the purpose of filing returns, payment of tax, availing input tax credit and other compliances. Such a person is defined as a 'taxable person' under GST law.

On the contrary, a GST practitioner is a person registered as a GST professional under GST Law. A taxpayer may



authorise a GST practitioner to furnish monthly/quarterly/ annual returns and information, on his behalf, to the government. The manner of approval of GST practitioners, the manner of removal, eligibility and qualification, roles and responsibilities and other conditions relevant for the functioning of a GST Practitioner have been prescribed in Rule 24 and 25 of the Return Rules. A taxable person can add a GST Practitioner to his GST Portal, to allow such a person to make compliance under GST on his behalf.

8. Disqualifications and cancellation of GST Practitioner's certificate:

If a GST Practitioner is found guilty of misconduct in connection with any proceedings under the GST Act, he is disqualified to act as GST Practitioner. The process of disqualification from practicing as a GST Practitioner is as follows:

- A Show cause notice is served upon the GST Practitioner by the authorized officer in FORM GST PCT- 03 to call for an explanation for carrying out the misconduct.
- Reasonable opportunity of being heard is provided to GST practitioner to seek justifications from his/ her side.
- After hearing the GST Practitioner, if he is found guilty of misconduct, the authorized officer passes order in FORM GST PCT -04 directing that the GST practitioner cannot function as GST practitioner under the GST Act, 2017 and is disqualified.
- However, the person (i.e. the GST practitioner) can make an appeal against the order in FORM GST PCT -04 to the commissioner within thirty days.

9. Documents required for Enrolment of a GST Practitioner

Purpose	Acceptable Documents	Max Size for Upload
Photo of Applicant in JPG Format	Photo	100 KB
	Any other certificate/document issued by Government	120 KB
	Any other Certificate or record from Govt department	100 KB
	Consent Letter	100 KB
	Electricity Bill	100 KB
	Legal ownership document	1 MB
	Municipal Khata Copy	100 KB
	Property Tax Receipt	100 KB
	Rent/ Lease agreement	2 MB
	Rent receipt with NOC (In case of no / expired agreement)	1 MB
Proof of qualifying degree in JPG/PDF format	Degree	100 KB
Proof of designation of post held at time of retirement in JPG/PDF format (Applicable for Retired Govt Officials only)	Pension Certificate used by AG Office or LPG	1 MB

AMENDMENT

Notification No. 60/2018 – Central Tax, dt 30.11.2018 After Rule 83 of the CGST Rule, 2017 the following rule shall be inserted, namely:-

"Rule 83A. Examination of Goods and Services Tax Practitioners.-



- (1) Every person referred to in clause (b) of sub-rule (1) of rule 83 and who is enrolled as a goods and services tax practitioner under sub-rule (2) of the said rule, shall pass an examination as per sub-rule (3) of the said rule.
- (2) The National Academy of Customs, Indirect Taxes and Narcotics (hereinafter referred to as "NACIN") shall conduct the examination.
- (3) Frequency of examination.- The examination shall be conducted twice in a year as per the schedule of the examination published by NACIN every year on the official websites of the Board, NACIN, common portal, GST Council Secretariat and in the leading English and regional newspapers.
- (4) Registration for the examination and payment of fee.-
 - (i) A person who is required to pass the examination shall register online on a website specified by NACIN.
 - (ii) A person who registers for the examination shall pay examination fee as specified by NACIN, and the amount for the same and the manner of its payment shall be specified by NACIN on the official websites of the Board, NACIN and common portal.
- (5) Examination centers.- The examination shall be held across India at the designated centers. The candidate shall be given an option to choose from the list of centers as provided by NACIN at the time of registration.
- (6) Period for passing the examination and number of attempts allowed.-
 - (i) A person enrolled as a goods and services tax practitioner in terms of sub-rule (2) of rule 83 is required to pass the examination within two years of enrolment:

Provided that if a person is enrolled as a goods and services tax practitioner before 1st of July 2018, he shall get one more year to pass the examination:

Provided further that for a goods and services tax practitioner to whom the provisions of clause (b) of sub-rule (1) of rule 83 apply, the period to pass the examination will be as specified in the second proviso of sub-rule (3) of said rule.
 - (ii) A person required to pass the examination may avail of any number of attempts but these attempts shall be within the period as specified in clause (i).
 - (iii) A person shall register and pay the requisite fee every time he intends to appear at the examination.
 - (iv) In case the goods and services tax practitioner having applied for appearing in the examination is prevented from availing one or more attempts due to unforeseen circumstances such as critical illness, accident or natural calamity, he may make a request in writing to the jurisdictional Commissioner for granting him one additional attempt to pass the examination, within thirty days of conduct of the said examination. NACIN may consider such requests on merits based on recommendations of the jurisdictional Commissioner.
- (7) Nature of examination.-The examination shall be a Computer Based Test. It shall have one question paper consisting of Multiple Choice Questions. The pattern and syllabus are specified in Annexure-A.
- (8) Qualifying marks.- A person shall be required to secure fifty per cent. of the total marks.
- (9) Guidelines for the candidates.-
 - (i) NACIN shall issue examination guidelines covering issues such as procedure of registration, payment of fee, nature of identity documents, provision of admit card, manner of reporting at the examination center, prohibition on possession of certain items in the examination center, procedure of making representation and the manner of its disposal.
 - (ii) Any person who is or has been found to be indulging in unfair means or practices shall be dealt in accordance with the provisions of sub-rule (10). An illustrative list of use of unfair means or practices by a person is as under: -
 - (a) obtaining support for his candidature by any means;



- (b) impersonating;
 - (c) submitting fabricated documents;
 - (d) resorting to any unfair means or practices in connection with the examination or in connection with the result of the examination;
 - (e) found in possession of any paper, book, note or any other material, the use of which is not permitted in the examination center;
 - (f) communicating with others or exchanging calculators, chits, papers etc. (on which something is written);
 - (g) misbehaving in the examination center in any manner;
 - (h) tampering with the hardware and/or software deployed; and
 - (i) attempting to commit or, as the case may be, to abet in the commission of all or any of the acts specified in the foregoing clauses.
- (10) Disqualification of person using unfair means or practice.- If any person is or has been found to be indulging in use of unfair means or practices, NACIN may, after considering his representation, if any, declare him disqualified for the examination.
- (11) Declaration of result.- NACIN shall declare the results within one month of the conduct of examination on the official websites of the Board, NACIN, GST Council Secretariat, common portal and State Tax Department of the respective States or Union territories, if any. The results shall also be communicated to the applicants by e-mail and/or by post.
- (12) Handling representations.- A person not satisfied with his result may represent in writing, clearly specifying the reasons therein to NACIN or the jurisdictional Commissioner as per the procedure established by NACIN on the official websites of the Board, NACIN and common portal.
- (13) Power to relax.- Where the Board or State Tax Commissioner is of the opinion that it is necessary or expedient to do so, it may, on the recommendations of the Council, relax any of the provisions of this rule with respect to any class or category of persons.
- Explanation :- For the purposes of this sub-rule, the expressions –
- (a) "jurisdictional Commissioner" means the Commissioner having jurisdiction over the place declared as address in the application for enrolment as the GST Practitioner in FORM GST PCT-1. It shall refer to the Commissioner of Central Tax if the enrolling authority in FORM GST PCT-1 has been selected as Centre, or the Commissioner of State Tax if the enrolling authority in FORM GST PCT-1 has been selected as State;
 - (b) NACIN means as notified by notification No. 24/2018-Central Tax, dated 28.05.2018.



Study Note - 20

JOB WORK UNDER GST



This Study Note includes

- 20.1 Job Work Meaning
- 20.2 Provisions relating to Job Work under CGST Act, 2017
- 20.3 Accompanying documents
- 20.4 Form GST ITC - 04

20.1 JOB WORK MEANING

Meaning of job work and job worker: Section 2(68) of CGST Act, 2017 gives the meaning of the term 'job work'. As per the said provision, it means a person undertaking any treatment or processing of goods belonging to another registered person. Any person who does such job work will be considered as "Job worker".

As per the Section 2(68) the Job worker may or may not be registered but the principal should be registered.

20.2 PROVISIONS RELATING TO JOB WORK UNDER CGST ACT, 2017

Section 143 provides for a special procedure to exempt supplies from payment of GST by principal to job worker and return from job worker to principal subject to certain conditions and procedure.

It enables registered person to send inputs/capital goods under intimation and subject to such conditions as may be prescribed to a job worker without payment of tax.

It also provides that the inputs or capital goods can be sent from one job worker to another job worker as well without payment of any tax on such goods being sent.

20.3 ACCOMPANYING DOCUMENTS

Rule 55 of CGST Rules, 2017 provides that transaction of goods for job work can be without invoice, but a proper delivery challan containing specific details must be issued while sending goods to the job worker serial number of such delivery challan shall also be provided in GSTR -1.

Notification No. 39/2018 – Central Tax, dt 04.09.2018 amends Rule 55 of CGST Act, 2017

With regards to transport of goods without the tax invoice as laid down in Rule 55, the same procedure of transport of goods through delivery challans as applicable on Transportation of goods in a semi knocked down or completely knocked down condition, shall also apply to the transportation of goods in batches or lots, i.e. –

- (a) the supplier shall issue the complete invoice before dispatch of the first consignment;
- (b) the supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice;
- (c) each consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice; and
- (d) the original copy of the invoice shall be sent along with the last consignment.

Accounts & records :-

The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal.

Delivery Challan :-

- All goods sent for job work must be accompanied by a challan.
- The challan will be issued by the principal.
- It will be issued even for the inputs or capital goods sent directly to the job-worker.
- The details of challans must be shown in FORM GSTR-1.
- Details of challans must also be filed through Form GST ITC – 04.

Delivery challan to be treated as invoice if input/capital goods not returned within 1/3 years respectively.

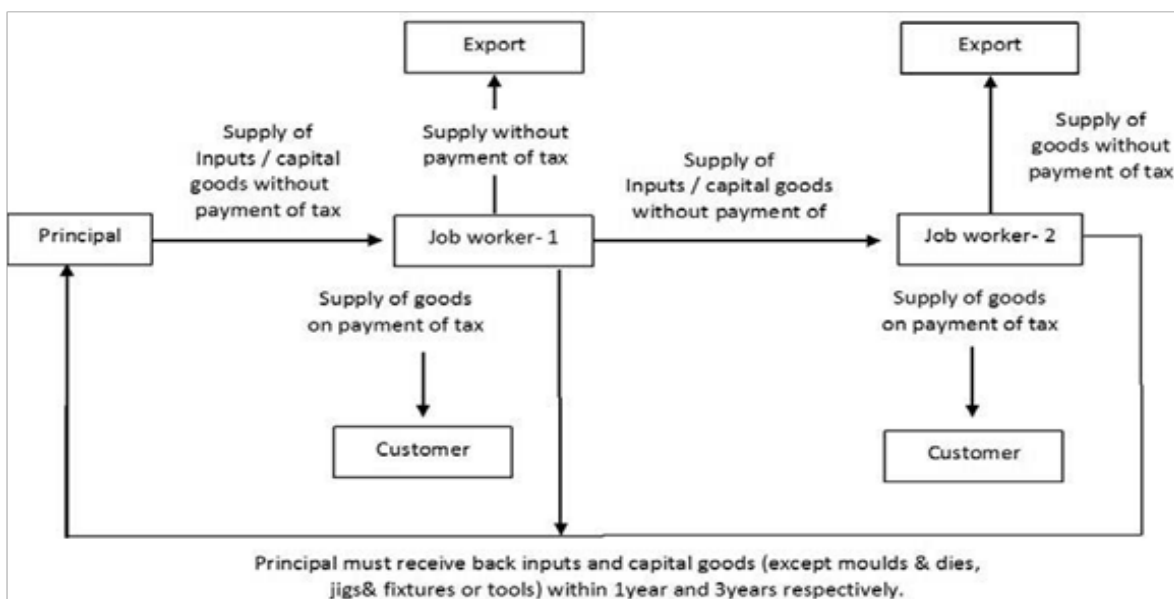
After the processing of goods or otherwise, the goods may be dealt with in any of the following manner by the principal within One year/Three Year- Brought back to any place of business without payment of tax and thereafter supplied, Within India on payment of tax, For export with or without payment of tax, Supply from the place of business of job worker.

The goods can be supplied directly from the place of business of job worker by the principal only when the principal declares the place of business of the job worker as his additional place of business. However, the exceptions are -

- If job worker is registered under Section 25;
- The principal is engaged in the supply of notified goods.
- Responsibility for accountability of Inputs/ Capital Goods

The principal is responsible and accountable for keeping proper accounts of the inputs or capital goods and for all the transactions between him and the job worker.

The above chain can be represented as under:





Inputs sent to Job Worker not received back within one year-As per section 143(3), where the inputs sent for job-work are not received back by the "principal" after completion of job-work or otherwise or are not supplied from the place of business of the job worker as aforesaid within a period of one year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out. Hence, the Principal would be liable to pay GST along with interest from the date inputs were sent out.

Capital Goods Sent to Job Worker not received back within three years- As per section 143(4), where the capital goods, other than moulds and dies, jigs and fixtures, or tools, sent for job-work are not received back by the "principal" or are not supplied from the place of business of the job worker as aforesaid within a period of three years of their being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job-worker on the day when the said capital goods were sent out. Hence, the Principal would be liable to pay GST along with interest from the date capital goods were sent out.

As per CGST (Amendment) Act, 2017 - Commissioner to be empowered to extend the time limit on sufficient cause being shown, for return of inputs and capital sent on job work, upto a period of one year and two years, respectively.

Waste and Scrap generated at Job worker-As per section 143(5), any waste and scrap generated during the job work may be supplied by the job worker directly from his place of business on payment of tax if such job worker is registered, or by the principal, if the job worker is not registered.

20.4 FORM GST ITC - 04

FORM GST ITC-04 must be submitted by the principal every quarter. He must include the details of challans in respect of the following-

- Goods dispatched to a job worker or
- Received from a job worker or
- Sent from one job worker to another.

ILLUSTRATIONS

- 1) A Ltd sends the goods to B & co. for making finished goods on 30/07/2017. What are the tax implications, in the following cases if GST @ 18% is levied.
 - a) B & co. sends the goods back to A Ltd within one year of being sent.
 - b) B & co. sells the goods directly to the customer in behalf of A Ltd.

Solution :

As per Sec 143 of the Act, supply of goods to a job worker without payment of tax is permissible upon an intimation. In the given example, the implications are as follows:

- On supply of goods to B & co. – As per the sec 143 of Act, no tax shall be payable on supply of goods to B & co. However, the tax will be payable if finished goods is not returned before one year from 30/07/2017.
- B & co. sends the finished goods back to A Ltd – As per the Act, there is no tax liability on returning of goods back to the principal i.e A Ltd within a period of one year. Hence post completion of Job Work, no tax is liveable on finished goods returned to A Ltd.



- B & co. sells the finished goods on behalf of A Ltd- Sec 143, also allows the job worker to directly sell the goods on behalf of principal, wherein the liability to pay tax is of the principal and not the job worker. A Ltd is liable to pay GST on sale of Finished goods to customer by B & co.

However, A Ltd must declare the premises of B & co. as an 'Additional Place of Business' and the sale of finished goods will form part of aggregate turnover of A Ltd. Such a declaration is not required in case where :

- Job worker is registered under Sec 25 or
 - Principal is engaged in supply of notified goods.
- 2) A Ltd sends the goods/inputs to B & co. for further processing on 30/08/2017. The value of goods sent for job work is Rs. 100,000. What are the tax implications, in the following cases, if GST @ 18% is levied.
- A) B & co. sends the processed good back to A Ltd on 30/10/2017.
- B) B & co. send the processed good back to A Ltd on 30/10/2018.

Solution :

B & co. sends the processed goods back to B Ltd on 30/10/2017 – As per Sec 143, Principal can remove the goods without payment of tax and take input tax credit provided inputs sent for job work are returned back within one year of removal. Otherwise, it shall be treated as supply from Principal to Job-worker as on 30/08/2017 and subject to tax along with interest.

In the present case, as the inputs are received back on 30/10/2017 i.e before completion of one year, and hence no tax is payable.

B & co. sends the processed goods back to B Ltd on 30/10/2018 – As per Sec 143, Principal can remove the goods without payment of tax and take input tax credit provided inputs sent for job work are returned back within one year of removal. Otherwise, it shall be treated as supply from Principal to Job-worker as on 30/08/2017 and subject to tax along with interest.

In the present case, as the inputs are received back on 30/10/2018 and hence A Ltd needs to pay tax @ 18% i.e Rs. 9000 CGST and Rs. 9000 SGST along with the specified interest on completion of one year.

- 3) P Ltd send the machinery to R & co. for fixing of some technical issue and maintenance on 15/08/2017. The value of goods sent to R & co. is Rs. 100,000. What are the tax implications, in the following cases.
- A) R & co. sends the machinery back to 30/12/2018
- B) R & co. sends the machinery back to 30/12/2020

Solution :

R & co. sends the machinery back to 30/12/2018 – As per Sec 143, Principal can remove the goods without payment of tax and take input tax credit provided capital goods sent for job work are returned within 3 years of removal. Otherwise, it shall be treated as supply from principal to Job worker as on 15/08/2017 and subject to interest along with.

In the present case, as the machinery is received back on 30/12/2018 i.e before completion of 3 years, and hence no tax is payable.

R & co. sends the machinery back to 30/12/2020 - In the present case, as the machinery is received back on 30/12/2020 i.e after completion of 3 years, and hence tax is payable @ 18% i.e SGST and CGST Rs. 9000 each along with specified interest on completion of 3 years.



- 4) A Pvt Ltd., a registered manufacturer, sent steel cabinets worth Rs. 50 Lakh under a delivery challan to M/s B Tools, a registered job worker, for work on 28/01/2018. The scope of job work included mounting the steel cabinets on a metal frame and spending the mounted panels back to A Pvt Ltd., The metal frame is to be supplied by M/s B Tools has agreed to a consideration of Rs. 5 Lakhs for the entire mounting activity including the supply of metal frame. During the course of mounting activity, metal waste is generated which is should be M/s B tools for Rs. 45,000. M/s B Tools sent the steel cabinets mounted on the metal frame of A Pvt Ltd., on 31/12/2018.

Assuming GSTt Rate for metal frame is 28% for metal waste as 12% and standard rate for services as 18%, you are requires to compute the GST liability of M/s B Tools. Also, give reasons for inclusion or exclusion of the value of cabinets in the job charges for the purpose of payment of GST By M/s B Tools.

Solution :

As per para 3 of Schedule II to the CGST Act, any treatment or process which is applied to another person's goods is a supply of services and accordingly is subject to GST rate applicable for services.

In the given case, M/s B Tools(job work) undertakes the process of mounting the steel cabinets of A Pvt Ltd (principal) on metal frames. In view of para 3 of Schedule II to the CGST Act, the mounting activity classifies as services even though metal frames are also supplied as a part of the mounting activity. Accordingly, the job-charges will be chargeable to rate of 18%, which is the applicable rate for services.

Further, The value of steel cabinets will not be included in the value if taxable supply made by M/s B Tools as the supply of cabinets does not fall within the scope of supply to be made by M/s B Tools . It is only required to mount the steel cabinets, which are to be supplied by A Ltd. On metal frames, which are to be supplied by it.

As regards to sale of waste generated during the job work, since M/s B Tools is registered, the tax leivable on the supply will have to be paid by it in terms of Sec 143(5) of the CGST Act, Such Supply will be treated as supply of goods and subject to GST rate applicable for metal waste.

Accordingly, the GST liability of M/s B Tools will be computed as under :

Job Charges	₹ 5,00,000
GST @ 18%	₹ 90,0000
Sale of metal waste	₹ 45,000
GST @ 12%	₹ 5,400
Total GST payable	₹ 95,400

Case Laws

As per Advance Ruling: M/S JSW ENERGY LIMITED it was held thatthe activity undertaken by M/s JEL to convert Coal, to be supplied by M/s JSL, in electricity is not covered under the definition of Job work in terms of the CGST Act. Since goods supplied by M/s JSL will be utilized by M/s JEL in manufacture of new commodity i.e. electricity (though attracting NIL rate of duty), the process is manufacture and the same will be considered as supply of goods and not service.

As per Advance Ruling: M/S RARA UDHYOG it was held that the activity (removing of various impurities from various products such as saunf (fennel), dhaniya(coriander) jeera (cumin seeds) etc. or like goods brought to them for cleaning process) of mechanized cleaning does not fall under intermediate production process as job work in relation to cultivation of plants. Intermediate production process as job work in relation to cultivation of plants usually relates to agricultural operations directly related to production of any agricultural produce such as cultivation, harvesting, threshing, plant protection, testing, and supply of farm labour etc., carried out at agricultural farm - the activity of mechanized cleaning at an installed plant is not covered under the above clause too and does not attract NIL rate of Tax.



As per Advance Ruling: M/S. INOX AIR PRODUCTS PVT. LTD it was held that the activity (Activity of manufacturing industrial gases viz. Oxygen, Nitrogen and Argon) undertaken by the applicant falls under the 'Job Work' as defined under Section 2(68) of the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017 - The applicant is liable to pay Goods and Services Tax on the value of supply determined under Section 15(1) of the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017.

CLARIFICATION

Clarification on issues related to Job Work – Under GST Law

Issue: Whether independent fabric processors (job workers) in the textile sector supplying job work services are eligible for refund of unutilized input tax credit on account of inverted duty structure under section 54(3) of the CGST Act, 2017, even if the goods (fabrics) supplied are covered under notification No. 5/2017-Central Tax (Rate) dated 28.06.2017?

The above mentioned issue was clarified vide Circular No. 48/22/2018-GST dt 14.06.2018 as below:

Notification No. 5/2017-Central Tax (Rate) dated 28.06.2017 specifies the goods in respect of which refund of unutilized input tax credit (ITC) on account of inverted duty structure under section 54(3) of the CGST Act shall not be allowed. However, in case of fabric processors, the output supply is the supply of job work services and not of goods (fabrics).

Hence, it is clarified that the fabric processors shall be eligible for refund of unutilized ITC on account of inverted duty structure under section 54(3) of the CGST Act even if the goods (fabrics) supplied to them are covered under notification No. 5/2017-Central Tax (Rate) dated 28.06.2017

Study Note - 21

E-WAYBILLS UNDER GST



This Study Note includes

21.1 E-Way Bill

21.1 E-WAY BILL

1. MEANING

e Way bill will be generated when there is a movement of goods in a vehicle/ conveyance of value more than ₹ 50,000 (either each Invoice or in (aggregate of all Invoices in a vehicle/ Conveyance) –

- In relation to a 'supply'
- For reasons other than a 'supply' (say a return)
- Due to inward 'supply' from an unregistered person

For this purpose, a supply may be either of the following:

- A supply made for a consideration (payment) in the course of business
- A supply made for a consideration (payment) which may not be in the course of business
- A supply without consideration (without payment) In simpler terms, the term 'supply' usually means a:
 1. Sale – sale of goods and payment made
 2. Transfer – branch transfers for instance
 3. Barter/Exchange – where the payment is by goods instead of in money

Therefore, eWay Bills must be generated on the common portal for all these types of movements. For certain specified Goods, the eWay bill needs to be generated mandatorily even if the Value of the consignment of Goods is less than ₹ 50,000:

1. Inter-State movement of Goods by the Principal to the Job-worker by Principal/ registered Job-worker,
2. Inter-State Transport of Handicraft goods by a dealer exempted from GST registration.

2. Generation of an e-Way bill -

- i. Registered Person – eWay bill must be generated when there is a movement of goods of more than ₹ 50,000 in value to or from a Registered Person. A Registered person or the transporter may choose to generate and carry eWay bill even if the value of goods is less than ₹ 50,000.
- ii. Unregistered Persons – Unregistered persons are also required to generate e-Way Bill. However, where a supply is made by an unregistered person to a registered person, the receiver will have to ensure all the compliances are met as if they were the supplier.
- iii. Transporter – Transporters carrying goods by road, air, rail, etc. also need to generate e-Way Bill if the supplier has not generated an e-Way Bill.



Who	When	Part	Form
Every Registered person under GST	Before movement of goods	Fill Part A	Form GST EWB-01
Registered person is consignor or consignee (mode of transport may be owned or hired) OR is recipient of goods	Before movement of goods	Fill Part B	Form GST EWB-01
Registered person is consignor or consignee and goods are handed over to transporter of goods	Before movement of goods	Fill Part B	The registered person shall furnish the information relating to the transporter in Part B of FORM GST EWB-01
Transporter of goods	Before movement of goods		Generate e-way bill on basis of information shared by the registered person in Part A of FORM GST EWB-01
An unregistered person under GST and recipient is registered	Compliance to be done by Recipient as if he is the Supplier.		1. If the goods are transported for a distance of fifty kilometers or less, within the same State/ Union territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01. 2. If supply is made by air, ship or railways, then the information in Part A of FORM GST EWB-01 has to be filled in by the consignor or the recipient

Note: If a transporter is transporting multiple consignments in a single conveyance, they can use the form GST EWB-02 to produce a consolidated e-way bill, by providing the e-way bill numbers of each consignment. If both the consignor and the consignee have not created an e-way bill, then the transporter can do so * by filling out PART A of FORM GST EWB-01 on the basis of the invoice/bill of supply/delivery challan given to them.

Documents or Details required to generate e-way bill-

- Invoice/Bill of Supply/Challan related to the consignment of goods
- Transport by road – Transporter ID or Vehicle number
- Transport by rail, air, or ship – Transporter ID, Transport document number, and date on the document.

Documents and devices to be carried by a person-in-charge of a conveyance.[Rule 138(A)]-

(1) The person in charge of a conveyance shall carry-

- (a) the invoice or bill of supply or delivery challan, as the case may be; and
- (b) a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner:

Provided that nothing contained in clause (b) of this sub-rule shall apply in case of movement of goods by rail or by air or vessel.

(2) A registered person may obtain an Invoice Reference Number from the common portal by uploading, on the said portal, a tax invoice issued by him in FORM GST INV-1 and produce the same for verification by the proper officer in lieu of the tax invoice and such number shall be valid for a period of thirty days from the date of uploading.



- (3) Where the registered person uploads the invoice under sub-rule (2), the information in Part A of FORM GST EWB-01 shall be auto-populated by the common portal on the basis of the information furnished in FORM GST INV-1.
- (4) The Commissioner may, by notification, require a class of transporters to obtain a unique Radio Frequency Identification Device and get the said device embedded on to the conveyance and map the e-way bill to the Radio Frequency Identification Device prior to the movement of goods.
- (5) Notwithstanding anything contained in clause (b) of sub-rule (1), where circumstances so warrant, the Commissioner may, by notification, require the person-in-charge of the conveyance to carry the following documents instead of the e-way bill
 - (a) tax invoice or bill of supply or bill of entry; or
 - (b) a delivery challan, where the goods are transported for reasons other than by way of supply.

As per Notification No. 39/2018 – Central Tax, dt 04.09.2018- the person in-charge of the conveyance shall also carry a copy of the bill of entry in case of imported goods but the date and document number must be mentioned in Part A of GST EWB-01.

Example: Goods imported from China arrive at Mumbai port. These goods are transported from Mumbai port to factory in Pune. This is an inter-State supply from China to Pune, but it is an intra-State movement from Mumbai to Pune – Requirement of EWB to be determined under the State GST Law.

Example: Goods are sold from Lucknow by Supplier to Customer in Delhi with instructions for these goods to be delivered to job-worker in Noida. This is an inter- State supply from Lucknow to Delhi but an intra-State movement within UP – Requirement of EWB to be determined under the State GST Law.

Example: Generator installed in basement of building being sold to Landlord on termination of lease agreement. EWB will NOT BE REQUIRED as there is 'no movement' in this supply.

Example: Contractor carrying portable crane to customer site, both located in same State, is intra-State movement – Requirement of EWB to be determined under the State GST Law.

Example: Laptop carried by an employee of a Company in Delhi, having no other branches, to client-location in Bangalore on business. This movement is not supply but is incidental to 'services of employee to employer' under schedule III.

EWB will NOT BE REQUIRED for this movement. Contract-staff carrying company laptop not excluded from EWB requirement.

Example: LPG cylinders transported from dealership to bottling plant of Oil Company, is 'excluded' from requirement. EWB will NOT BE REQUIRED for this movement. But EWB will be required for movement of cylinders supplied by fabricator to Oil Company.

3. 'Bill-to-Ship-to' Transactions- Although bill-to-ship-to transactions could sometimes result in twin-supply transactions, they require a single EWB since the movement is singular. In the e-way bill form, there are two portions under the 'TO' section.

- In the left-hand-side: 'Billing To' GSTIN and trade name is entered; and
- In the right-hand-side: 'Ship to' address of the destination of the movement is entered.
- The other details are entered as per the invoice.

In case ship-to State is different from the Bill-to State, the tax components are entered as per the details of the bill-to person (Bill-to State). i.e., if the Bill-to location is inter- State for the supplier, IGST is entered and if the Bill-to person is located in the same State as the supplier, then SGST and CGST are entered irrespective of the place of delivery (whether within the State or outside the State).

In a typical "Bill To Ship To" model of supply, there are three persons involved in a transaction, namely:

- 'A' is the person who has ordered 'B' to send goods directly to 'C'.
- 'B' is the person who is sending goods directly to 'C' on behalf of 'A'.
- 'C' is the recipient of goods.

In this complete scenario two supplies are involved and accordingly two tax invoices are required to be issued:

- Invoice -1, which would be issued by 'B' to 'A'.
- Invoice -2 which would be issued by 'A' to 'C'.

It is clarified that as per the CGST Rules, 2017 either 'A' or 'B' can generate the e-Way Bill but it may be noted that only one e-Way Bill is required to be generated as per the following procedure:

Case -1: Where e-Way Bill is generated by 'B', the following fields shall be filled in Part A of GST FORM EWB-01:

Bill From	Bill From: In this field details of 'B' are supposed to be filled.
Dispatch From	Dispatch From: This is the place from where goods are actually dispatched. It may be the principal or additional place of business of 'B'.
Bill To	Bill To: In this field details of 'A' are supposed to be filled.
Ship To	Ship to: In this field address of 'C' is supposed to be filled.
Invoice Details	Invoice Details: Details of Invoice-1 are supposed to be filled

Case -2: Where e-Way Bill is generated by 'A', the following fields shall be filled in Part A of GST FORM EWB-01:

Bill From	In this field details of 'A' are supposed to be filled.
Dispatch From	This is the place from where goods are actually dispatched. It may be the principal or additional place of business of 'B'.
Bill To	In this field details of 'C' are supposed to be filled.
Ship To	In this field address of 'C' is supposed to be filled.
Invoice Details	Details of Invoice-2 are supposed to be filled

Example : Goods supplied from Baroda to intermediate in Chennai but directly delivered to Kolkata. EWB to be generated 'before' commencement of movement with 'bill to Chennai' and 'ship to Kolkata' and the GSTIN of original supplier (Baroda) and intermediate (Chennai).

Example : Car sold by Dealer in Bangalore to Bank in Mumbai but delivered to Lessee in Bangalore. EWB to be issued 'before' commencement of movement with 'bill to Mumbai' and 'ship to Bangalore'.

4. In the following cases it is not necessary to generate e-Way Bill:

1. The mode of transport is non-motor vehicle
2. Goods transported from Customs port, airport, air cargo complex or land customs station to Inland Container Depot (ICD) or Container Freight Station (CFS) for clearance by Customs.
3. Goods transported under Customs supervision or under customs seal
4. Goods transported under Customs Bond from ICD to Customs port or from one custom station to another.
5. Transit cargo transported to or from Nepal or Bhutan
6. Movement of goods caused by defence formation under Ministry of defence as a consignor or consignee
7. Empty Cargo containers are being transported



8. Consignor transporting goods to or from between place of business and a weighbridge for weighment at a distance of 20 kms, accompanied by a Delivery challan.
9. Goods being transported by rail where the Consignor of goods is the Central Government, State Governments or a local authority.
10. Goods specified as exempt from E-Way bill requirements in the respective State/Union territory GST Rules.
11. Transport of certain specified goods- Includes the list of exempt supply of goods, Annexure to Rule 138(14), goods treated as no supply as per Schedule III, Certain schedule to Central tax Rate notifications.

Note: Part B of e-Way Bill is not required to be filled where the distance between the consigner or consignee and the transporter is less than 50 Kms and transport is within the same state.

As per Notification No. 26/2018 – Central Tax, dt 13.6.2018- A new clause (o) has been inserted to the list of specified goods on which no e-way bill is required to be generated. For movement of empty cylinders for packing of liquefied petroleum gas other than supply, No E-Waybill will be required.

5. An e-way bill is valid for periods as listed below, which is based on the distance travelled by the goods. Validity is calculated from the date and time of generation of e-way bill-

Type of conveyance	Distance	Validity of EWB
Other than Over dimensional cargo	Less Than 100 Kms	1 Day
	For every additional 100 Kms or part thereof	additional 1 Day
For Over dimensional cargo	Less Than 20 Kms	1 Day
	For every additional 20 Kms or part thereof	additional 1 Day

Validity of Eway bill can be extended also. The generator of such Eway bill has to either four hours before expiry or within four hours after its expiry can extend Eway bill validity.

6. Verification of documents and conveyances.-[Rule 138B]-

- (1) The Commissioner or an officer empowered by him in this behalf may authorize the proper officer to intercept any conveyance to verify the e-way bill in physical or electronic form for all inter-State and intra-State movement of goods.
- (2) The Commissioner shall get Radio Frequency Identification Device readers installed at places where the verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the e-way bill has been mapped with the said device.
- (3) The physical verification of conveyances shall be carried out by the proper officer as authorised by the Commissioner or an officer empowered by him in this behalf:

Provided that on receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any other officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.

As per Notification No. 28/2018 – Central Tax, dt 19.6.2018 - After interception of the vehicle, the officer had 3 days time to prepare and submit summary report of inspection in Part B of Form EWB-03. Such period now can be extended by another 3 days by the Commissioner or any other officer authorized by him.

GST CIRCULAR RELATING TO E-WAY BILL

A) Circular No. 47/21/2018-GST dt 08.06.2018 - Clarifications of certain issues under GST

1. In case of transportation of goods by railways, whether goods can be delivered even if the e-way bill is not produced at the time of delivery?



As per proviso to rule 138(2A) of the Central Goods and Services Tax Rules, 2017 (CGST Rules for short), the railways shall not deliver the goods unless the e-way bill is produced at the time of delivery.

2. Whether e-way bill is required in the following cases-

- (i) Where goods transit through another State while moving from one area in a State to another area in the same State.
- (ii) Where goods move from a DTA unit to a SEZ unit or vice versa located in the same State.

Where goods move from a DTA unit to a SEZ unit or vice versa located in the same State, there is no requirement to generate an e-way bill (this exemption is applicable only if state has exempted the same.)

B) Circular No. 61/35/2018-GST dt 04.09.2018-E-way bill in case of storing of goods in godown of transporter-

The GST Council clarifies issue regarding the textile sector and problems being faced by weavers & artisans regarding storage of their goods in the warehouse of the transporter. It clarify that in case the consignee/ recipient taxpayer stores his goods in the godown of the transporter, then the transporter's godown has to be declared as an additional place of business by the recipient taxpayer. In such cases, mere declaration by the recipient taxpayer to this effect with the concurrence of the transporter in the said declaration will suffice. Where the transporter's godown has been declared as the additional place of business by the recipient taxpayer, the transportation under the e-way bill shall be deemed to be concluded once the goods have reached the transporter's godown (recipient taxpayer's additional place of business). Hence, e-way bill validity in such cases will not be required to be extended. Further, whenever the goods are transported from the transporters' godown, which has been declared as the additional place of business of the recipient taxpayer, to any other premises of the recipient taxpayer then, the relevant provisions of the e-way bill rules shall apply. Hence, whenever the goods move from the transporter's godown (i.e, recipient taxpayer's additional place of business) to the recipient taxpayer's any other place of business, a valid e-way bill shall be required, as per the extant State-specific e-way bill rules.

Synopsis.

- 1. Place of business now also includes a warehouse, a godown, or any other place where a taxable person stores in goods, supplies or receives goods or services or both.
- 2. In case, the goods have reached the transporter's godown i.e additional place of business then the transportation under the e-way bill will be deemed to be concluded. There will be no need of an extension of e-way bill's validity.
- 3. The recipient will be required to maintain books of accounts in relation to the goods stored at the godown of the transporters.

Study Note - 22

TRANSITIONAL PROVISIONS

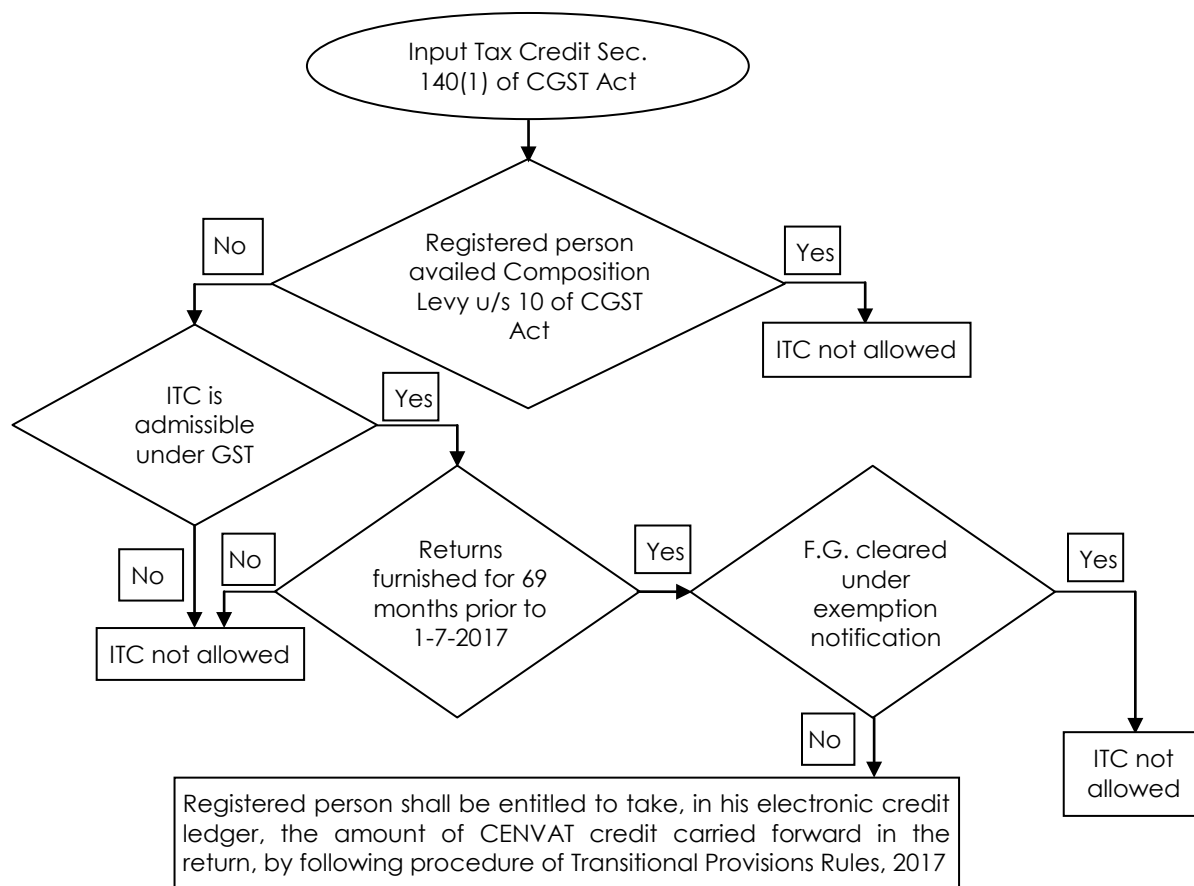


This Study Note includes

22.1 Input Tax Credit

22.1 INPUT TAX CREDIT

Input Tax Credit [Sec. 140(1) of CGST Act]



Submission of Application:

- **FORM GST TRAN-1** duly signed on the Common Portal within 60 days from 1-7-2017 by showing details of tax already c/f in their respective returns for inputs including goods, services and capital goods.
- Inputs purchased from 100% EOU/EHTP credit is allowed to the extent as provided in rule 3(7) of CCR, 2004. (CGST RULES)

S.No.	Nature of ITC carried forward in last return filed	Tax carried forward as
1	Service tax	CGST
2	Central Excise	CGST
3	CVD under Customs Act	IGST
4	SAD (Spl. CVD) under Customs Act (not available to service Providers)	IGST
5	NCCD on inputs	CGST

S.No.	Nature of ITC carried forward in last return filed	Tax carried forward as
1	State VAT	SGST
2	Entry Tax	SGST

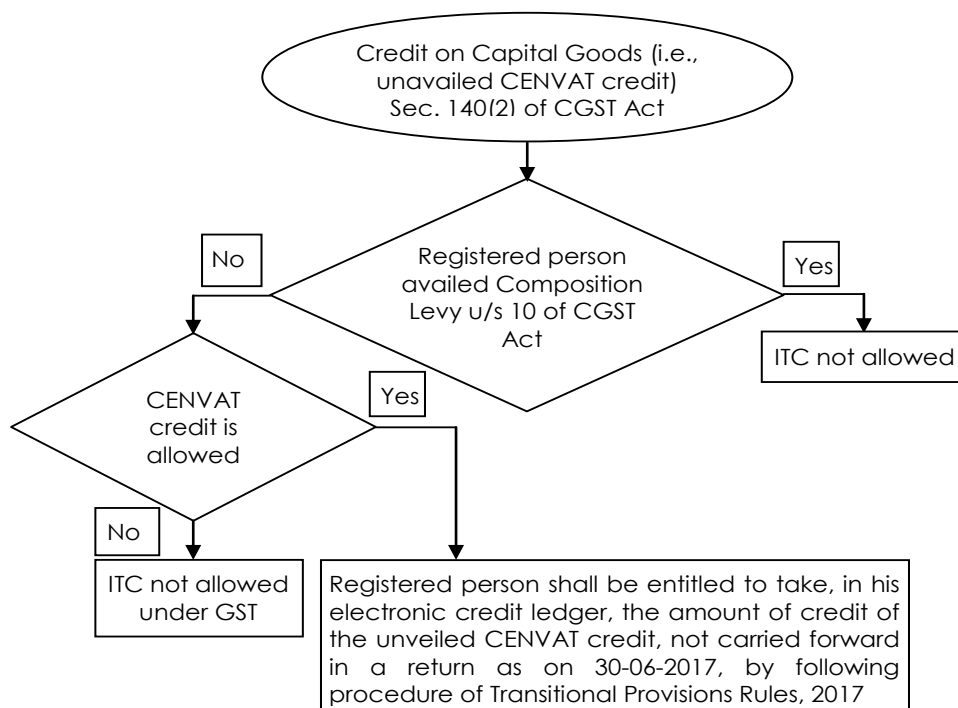
Submission of Application:

- The application shall specify separately
 - i. the value of claim u/s 3, 5(3), 6, 6A and 8(8) of CST Act, 1956 made by the applicant during the financial year relating to the relevant return, and
 - ii. the serial number and value of declaration in Form C and / or F and certificates in Form E and/or H or Form I specified in Rule 12 of the CST (Registration and Turnover) Rules, 1957 submitted by the applicant in support of the claims referred to in sub-clause (i) above. (SGST RULES)

As per CGST (Amendment) Act, 2018 – Section 140(1) has been amended to – “A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit of eligible duties carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed.”

CENVAT Credit on only “Eligible duties” can be availed – Section to eliminate dispute of Transition of EC, SHEC & KKC in GST. Further CVD us 3(1) of Customs Tariff Act has been excluded from eligible duty.

(A) Credit on Capital Goods (i.e. Unavailed CENVAT credit) [Sec. 140(2) of CGST Act]



Under FORM GST TRAN-1 (Part-B)**Transitional Provisions Rules, 2017****Rule 1(2): Under Form GST TRAN-1 (Part-B)**

DETAILS of unavailed tax on capitt goods where such ITC is not carried forward in their respective returns.

S.No.	Nature of ITC carried forward in last return filed	Tax carried forward as
1	Central Excise & NCCD	CGST
2	CVD	IGST
3	SAD (i.e. Spl. CVD)	IGST
4	VAT	SGST

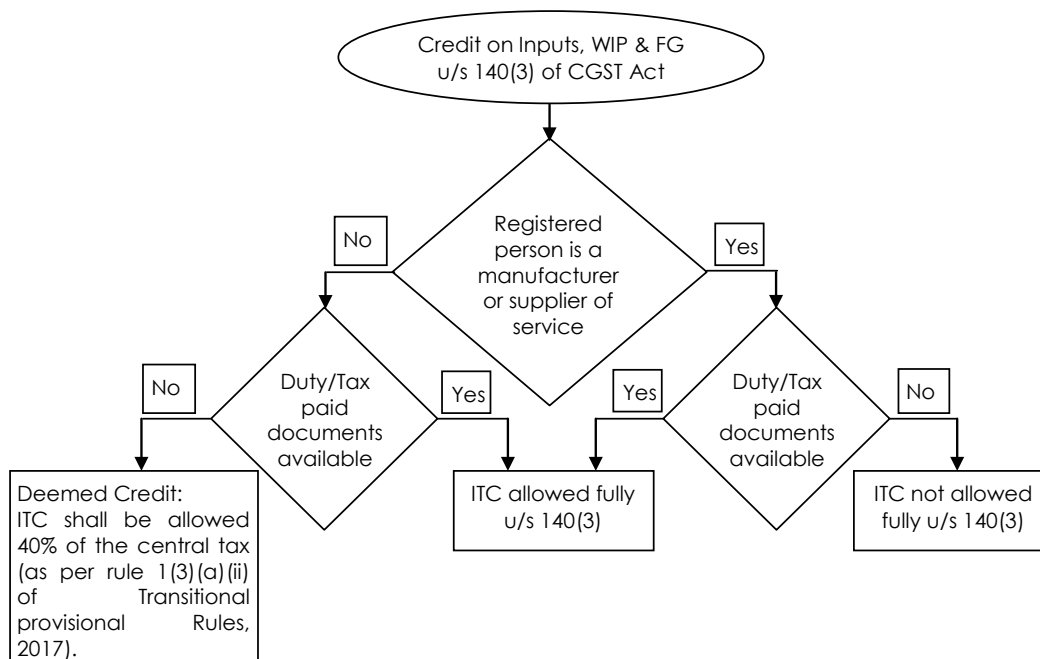
Also specify the separately the following:

- (i) Amount of ITC already availed or utilized under the existing laws till 01-07-2017 and
- (ii) Amount of ITC yet to be availed or utilized under the existing laws till 01-07-2017

(B) Credit of duties on Inputs held in Stock, WIP or F.G. as on 01-07-2017. [Sec. 140(3) of CGST Act]:

A registered person, who:

- (a) was not liable to be registered under the existing law (C.Ex, S.T. & VAT), or
- (b) who was engaged in the manufacture of exempted goods and provision of exempted services, or
- (c) who was providing works contract service and was availing of the benefit of NT No. 26/2012 or
- (d) a first state dealer or a second stage dealer or a registered importer or a depot of manufacturer shall be entitled to take, in his electronic credit ledger, subject to the following conditions, namely
 - (i) Such inputs used or intended to be used for making taxable supplies under this Act;
 - (ii) Such registered person is eligible for input tax credit on such inputs under this Act;
 - (iii) Such registered person is in possession of invoice evidencing payment of duty under the existing law (C.Ex, S.T. & VAT) in respect of such inputs;
 - (iv) Such invoices were issued not earlier than 12 months immediately preceding 1st July 2017 (it means the duty paid document shall not be of the date prior to 1-7-2016);

Credit on Inputs, WIP & FG [u/s 140(3) of CGST Act]:



Transitional Provisions Rules:

- i. A registered person other than manufacturer or supplier of service will only be eligible for deemed credit.
- ii. @ 40% of the Central tax applicable on supply of such goods after the appointed date and shall be credited after the central tax payable on such supply has been paid.
- iii. The goods are required to be sold within a period of 6 months in order to avail the credit, as the scheme is applicable only for 6 tax periods from the appointed date.

Transitional Provisions Rules

Deemed Credit provisions applies only if the following conditions are satisfied:

- i. Such goods were not wholly exempt from duty of excise or were not nil rated.
- ii. The registered person should have the document for procurement of these goods (e.g. he should possess purchase invoices/bills/challan etc).
- iii. A registered person availing this scheme must separately submit the details of stock in hand on 1st July. The registered person must give details of sales of such goods in the FORM GST TRAN-1 at the end of each of the six tax periods during which the scheme is in operation.
- iv. The amount of credit allowed will be credited to the electronic credit ledger maintained in the **FORM GST PMT-2** on the Common Portal.
- v. The stock of goods on which the credit is availed must be easily identified by the registered person and must be stored accordingly.

The amount of credit specified in the application in the **FORM GST TRAN-1** will be credited to the electronic credit ledger of the applicant maintained in the **FORM GST PMT-2** on the Common Portal.

Deemed Credit [u/s 140(3)]:

- Registered person holding stock as on 1-7-2017 along with VAT and Entry tax paid document on such stock of goods (which suffered tax at first point of sale in the state and subsequent sale of which are not subject to tax) shall be allowed to avail the input tax credit on such goods held in stock. Thus, in case of credit of VAT and Entry tax, is allowed as ITC equal to the VAT and Entry tax which attracted tax at the first point only.
- If such registered person is not in possession of any document evidencing payment of VAT, then such credit shall be allowed @ 40% of the State tax applicable on such goods and shall be credited after the State tax payable on such supply has been paid.
- The scheme shall be available for six tax periods from the 1-7-2017.
- This benefit is available only when the supplier pass on the benefit of such credit by way of reduced prices to the recipient.
- The stock of goods on which such credit is availed is to be so stored that it can be easily identified by the registered person.

Example 1:

Mr. X is a taxable person under GST (who is a wholesaler), is having a stock worth of ₹ 5,00,000/- as on 01-07-2017. Such person has supplied goods for ₹ 5,60,000/- and on which he has paid CGST @ 9% and SGST @ 9%.

How much ITC is allowed under sec. 140(3) of GST in the following independent cases:

- (a) **If he is in possession of duty paid document for the stock (namely BED is ₹ 62,500 and VAT ₹ 28,125).**
- (b) **If he is not in possession of duty paid document for the stock, but has invoice evidencing purchase of good.**

Answer:

- (a) **ITC allowed is equal to BED is ₹ 62,500 as CGST credit and VAT of ₹ 28,125 as SGST credit.**
- (b) **In accordance with the provisions of Transition Rules, he can claim credit to the extent of 60% of CGST paid, i.e., ₹ 30,240/- (₹ 50,400 @ 60%) as CGST credit.**
In accordance with the provisions of Transition Rules, he can claim credit to the extent of 60% of SGST paid, i.e., ₹ 30,240/- (₹ 50,400 @ 60%) as SGST credit.

(C) Credit in respect of exempted and non-exempted goods or provisions of exempted as well as non-exempted services [u/s 140(4)]:

Registered person is liable to tax under this Act, on all his goods and services, shall be entitled to take, in his electronic credit ledger

- (a) The amount of CENVAT credit c/f in a return furnished under the existing law by him in accordance with the provisions of Sec. 140(1); and
- (b) The amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished goods or F.G. held in stock on as on 1-7-2017, relating to such exempted goods or services, in accordance with the provisions of Sec 140(3).

Example 2:

M/s X Ltd. manufacturer of product 'A' and 'B'. Product 'A' is cleared on payment of duty whereas product 'B' is exempt from payment of excise duty. Inputs used exclusively for product 'A' of ₹ 2,00,000 suffered excise duty ₹ 25,000 and product 'B' of ₹ 1,00,000 suffered excise duty paid ₹ 12,500. Common inputs of ₹ 3,00,000 is used for product 'A' as well as 'B' which also suffered excise duty ₹ 37,500.

As on 1-7-2017, Finished goods of Product 'A' worth ₹ 10,00,000 and Product 'B' worth of ₹ 5,00,000 is in Stock.

How much ITC credit is allowed to M/s X Ltd under GST under Section 140(1) and 140(4) of the CGST Act, 2017.

w.e.f. 1-7-2017 Product 'A' as well as 'B' taxable with CGST 6% as well as SGST 6%.

Note: Manufacturer is in possession of relevant duty paid documents on inputs.

Answer:

ITC c/f under Sec 140(1) is as follows:

Inputs used exclusively for Product 'A' = ₹ 25,000

Inputs used commonly for "A & B" = ₹ 25,000

(₹ 37,500 x ₹ 10 Lakhs / ₹ 15 Lakhs)

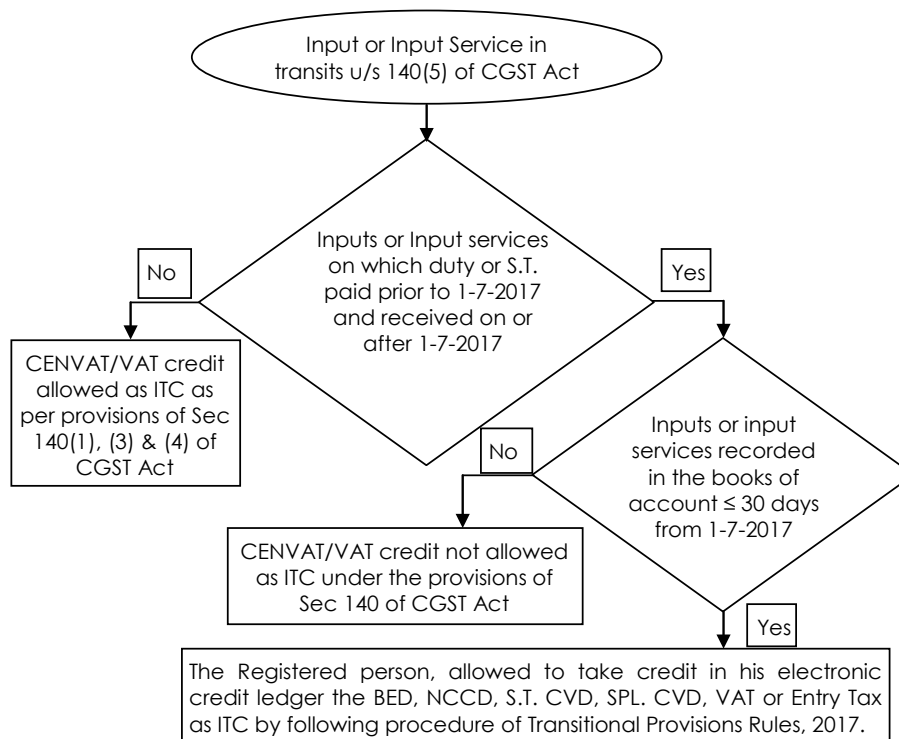
ITC allowed under Sec 140(3) is as follows:

Inputs used exclusively for Product 'B' = ₹ 12,500

Inputs used commonly for "A & B" = ₹ 12,500

(₹ 37,500 x ₹ 5 Lakhs / ₹ 15 Lakhs)

Total ITC under section 140(4) = ₹ 75,000

(D) Input or Input Service in transits [u/s 140(5) of CGST Act]:



Period of 30 days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding 30 days.

The registered person shall furnish a statement namely Form GST TRAN – 1 (Part –E):

- (i) the name of supplier,
- (ii) Serial number and date of issue of invoice by the supplier based of which credit of input tax was admissible under the existing law (C.Ex., S.T., & VAT)
- (iii) The description, quantity and value of the goods or services
- (iv) The amount of eligible taxes and duties (BED, S.T., NCCD, CVD, Spl. CVD, VAT or Entry Tax)
- (v) The date on which the receipt of goods or services is entered in the books of account of the recipient.

Example 3:

Mr. X has cleared goods from his factory on 20th May 2017 for sale to Mr. Y for ₹ 5,00,000. Effective rate of E.D @12.5%. However, E.D ₹ 62,500 has been paid on 6th June 2017. The consignment received by Mr. Y on 5th July 2017.

Find the following:

- (a) Mr. Y is eligible for ITC if so what amount?
- (b) Time limit within which receipt of inputs should record in the books of account of Mr. Y.
- (c) Mr. Y recorded receipt of inputs in the books of account on 15-8-2017, if so can be avail the ITC?

Answer:

- (a) Yes. Mr. Y is eligible to avail the ITC of ₹ 62,500 provided he deals with taxable supplies being registered person.
- (b) Inputs or Input Services recorded in the books of account ≤ 30 days from 1-7-2017. Therefore, Mr. Y should be account for by 30th July 2017.
- (c) Since, period of 30 days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding 30 days.

In the given Mr. Y can take credit on inputs on 15th Aug 2017, provided permission granted by the Commissioner for extension not exceeded 30 days.

Example 4:

Mr. X imported goods from USA on 28th June 2017 for ₹ 5,00,000. Customs duties like BCD ₹ 50,000, CVD ₹ 68,750, Cess ₹ 3,563 and Spl.CVD. of ₹ 24,893 also paid on 29th June 2017. The consignment received by Mr. Y into his factory on 20th July 2017. The services of Customs Broker and C&F are used for imported inputs. Service Tax ₹ 10,000, SBC of ₹ 500 and KKC of ₹ 500 has been paid on 30th June 2017 along with value of services to the provider of services.

Mr. Y is eligible for ITC if so what amount?

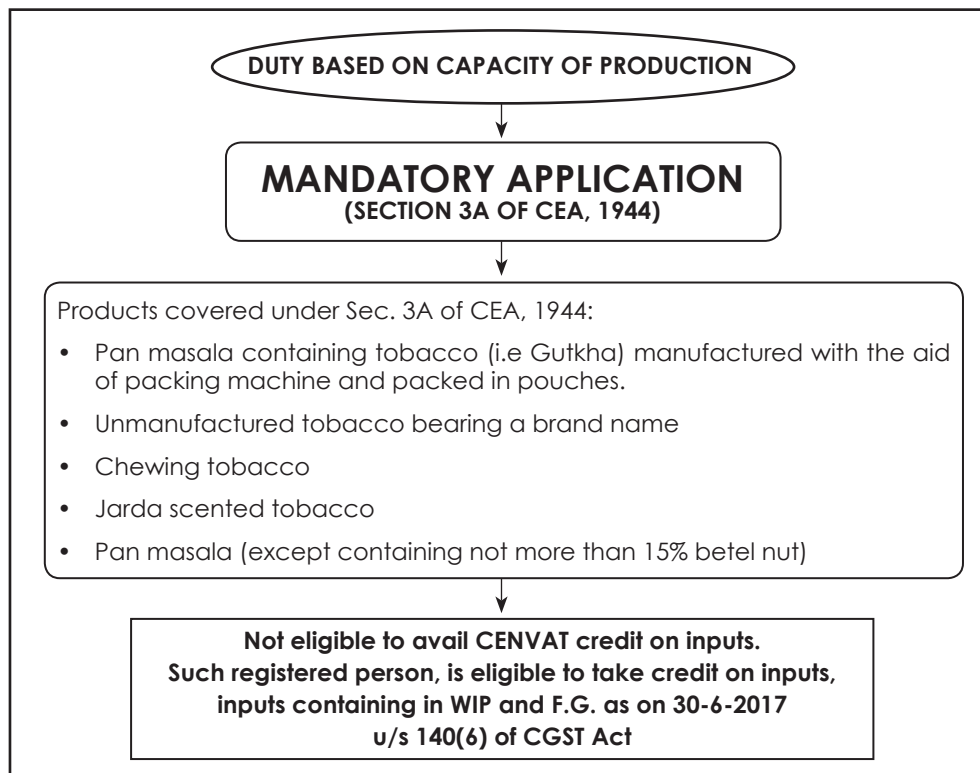
Answer:

Statement showing ITC to Mr. X under GST

S.No.	Duties and Taxes	Tax Amount in ₹	Remarks
1	BCD	Nil	Not allowed as ITC
2	CVD	68,750	Allowed as ITC under CGST
3	Cess	Nil	Not allowed as ITC
4	Spl. CVD	24,893	Allowed as ITC under CGST
5	Service Tax	10,000	Allowed as ITC under CGST
6	SBC	Nil	Not allowed as ITC
7	KKC	nil	Not allowed as ITC
	Total u/s 140(5)	1,03,643	

(E) Duty based on capacity of production

Such registered person, is eligible to take credit on inputs, inputs containing in WIP and F.G. as on 30-6-2017 u/s 140(6) of CGST

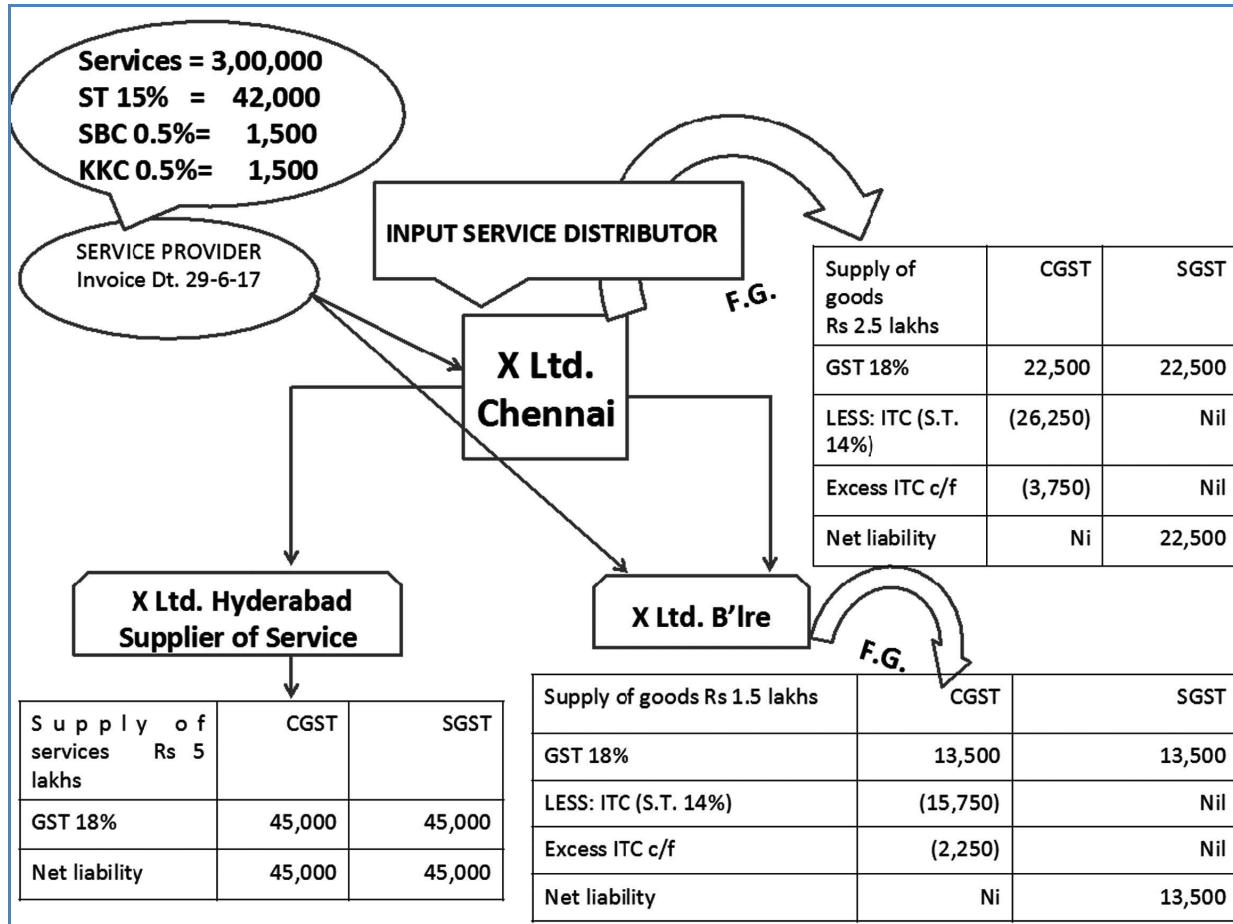
**Satisfy the following conditions to take credit [u/s 140(6)]:**

- (i) Such inputs are used or intended to be used for making taxable supplies under this Act;
- (ii) The registered person not opted to pay tax under composition levy (Sec 10.);
- (iii) The said registered person is eligible for input tax credit on such inputs under this Act;
- (iv) The said registered person is in possession of invoice evidencing payment of duty under existing law (C.Ex., S.T., CVD, Spl. CVD., VAT or Entry tax) in respect of inputs; and
- (v) Such invoice not earlier than 12 months as on 30-6-2017.

(F) Credit on input service by an input service distributor [u/s 140(7)]:

- The input tax credit on account of any services received prior to 1-7-2017 by an Input Service Distributor shall be eligible for distribution as credit under this Act even if the invoices relating to such services are received on or after 1-7-2017.

Input Service Distributor



(G) Centralized registered person under existing law is allowed to take credit [u/s 140(8)]:

- Centralized registration is allowed under Rule 4 of the STR, 1994.
- Registered person under this Act, to take credit in the Electronic Credit Ledger for the amount carried forward in the return furnished in the earlier law.
- Thus, the balance of credit shown in the return filed for a period upto 30th June 2017 can be carried forward by the service provider.

Note: Rule 7 of STR, 1994 may amend to provide for filing of return for the period 1-4-2017 to 30-6-2017 by 25th July 2017.

- Provided that if registered person furnishes his return for the period from ending 30-6-2017 within 3 months (i.e. from 1-7-2017), then the credit shall be carried forward, subject to the condition that the said return is either an original return or in case of revised return, the credit amount is less than the credit shown in the original return.
- Return is filed subsequent to September 2017 (i.e. after 3 months from 1-7-2017), the credit will not be allowed to carried forward to the person having centralized registration.



Distribution of credit by Centralized registered person under existing law is allowed to transfer credit to any registered person have same PAN [u/s 140(8)]:

Example 5:

Guidelines Academy being provider of taxable services has obtained centralized registration in Chennai for its offices in Hyderabad and Cochin under the Finance Act, 1994. The Chennai Office has the balance credit of ₹ 5 Lakhs as on 30-06-2017.

Can Guidelines Academy distribute the credit to Hyderabad and Cochin?

If so in which ratio. Explain?

Answer:

Registered person, can be filed the return for the period ending 30th June 2017 by showing credit that can be carried forward by him on or before the due date or within 3 months from 1-7-2017 as the case may be.

In the given case, credit can be distributed by Guidelines Academy to Hyderabad and Cochin. Since, all the units has same PAN.

It is not necessary that to distribute the credit in the ratio of the turnover of these locations.

(H) Reversal of Service tax credit on input services due to non-payment [u/s 140(9) of CGST Act]:

- As per Rule 4(7) of CCR, 2004: C.C. on I.S. allowed on credit basis, provided payment should be made within **three months** from the date of invoice.
- In case the amount is not paid within 3 months from the date of invoice, the credit is required to be reversed by the service provider/manufacturer.
- The said credit can be taken as and when the manufacturer or service provider has paid the amount to the service provider.
- CENVAT credit on input service reversed under rule 4(7) of CCR, 2004, such credit can be reclaimed subject to the condition that the registered person has made the payment of the consideration for that supply of service within a period of 3 months from 1-7-2017.**

(I) The manner in which credit is required to be calculated [u/s 140(10) of CGST Act]:

The Transitional Provision Rules, 2017 specify:

Manner of calculation of credit u/s 140(3);

Manner of calculation of credit u/s 140(4);

Manner of calculation of credit u/s 140(6).

As per CGST (Amendment) Act, 2018 - Explanation to Section 140 -

Explanation 1.—For the purposes of sub sections (1), (3), (4) and (6), the expression “eligible duties” means— (i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;

(ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;

(iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975;

(v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;

(vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985; and

(vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001, in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.



Explanation 2.—For the purposes of sub-sections (1) and (5), the expression “eligible duties and taxes” means—

- (i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;
- (ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;
- (iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975;
- (v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;
- (vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985;
- (vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001; and
- (viii) the service tax leviable under section 66B of the Finance Act, 1994, in respect of inputs and input services received on or after the appointed day.

Explanation 3.—For removal of doubts, it is hereby clarified that the expression “eligible duties and taxes” excludes any cess which has not been specified in Explanation 1 or Explanation 2 and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975.

CIRCULAR ON TRANSITIONAL PROVISIONS

Circular No. 58/32/2018- GST dt 04.09.2018- Recovery of arrears of wrongly availed CENVAT credit under the existing law and inadmissible

The GST Council clarifies issue regarding the process of recovery of arrears of wrongly availed CENVAT credit under the existing law and CENVAT credit wrongly carried forward as transitional credit in the GST regime.

Accordingly, it is clarified that the recovery of arrears arising under the existing law shall be made as central tax liability to be paid through the utilization of the amount available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01). Currently, the functionality to record this liability in the electronic liability register is not available on the common portal. Therefore, it is clarified that as an alternative method, taxpayers may reverse the wrongly availed CENVAT credit under the existing law and inadmissible transitional credit through Table 4(B)(2) of FORM GSTR-3B. The applicable interest and penalty shall apply on all such reversals which shall be paid through entry in column 9 of Table 6.1 of FORM GSTR-3B.

It is clarified that the taxpayers will reverse the wrongly availed CENVAT credit under the existing law and inadmissible credit through table 4(B)(2) of GSTR 3B. Interest and penalty will be applicable thereof.

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Study Note - 23

ANTI-PROFITEERING



This Study Note includes

23.1 Anti-profiteering

23.2 Anti-profiteering Committee

23.1 ANTI-PROFITEERING

Anti Profiteering-Section 171

As per section 171(1),

- Any reduction in rate of tax on any supply of goods or services
- or
- the benefit of input tax credit

shall be passed on to the recipient by way of commensurate reduction in prices.

Detailed analysis of above provision is as follows-

Any reduction in rate of tax on any supply of goods or services-

For Example Under the Service Tax regime, Tour operator services are charged at abated rate of 9% whereas in Goods & Services Tax Act, 2017 rate of tax fixed is 5% which resulted in reduction of tax from 9% to 5%. The tax rate reduction benefit to the extent of 4% to be passed on to recipient.

Particulars	Service tax regime	GST regime	Remarks
Taxable value	100	100	
ST/GST rate (%)	9%	5%	
ST/GST (₹)	9	5	
Total Invoice value	109	105	Reduction of ₹ 4 is benefit to be passed on to recipient

The benefit of input tax credit

Any additional benefit by way of Input tax credit is arising to the supplier due to implementation of GST the same benefit to be passed on to recipient by way of reduction in prices which is explained as follows-

X Ltd being an Interior designing service provider while providing output service has availed Input services and a material 'M' for which tax paid is as under

Particulars	Service tax regime	GST regime
Tax paid towards service tax on Input services availed	15	15
Tax paid towards VAT for Material 'M'	5	5

Output tax liability of X Ltd is ₹ 25 before deducting Input tax credit available.

In the given case benefit of input tax credit accruing to X Ltd due to implementation of GST is as follows-



Particulars	Service tax regime	GST regime	Remarks
Output tax liability	25	25	
Input allowed- Towards Input services Towards Material 'M'	15 NIL	15 5	Service provider cannot avail VAT paid as Input tax credit in Service tax regime
Total Input Tax credit eligible for set off	15	20	
Net tax payable	10	5	
Input tax benefit due to GST	-	5	Benefit of ₹5 to be passed to recipient by way reduction in prices

23.2 ANTI-PROFITEERING COMMITTEE-SECTION 171(2)

Anti-profiteering Committee [Section 171(2)]

The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

The National Anti-Profiteering Authority shall be a five member committee consisting of

- a Chairman who holds or has held a post equivalent in rank to a Secretary to the Government of India; and
- four Technical Members who are or have been Commissioners of State tax or central tax or have held an equivalent post under existing laws.
- The Additional Director General of Safeguards under the CBEC (Board) shall be the Secretary to the Authority.

The Authority shall cease to exist after the expiry of two years from the date on which the Chairman enters upon his office unless the Council recommends otherwise.

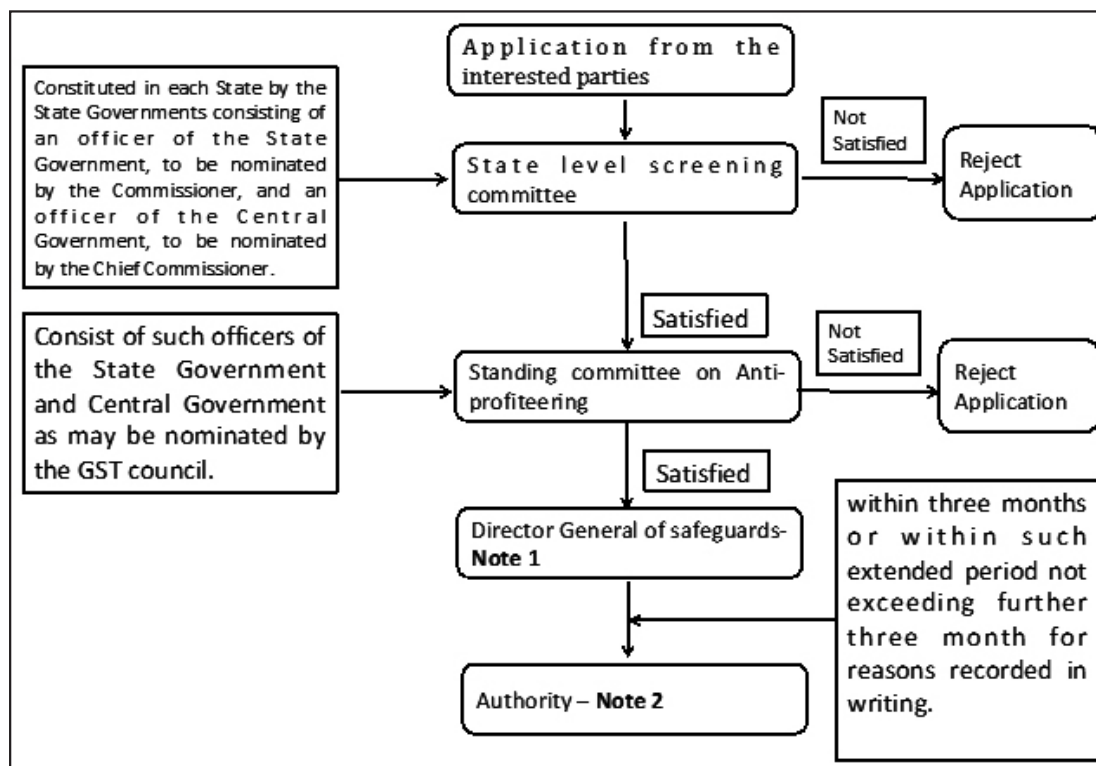
Duties & Powers of Anti-profiteering committee-Section 171(3)

The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.

The Authority can determine the methodology and procedure for determination as to whether the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit has been passed on by the registered person to the recipient by way of commensurate reduction in prices.

The Authority would have the following duties:

- to determine whether any reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices;
- to identify the registered person who has not passed on the benefit of reduction in the rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices;
- to order,
 - reduction in prices;
 - return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen per cent. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Consumer Welfare Fund;
 - imposition of penalty; and
 - Cancellation of registration.

Application & process flow of Anti-profiteering hierarchy mechanism:**Note-1:**

The Director General of Safeguards shall conduct investigation and collect evidence necessary to determine undue profiteering and before initiation of the investigation, issue a notice to the interested parties (and to such other persons as deemed fit for a fair enquiry into the matter) containing, inter alia, information on the following, namely: -

- the description of the goods or services in respect of which the proceedings have been initiated;
- summary of the statement of facts on which the allegations are based; and
- the time limit allowed to the interested parties and other persons who may have information related to the proceedings for furnishing their reply.

The evidence or information presented to the Director General of Safeguards by one interested party can be made available to the other interested parties, participating in the proceedings. The evidence provided will be kept confidential and the provisions of section 11 of the Right to Information Act, 2005 (22 of 2005), shall apply mutatis mutandis to the disclosure of any information which is provided on a confidential basis.

The Director General of Safeguards can seek opinion of any other agency or statutory authorities in the discharge of his duties. The Director General of Safeguards, or an officer authorised by him will have the power to summon any person necessary either to give evidence or to produce a document or any other thing. He will also have same powers as that of a civil court and every such inquiry will be deemed to be a judicial proceeding.

The Director General of Safeguards will complete the investigation within a period of three months or within such extended period not exceeding a further period of three months for reasons to be recorded in writing as allowed by the Standing Committee and, upon completion of the investigation, furnish to the Authority, a report of its findings along with the relevant records.



Note-2

The Authority shall (after granting an opportunity of hearing to the interested parties if so requested) within a period of three months from the date of the receipt of the report from the Director General of Safeguards determine whether a registered person has passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices. If the Members of the Authority differ in opinion on any point, the point shall be decided according to the opinion of the majority. Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order

- (a) reduction in prices;
- (b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest;
- (c) imposition of penalty as specified under the Act; and
- (d) cancellation of registration under the Act.

Any order passed by the Authority shall be immediately complied with by the registered person failing which action shall be initiated to recover the amount in accordance with the provisions of the Integrated Goods and Services Tax Act or the Central Goods and Services Tax Act or the Union territory Goods and Services Tax Act or the State Goods and Services Tax Act of the respective States, as the case may be. The Authority can direct any authority of central tax, State tax or Union territory tax to monitor the implementation of the order passed by it.

In exercise of the powers conferred by section 164 read with section 171 of the Central Goods and Services Tax Act, 2017(12 of 2017) the Central Government hereby makes the following rules under Anti Profiteering , namely :-

1. Constitution of the Authority Rule 122.- The Authority shall consist of- (a) a Chairman who holds or has held a post equivalent in rank to a Secretary to the Government of India; and (i) (b) four Technical Members who are or have been Commissioners of State tax or central tax or have held an equivalent post under the existing law, -to be nominated by the Council.
2. Constitution of the Standing Committee and Screening Committees Rule 123.-
 - (1) The Council may constitute a Standing Committee on Anti-profiteering which shall consist of such officers of the State Government and Central Government as may be nominated by it .
 - (2) A State level Screening Committee shall be constituted in each State by the State Governments which shall consist of- (a) one officer of the State Government, to be nominated by the Commissioner, and
(b) one officer of the Central Government, to be nominated by the Chief Commissioner
3. Appointment, salary, allowances and other terms and conditions of service of the Chairman and Members of the Authority Rule 124:-
 - (1) The Chairman and Members of the Authority shall be appointed by the Central Government on the recommendations of a Selection Committee to be constituted for the purpose by the Council
 - (2) The Chairman shall be paid a monthly salary of Rs. 2,25,000 (fixed) and other allowances and benefits as are admissible to a Central Government officer holding posts carrying the same pay. Where a retired officer is selected as a Chairman, he shall be paid a monthly salary of Rs. 2,25,000 reduced by the amount of pension.
 - (3) The Technical Member shall be paid a monthly salary of Rs. 2,05,400 (fixed) and shall be entitled to draw allowances as are admissible to a Government of India officer holding Group 'A' post carrying the same pay. Where a retired officer is selected as a Technical Member, he shall be paid a monthly salary of Rs. 2,05,400 reduced by the amount of pension.
 - (4) The Chairman shall hold office for a term of two years from the date on which he enters upon his office, or until he attains the age of sixty- five years, whichever is earlier and shall be eligible for reappointment. A



person shall not be selected as the Chairman if he has attained the age of sixty-two years.

- (5) The Technical Member of the Authority shall hold office for a term of two years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment. A person shall not be selected as a Technical Member if he has attained the age of sixty-two years.
4. Secretary to the Authority Rule 125 The Additional Director General of Safeguards under the Board shall be the Secretary to the Authority.
5. Power to determine the methodology and procedure Rule 126:- The Authority may determine the methodology and procedure for determination as to whether the reduction in rate of tax on the supply of goods or services or the benefit of input tax credit has been passed on by the registered person to the recipient by way of commensurate reduction in prices.
6. Duties of the Authority- It shall be the duty of the Authority Rule 127:-
 - (1) to determine whether any reduction in rate of tax on any supply of goods or services or the benefit of the input tax credit has been passed on to the recipient by way of commensurate reduction in prices;
 - (2) to identify the registered person who has not passed on the benefit of reduction in rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices;
 - (3) to order,
 - (a) reduction in prices;
 - (b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen percent from the date of collection of higher amount till the date of return of such amount or recovery of the amount not returned in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Fund referred to in section 57
 - (c) imposition of penalty as prescribed under the Act; and
 - (d) cancellation of registration under the Act.
7. Examination of application by the Standing Committee and Screening Committee Rule 128:-
 - (1) The Standing Committee shall, within a period of two months from the date of receipt of a written application, in such form and manner as may be specified by it, from an interested party or from a Commissioner or any other person, examine the accuracy and adequacy of the evidence provided in the application to determine whether there is prima-facie evidence to support the claim of the applicant that the benefit of reduction in rate of tax on any supply of goods or services or the benefit of input tax credit has not been passed on to the recipient by way of commensurate reduction in prices.
 - (2) All applications from interested parties on issues of local nature shall first be examined by the State level Screening Committee and the Screening Committee shall, upon being satisfied that the supplier has contravened the provisions of section 171, forward the application with its recommendations to the Standing Committee for further action.
8. Initiation and conduct of proceedings Rule 129:-
 - (1) Where the Standing Committee is satisfied that there is a prima-facie evidence to show that the supplier has not passed on the benefit of reduction in rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, it shall refer the matter to Director General of Safeguards for a detailed investigation.
 - (2) The Director General of Safeguards shall conduct investigation and collect evidence necessary to determine whether the benefit of reduction in rate of tax on any supply of goods or services or the benefit



of the input tax credit has been passed on to the recipient by way of commensurate reduction in prices.

- (3) The Director General of Safeguards shall, before initiation of investigation, issue a notice to the interested parties containing, inter alia, information on the following, namely:-
 - (a) the description of the goods or services in respect of which the proceedings have been initiated;
 - (b) summary of statement of facts on which the allegations are based; and
 - (c) the time limit allowed to the interested parties and other persons who may have information related to the proceedings for furnishing their reply.
- (4) The Director General of Safeguards may also issue notices to such other persons as deemed fit for fair enquiry into the matter.
- (5) The Director General of Safeguards shall make available the evidence presented to it by one interested party to the other interested parties, participating in the proceedings.
- (6) The Director General of Safeguards shall complete the investigation within a period of three months of receipt of reference from the Standing Committee or within such extended period not exceeding a further period of three months for reasons to be recorded in writing as allowed by the Standing Committee and, upon completion of the investigation, furnish to the Authority a report of its findings, along with the relevant records.

9. Confidentiality of information Rule 130:-

- (1) Notwithstanding anything contained in sub-rules (3) and (5) of rule 10 and sub-rule (2) of rule 14, the provisions of section 11 of the Right to Information Act, 2005 shall apply mutatis mutandis to the disclosure of any information which is provided on a confidential basis.
- (2) The Director General of Safeguards may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of the party providing such information, the said information cannot be summarised, such party may submit to the Director General of Safeguards a statement of reasons why summarisation is not possible

10. Cooperation with other agencies or statutory authorities Rule 131:-

Where the Director General of Safeguards deems fit, he may seek opinion of any other agency or statutory authorities in discharge of his duties.

11. Power to summon persons to give evidence and produce documents Rule 132:- (1) The Director General of Safeguards, or an officer authorized by him in this behalf, shall be deemed to be the proper officer to exercise power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing under section 70 and shall have power in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908). (2) Every such inquiry referred to in sub-rule (1) shall be deemed to be a "judicial proceedings" within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

12. Order of the Authority Rule 133:-

- (1) The Authority shall, within a period of three months from the date of receipt of the report from the Director General of Safeguards determine whether a registered person has passed on the benefit of reduction in rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.
- (2) An opportunity of hearing shall be granted to the interested parties by the Authority where any request is received in writing from such interested parties.
- (3) Where the Authority determines that a registered person has not passed on the benefit of reduction in rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order –



- (a) reduction in prices;
 - (b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen percent from the date of collection of higher amount till the date of return of such amount or recovery of the amount including interest not returned in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Fund referred to in section 57;
 - (c) imposition of penalty as prescribed under the Act; and
 - (d) cancellation of registration under the Act.
13. Decision to be taken by the majority Rule 134:- If the Members of the Authority differ in opinion on any point, the point shall be decided according to the opinion of the majority.
14. Compliance by the registered person Rule 135:- Any order passed by the Authority under these rules shall be immediately complied with by the registered person failing which action shall be initiated to recover the amount in accordance with the provisions of the Integrated Goods and Services Tax Act or the Central Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the State Goods and Services Tax Act of the respective States, as the case may be.
15. Monitoring of the order Rule 136:- The Authority may require any authority of central tax, State tax or Union territory tax to monitor implementation of the order passed by it. 18. Tenure of Authority.- The Authority shall cease to exist after the expiry of two years from the date on which the Chairman enters upon his office unless the Council recommends otherwise.
16. Tenure of Authority Rule 137.- The Authority shall cease to exist after the expiry of two years from the date on which the Chairman enters upon his office unless the Council recommends otherwise.

AMENDMENTS:

1. Rule 133(3) has been amended vide Notification No. 26/2018 – Central Tax, dt 13.6.2018 so as to provide that in case where an Order for reduction has been passed by The Anti-Profiteering Authority and the eligible person does not claim return of the amount or is not identifiable, the amounts should be credited to the Consumer Welfare Fund.
2. AMENDMENT VIDE Notification No. 29/2018 – Central Tax, dt 06.07.2018 in Rule 125, 129, 130, 131, 132 & 133 wherein "Directorate General of Safeguards" will be called "Directorate General of Anti-profiteering"



Study Note - 24

REPLYING TO DEPARTMENT NOTICES UNDER GST-SAMPLE CASES



This Study Note includes

24.1 Show Cause Notice

24.2 Replying to Department Notices under GST – Sample Cases

24.1 SHOW CAUSE NOTICE

The Goods & Service Tax (GST) is payable on self-assessment basis i.e. assessee himself has to determine its tax liability.

If the determination of assessee goes wrong i.e. assessee has short paid any taxes or not paid any taxes or has wrong availed and utilized any input tax credit or has erroneously been refunded, etc then, under such circumstances demand would be raised by the GST officials by way of issuing GST notices - to be called as Show cause notices under taxation parlance.

Show cause notice(SCN) is the first stage in any investigation in tax laws. In Goods and Services Tax Act, show cause notice is to be issued before any penalty is levied or demand is raised. SCN is also required to be issued while taking action for payment of Goods and Services tax collected from any person which has not been deposited with the Central Government.

Handling a show cause GST notice and GST notice reply letter format

Some points stated below are important to note while handling show cause GST notices -

- Date of notice and date of receipt of GST notice could be different. While acknowledging the Show cause GST notice, always remember to put date and time over the acknowledgement copy.
- Don't avoid the receipt of SCN. If such notice is being served, there is no point in avoiding receiving it. First it has to be received and then contested / replied. Non-receipt is considered as a service.
- If the service of notice is time barred, it could be suitably replied with substantiating evidence.
- Whenever SCN is intended to enhance the liability of assessee or reduce the amount of refund, an opportunity of being heard is necessary and it cannot be denied by the revenue.
- SCN is always issued in writing.
- Department cannot go beyond what is mentioned in SCN and adjudicate an issue which is not a subject matter of SCN.
- SCN is required to be replied within the stipulated time mentioned in the notice and must be replied accordingly.
- Try to provide reply or explanation to all points covered in SCN and wherever necessary, substantiate the reply with documentary evidences.
- Detailed reply may be submitted along with earlier decided case laws.
- A list of evidences on which you are relying must also be submitted.
- Orders issued against show cause notice are appealable.

If the above points are borne in mind by the assessee and service providers, it shall help them in appropriately replying to the show cause notice issued by the Department.

**24.2 REPLYING TO DEPARTMENT NOTICES UNDER GST – SAMPLE CASES****Sample Case 1****REPLY TO SHOW CAUSE NOTICE (IN FORM DRC 01) RECEIVED FOR DIFFERENTIAL TAX AMT IN GSTR 3B VIS-À-VIS GSTR 1****FORM GST DRC - 06****[See rule 142(4)]**

Reply to the Show Cause Notice

1. GSTIN		
2. Name		
3. Details of Show Cause Notice : Form GST DRC-01	Reference No :...	Date of issue :.....
4. Financial Year	2017-18	
5. Reply: As below		

Date

To

.....

Dear Sir,

**(Sub: Reply to DRC-01 dated (Reference No.....) issued to
limited holding GSTIN)**

With reference to the above mentioned subject, we confirm to have received the said Notice under Sec of The CGST Act 2017, read with Rule of CGST Rules 2017, in form DRC-01 and noted the contents thereof.

Facts of The Case

We, M/s, having our registered office at (herein referred to as 'Noticee') confirm having received the Show Cause Cum Demand Notice (herein after referred to as 'SCN') referred above and noted the contents thereof. The allegations, alleged contravention and proposal contained in the SCN are as under:-

- 1.0. It is alleged that M/s., holding GSTIN. has contravened the provisions of Section of the CGST Act 2017 (hereinafter referred to as 'the said Act') read with Rule Of The CGST Rules 2017 as amended (hereinafter referred to as 'the said Rules') in as much as the noticee has not paid GST amounting to Rs..... o Goods/ Services
- 2.0. The said noticee was therefore, required to show Cause to the Joint Commissioner of Service Tax, Service Tax as to why the said GST Amount alongwith Interest and penalty should not be recovered from the Noticee.
- 3.0. The noticee was asked by the department to submit documents relating to charging and payment of GST for the period which the noticee dutifully complied.



- 4.0. Thereafter certain correspondences have also taken place between the Noticee and the GST authorities whereby certain information/explanations/clarifications were sought and which the Noticee has provided.

Grounds

- 5.0. We have made a detailed reconciliation between the GSTR 1 and GSTR 3B filed by us for the month of JULY 2017– MARCH 2018.
- 6.0. Now we provide the detailed working of the differences between GSTR 1 and GSTR 3B in Annexure A to this submission. The reasons for the same is as follows-
1. In the month of, one sale entry was missed out in GSTR 1, but while filing GSTR 3B the same was taken into consideration and correctly reported in the GSTR 3B and taxes had been paid on that. We had been reported this invoice in GSTR 1 of with the respective date of the invoice.
- 7.0. From the above, your honour may note that we have already amended GSTR 3B in subsequent tax period as per circular no.26/26/2017-GST. So as on date there is no discrepancy in our GSTR 1 and GSTR 3B.

Prayer

In view of the above, it is prayed before your honour that kindly accept our explanation on the matter of discrepancies in the returns from July 17 to Mar 18 And drop the issue.

For this act of kindness, your petitioner as in duty bound shall remain grateful.

6. Documents Annexed:

1.

7. Option for personal hearing - **Yes**

8. Verification-

I hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed there from.

Signature of Authorized Signatory

Name _____

Designation / Status -----

Date –

**Sample Case 2****REPLYING TO NOTICE FOR DIFFERENCE BETWEEN TAX AMT IN GSTR 3B VIS-A-VIS IN GSTR 1 –
THE NOTICE IS RECEIVED IN FORM ASMT-10 AND REPLY AS BELOW IN ASMT-11****Form GST ASMT - 11****[See rule 99(2)]**

Reply to the notice issued under section 61 intimating discrepancies in the return

1. GSTIN											
2. Name											
3. Details of the notice				Date.							
4. Tax Period	JULY 2017– MARCH 2018										
5. Reply to the discrepancies	We refer to the above notice received on We have noted the differences provided by your honour between GSTR 3B and GSTR 1 filed by us for the months of JULY 2017– MARCH 2018. We have made a detailed reconciliation between the GSTR 1 and GSTR 3B filed by us for the month of JULY 2017– MARCH 2018. Now we provide the detailed working of the differences between GSTR 1 and GSTR 3B in Annexure A to this submission. The reasons for the same is as follows- 1. In the month of, one sale entry was missed out in GSTR 1, but while filing GSTR 3B the same was taken into consideration and correctly reported in the GSTR 3B and taxes had been paid on that. We had been reported this invoice in GSTR 1 of with the respective date of the invoice. (Details as per annexure) From the above, your honour may note that we have already amended GSTR 3B in subsequent tax period as per circular no.26/26/2017-GST. So as on date there is no discrepancy in our GSTR 1 and GSTR 3B. In view of the above, it is prayed before your honour that kindly accept our explanation on the matter of discrepancies in the returns from July 17 to Mar 18 And drop the issue. <table border="1"> <thead> <tr> <th>Sr. No.</th> <th>Discrepancy</th> <th>Reply</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>Taxable value and tax amount related reply</td> <td>Please find the details report on annexure 1</td> </tr> </tbody> </table>					Sr. No.	Discrepancy	Reply	1.	Taxable value and tax amount related reply	Please find the details report on annexure 1
Sr. No.	Discrepancy	Reply									
1.	Taxable value and tax amount related reply	Please find the details report on annexure 1									
6. Amount admitted and paid, if any -	Act	Tax	Interest	Others	Total						
	CGST	NA	NA	NA	NIL						
	SGST`	NA	NA	NA	NIL						

7. Verification-

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

Signature of Authorised Signatory

Name –

Designation / Status –

Date – 09-06-2018



Sample Case 3

REPLYING TO NOTICE FOR DIFFERENCE BETWEEN ITC AVAILED IN GSTR 3B VIS-A-VIS AVAILABLE IN GSTR 2A

Date 10-06-2018

To

The office of the Assistant Commissioner (ST),

Respected Sir/Madam,

**Sub: Reply to the notice received on for variation in ITC claimed in GSTR 3B Vs
ITC available under GSTR 2A.**

We have received the said Notice u/s of The CGST Act 2017 and read with Rule of CGST Rules 2017 and noted the contents thereof. In the said notice your goodself have sited certain discrepancies in the ITC availed by the noticee in its GSTR 3B and the GSTR 2A filed by the noticee which is available on the GST Portal.

In this regard, we have tried to match the reasons for differences and the same as are summarised as under:

1. Ineligible ITC was not claimed by us.
2. Timing Gap – Wherein the Invoice would be uploaded in the GSTR 1 of the Counter Party in one month and the ITC for the same would be availed by us in another month.
3. There are certain delayed/non-compliance from the supplier's side due to non payment, incorrect uploading, data entry mistake in figures or GST numbers, classifying at B2C instead of B2B, etc.

We are further enclosing the invoice-wise details of the ITC availed by us as per Sec 16 of The CGST Act 2017.

We pray to take our reply on record and rest the issue in the light of Provisions as per Law.

For this act of kindness, your petitioner as in duty bound shall remain grateful.

Signature of Authorised Signatory

Name –

Designation / Status – Director



Study Note - 25

OPERATION OF GST PORTAL - A WALK-THROUGH



This Study Note includes

25.1 GST Portal

25.2 Walk-through

25.1 GST PORTAL

GST Portal or GSTN hosted at <https://www.gst.gov.in/> is a website where all the activities related to GST can be done. Activities like GST registration, return filing, payment of taxes, application for refund, etc. can be done on the GST Portal.

Services Available on GST Portal

Here is a list of some services available on the GST Portal..

1. Application for Registration for Normal Taxpayer, ISD, Casual Dealer
2. Application for GST Practitioner
3. Opting for Composition Scheme (GST CMP-02)
4. Stock intimation for Composition Dealers (GST CMP-03)
5. Opting out of Composition Scheme (GST CMP-04)
6. Filing GST Returns
7. Payment of GST
8. Filing Table 6A of GSTR-1 (Export Refund)
9. Claim Refund of excess GST paid (RFD-01)
10. Furnish Letter of Undertaking(LUT)(RFD-11)
11. Transition Forms (TRAN-1, TRAN-2, TRAN-3)
12. Viewing E-Ledgers

Other than the above services changing core and non-core fields, browsing notices received, filing ITC Forms, Engage/ Disengage GST Practitioner are some of the other services provided on the GST Portal/ GSTN.

Goods and Service Tax Network

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

Structure of GSTN

Private players own 51% share in the GSTN, and the rest is owned by the government. The authorized capital of the GSTN is ₹10 crore (US\$1.6 million), of which 49% of the shares are divided equally between the Central and State governments, and the remaining is with private banks.

The contract for developing this vast technological backend was awarded to Infosys in September 2015.



The GSTN is chaired by Mr. Navin Kumar, an Indian Administrative Service servant (1975 batch), who has served in many senior positions with the Govt. of Bihar, and the Central Govt.

Salient Features of the GSTN

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

1. Trusted National Information Utility

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

2. Handles Complex Transactions

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

3. All Information Will Be Secure

The government will have strategic control over the GSTN, as it is necessary to keep the information of all taxpayers confidential and secure. The Central Government will have control over the composition of the Board, mechanisms of Special Resolution and Shareholders Agreement, and agreements between the GSTN and other state governments. Also, the shareholding pattern is such that the Government shareholding at 49% is far more than that of any single private institution.

4. Expenses Will Be Shared

The user charges will be paid entirely by the Central Government and the State Governments in equal proportion (i.e. 50:50) on behalf of all users. The state share will be then apportioned to individual states, in proportion to the number of taxpayers in the state.

Functions of GSTN

GSTN is the backbone of the Common Portal which is the interface between the taxpayers and the government. The entire process of GST is online starting from registration to the filing of returns.

It has to support about 3 billion invoices per month and the subsequent return filing for 65 to 70 lakh taxpayers.

The GSTN will handle:

- Invoices
- Various returns
- Registrations
- Payments & Refunds

25.2 WALK-THROUGH

Various FAQs and User Manual, Training Kit are available on GST Portal.

1) FAQs on Registration – Normal Taxpayer (FORM GST REG-01)

1. I am on the landing page of the New Registration Application and there are two radio buttons – New Registration and Temporary Reference Number (TRN). Which one do I need to select?

Select the New Registration Application to begin applying for GST Registration .



If you have already filled Part A of the Registration Application and have a valid TRN, select Temporary Reference Number.

2. I am applying for a new registration. Which state should I select?

Select the state for which you are applying for the registration.

Once you select a state in Part A of the Registration Application, it cannot be changed at a later stage.

3. My principal place of business is in State 'X' but I am applying for a new registration for State 'Y'. Which state should I select?

Select the state for which you are applying for the registration as registration is state-specific.

4. In the field for PAN, do I need to put my own PAN or the PAN of the business?

Please enter the PAN of your business. In case of proprietor, please provide your personal PAN.

5. Whose e-mail ID and mobile number should I give in the PART A of the Registration Application?

Please give details of the Primary Authorised Signatory in the Part A of the Registration Application .

6. What is Captcha Code? Why do I need to fill it?

Captcha Code is a numeric code that must be filled every time a taxpayer login to the GST Portal. It has been added as an additional security measure.

7. The Captcha Code provided is not legible. What should I do?

You can click the refresh icon next to the code and the system will generate a new code for you.

8. I clicked the SUBMIT button and now the system is asking me for a mobile OTP and an e-mail OTP but I haven't received either. What do I do? / I have received my mobile OTP but not my e-mail OTP or vice versa. How long should I wait?

Please wait for at least 180 seconds after generating the OTPs.

In case you have still not received the OTP/s, make sure you are checking the correct mobile phone and e-mail inbox. For e-mail OTP, you must also check the spam folder of your e-mail account.

In case you have still not received one or both the OTPs, please click the Click to Resend OTP option available on the screen. Both the OTPs will be sent again.

9. How long are the OTPs valid? OR Are the OTPs valid for a limited period of time? OR What is the validity of the OTP?

The validity period of each OTP is clearly mentioned in the SMS and e-mail. They are valid for at least 10 minutes.

10. I have entered both OTPs correctly but the system is saying the OTPs are not valid.

It is possible your OTPs have expired. Click the Click to Resend OTP option available on the screen. Both the OTPs will be sent again. Please wait for at least 180 seconds after generating the OTPs.

Please note, when you generate fresh OTPs, both previous OTPs (mobile as well as e-mail) become invalid.



You will now need to enter both mobile and e-mail OTP again.

11. How long should I wait for the OTPs before clicking on the resend OTP button?

Please wait for at least 180 seconds after generating the OTPs.

In case you have still not received the OTP/s, make sure you are checking the correct mobile phone and e-mail inbox. For e-mail OTP, you must also check the spam folder of your e-mail account.

In case you have still not received one or both the OTPs, please click on Click to Resend OTP option available on the screen. Both the OTPs will be sent again.

Please note, when you generate fresh OTPs, both previous OTPs (mobile as well as e-mail) become invalid.

12. What is a TRN?

TRN or Temporary Reference Number is a unique 15-digit reference number that is generated when you successfully submit all the fields of PART A (first page) of the new registration application and successfully validate your mobile number and e-mail ID by correctly entering the respective OTPs.

Your TRN is sent to you via SMS and e-mail. It is valid for 15 days from the date of creation.

After TRN is generated, note it down and access PART B of your new registration application on the GST Portal in the pre-login mode by entering the TRN.

13. Now that I have generated my TRN, how do I begin filling PART B of my new registration application?

Please go to the New Registration page and select the radio button Temporary Reference Number. Now enter your TRN and click PROCEED. A new page will open where you will have to enter the Mobile OTP and e-mail OTP which will be sent to you when you click PROCEED. Enter the respective OTPs and you will be directed to the landing page of PART B of the New Registration Application (Business Details section).

14. I did not write my TRN or I have forgotten my TRN?

Your TRN is also sent to you via SMS and e-mail.

15. I did not write my TRN and I also deleted the SMS and the e-mail that were sent to me. What do I do now?

In such a case, you will have to fill in all the details in PART A of the Registration Application again. Upon completing the process, a message will be displayed 'You already have a TRN generated <TRN number> with this combination'.

Be sure to save the TRN this time!

16. It has been more than 15 days since I generated a TRN. Can I still access my new registration application?

In such a case, you will have to fill in all the details in PART A of the Registration Application again. Upon completing the process, a message will be displayed 'You already have a TRN generated <TRN number> with this combination'.

17. Does the TRN expire 15 days after I generate it or 15 days after my last login?

The TRN expires 15 days after it is generated regardless of any number of logins by you.

18. I have logged into my new registration application successfully using my TRN, Mobile OTP, and E-mail OTP. What is the next step?

Please click on the blue box with the pencil icon inside it to continue filling your Registration Application.

2) Preparing GSTR 3B – User Manual.

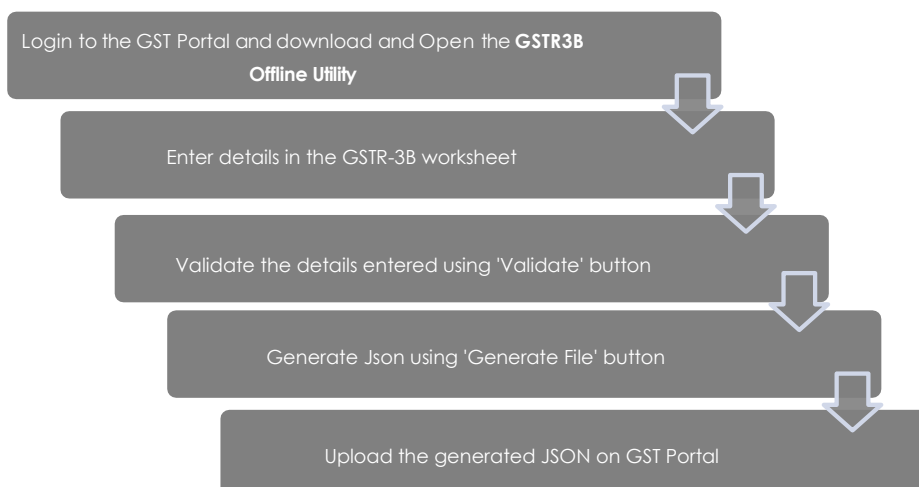
1. GSTR3B Offline Utility: An Overview

The Excel based GSTR-3B Offline Utility is designed to help taxpayer to prepare their GSTR-3B return offline.

Details for following sections of GSTR-3B return can be added by taxpayer using the offline Utility

- o 3.1 Details of Outward Supplies and inward supplies liable to reverse charge
- o 3.2 Of the supplies shown in 3.1 (a) above, details of inter-State supplies made to unregistered persons, composition taxable persons and UIN holders
- o Eligible ITC
- o Values of exempt, nil-rated and non-GST inward supplies
- o 5.1 Interest & late fee payable

Downloading GSTR3B Offline Utility and Uploading GSTR3B details



2. Downloading the GSTR3B Offline Utility

Downloading the GSTR3B Offline Utility is a one-time activity, however, it may require an update in future if the Tool is updated at the GST Portal. Please check the version of the offline utility used by you with the one available for download on the GST Portal at regular intervals.

To download and install the GSTR3B Offline Utility to prepare the GSTR3B return offline, perform the following steps:



You can download the GSTR3B Offline Utility from the Portal without login to the GST Portal.

1. Access the <https://www.gst.gov.in/> URL.
2. The GST Homepage is displayed. Click the Downloads > Offline tools > GSTR3B Offline Utility.

Home	Services ▾	GST Law ▾	Downloads ▾	Search Taxpayer ▾	Help ▾
Offline Tools					
Returns Offline Tool			Tran-1 5(b) CSV template		
GSTR3B Offline Utility			GSTR 4 Offline Tool		



3. The Returns Offline tool page is displayed. Click the Download button.



The download of the GSTR3B Offline Utility usually takes 2-3 minutes to download depending on the Internet speed.

Home Services GST Law Downloads Search Taxpayer Help

Home > Downloads > Returns

GSTR3B Offline Utility

The excel based GSTR3B offline utility is designed to help the taxpayer to prepare the GSTR3B return offline. The utility can be downloaded from this link. [Download](#)

Important!

- Before you extract the downloaded file, ensure that the file is not corrupted. How do I know that my file is not corrupt? Click here to know more.

System Requirement

To use the tool efficiently, ensure that you have the following installed on your system:

- Operating system → Windows 7 or above.
- Microsoft Excel 2007 & above

4. A confirmation message is displayed on the screen. Click the PROCEED button to download the GSTR3B Offline Utility from the GST Portal.

Goods and Services Tax

Home Services GST Law

Tools

GSTR3B Offline Utility

The excel based GSTR3B offline utility is designed to help the taxpayer to prepare the GSTR3B return offline. The utility can be downloaded from this link. [Download](#)

Important!

- Before you extract the downloaded file, ensure that the file is not corrupted. How do I know that my file is not corrupt? Click here to know more.

System Requirement

To use the tool efficiently, ensure that you have the following installed on your system:

- Operating system → Windows 7 or above.
- Microsoft Excel 2007 & above

The Progress update page is displayed in a new browser tab. You can notice that the download is in progress.

5. Browse and select the location where you want to save the downloaded files.



In some machines, depending on your browser settings, the files are downloaded in the folder Downloads on your machine.

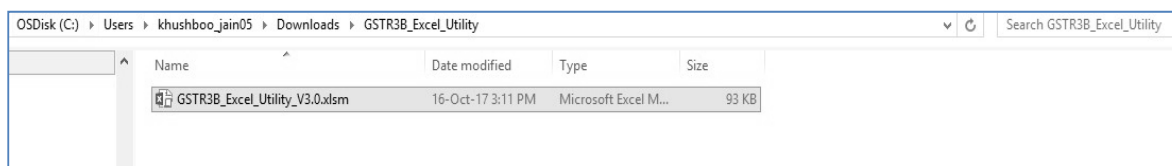
This PC > OS Disk (C:) > Users > khushboo_jain05 > Downloads

Name	Date modified	Type	Size
GSTR3B_Excel_Utility.zip	16-Oct-17 3:08 PM	Compressed (zip...)	88 KB

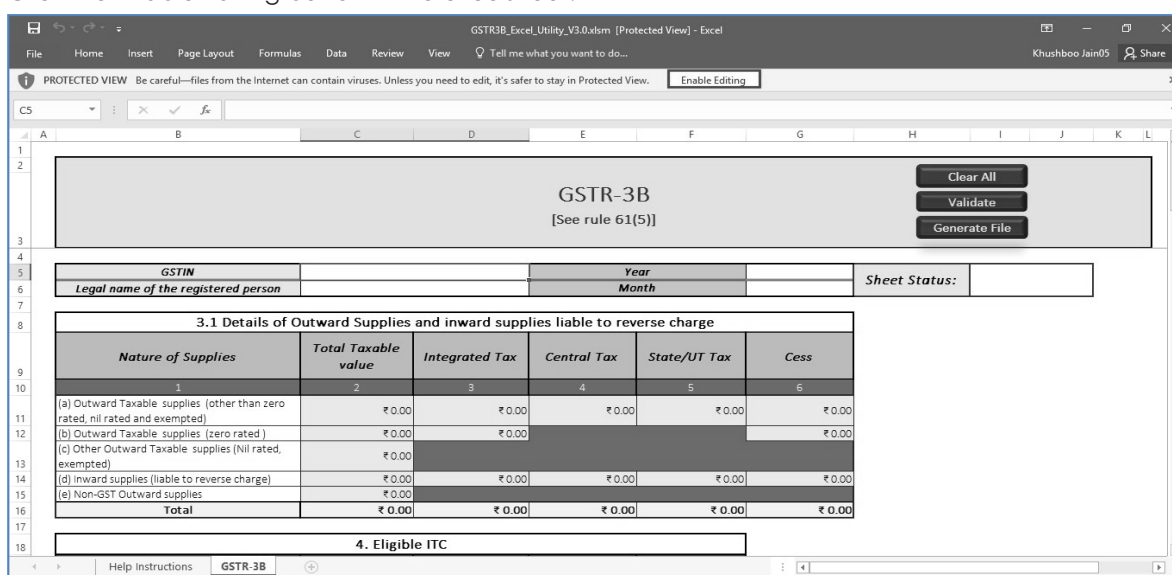
3. Installation of the GSTR3B Offline Utility

Once the download of the GSTR3B Offline Utility is complete, you need to unzip these downloaded files on your machine.

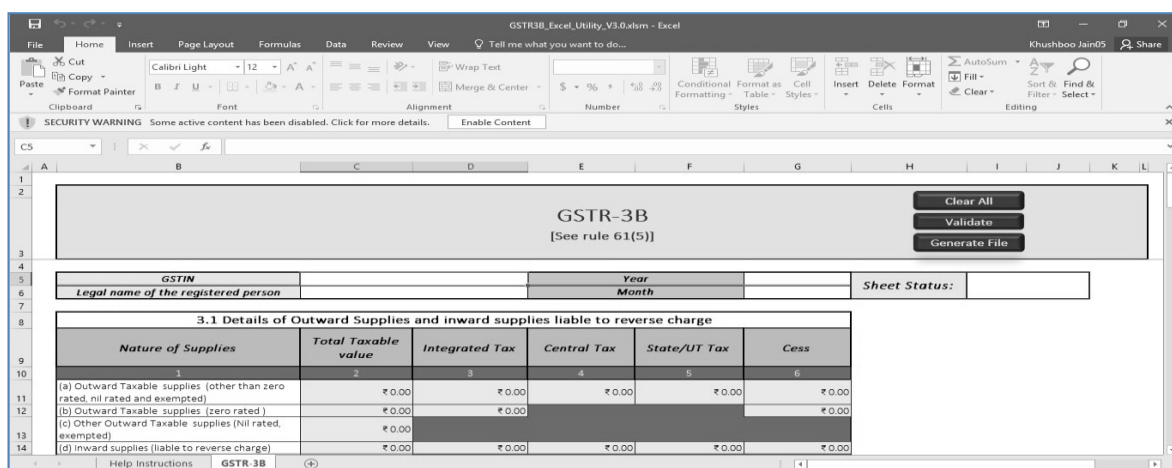
1. Unzip the downloaded files and extract the files from the downloaded zip folder GSTR3_Excel_Utility.zip. Zip folder consists of the GSTR3B_Excel_Utility file as shown in the screenshot below.



2. Double click the GSTR3B_Excel_Utility.
3. Click the Enable Editing button in the excel sheet.



4. Click the Enable Content button in the excel sheet.



For more details regarding various FAQs and User Manual, Training Kit visit "www.gst.gov.in"





CUSTOMS LAW



Study Note - 1

CUSTOMS LAW - BASIC CONCEPTS



This Study Note includes

- 1.1 Introduction
- 1.2 Definitions
- 1.3 Circumstances of Levy
- 1.4 Circumstances under which no Duty will be Levied
- 1.5 Tax Planning vs Tax Management

1.1 INTRODUCTION

Kautiliya's Arthashastra also refers to 'shulka' consisting of import duty and export duty that was collected at the city gates on goods coming in and going out respectively.

Subsequently, the levy of customs duty was organised through legislation during the British period.

Constitutional Provision:

Entry 83 of the Union List of the Seventh Schedule to the Constitution of India is empowered to levy the customs duty by the Central Government of India.

The term customs is not new for us. It was customary for a trader who brings the goods to a particular kingdom to offer gifts to the king for allowing him to sell his goods in that kingdom. The gifts given by the dealer to the king was nothing but a customary practice in those days. In the modern days, these gifts are collected by the Government of India in the form of Customs Duty from the importer who imports the goods from a country outside India and from an exporter who exports the goods to a country outside India.

The Customs Act, was enacted by the Parliament in the year 1962, as per the List I of the Union List Parliament has an exclusive right to make laws. The Customs Act regulates import and export, protecting the Indigenous industry from other countries and so on. The Central Government of India has power to make rules under section 156 of Customs Act, 1962, and also has the power to issue Notifications from time to time for the purpose of smooth functioning and effective administration of the Act.

As per section 157 of the Custom Act, 1962, the Central Board of Excise and Customs (CBE&C), now renamed to Central Board of Indirect Tax and Custos (CBIC) has been empowered to make regulations, consistent with provisions of the Act. The Commissioner of Customs has the power to issue the Public notices which are also called trade notices.

Difference between the Rules and Regulations

Rules	Regulations
(1) Issued by the Government of India	(1) Issued by the CBIC
(2) Has statutory force	(2) Has statutory force
(3) Consistency: Rules have to be consistent with Act	(3) Regulations have to be consistent with Act & Rules

It is important to know the various terms used in the Customs Law to have better understanding of the subject.

1.2 DEFINITIONS

- (1) **Adjudicating Authority:** As per section 2(1) of the Customs Act, 1962, adjudicating authority means any authority competent to pass any order or decision under this Act, but does not include:
 - The Central Board of Excise and Customs (CBIC),
 - Commissioner of Customs (Appeals) or
 - Customs, Excise and Service Tax Appellate Tribunal (CESTAT)
- (2) **Assessment:** As per section 2(2) of the Customs Act, assessment means process of determining the tax liability in accordance with the provisions of the Act, which includes provisional assessment, self assessment, reassessment and any assessment in which the duty assessed is nil.
- (3) **Board:** means As per section 2(6) of the Customs Act, board means the Central Board of Indirect Taxes and Customs constituted under the Central Boards of Revenue Act, 1963.
- (4) **Coastal Goods:** As per section 2(7) of the Customs Act, the term coastal goods means goods, other than imported goods, transported in a vessel from one port in India to another.

Under section 7(1)(d) of the Customs Act, 1962, the Central Board of Indirect Tax and Customs (CBIC), may by notification in the Official Gazette, appoint the ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India.

Example 1:



Chennai Port

Goods originally originated from India



Vizag Port

- (5) **Conveyance:** As per section 2(9) of the Customs Act Defines, 'Conveyance includes a Vessel, an Aircraft and a Vehicle'. The specific terms are vessel (by sea), aircraft (by air) and vehicle (by land).
- (6) **Customs Area:** As per section 2(11) of the Customs Act, customs area means the area of a customs station and includes any area in which imported goods or exported goods are ordinarily kept before clearance by Customs Authorities.

- (6) **Customs port:** As per section 2(12) of the Customs Act, customs port means any port appointed under section 7(a) of the Customs Act, to be a customs port and includes a place appointed under section 7(aa) of the Customs Act, to be an inland container depot (ICD).

Customs Airport under section 7(a) means any airport and includes a place appointed under section 7(aa) (w.e.f. 28-5-2012) to be an air freight station.

Section 7(a): The CBIC may, by notification in the Official Gazette, appoint the ports and air ports which alone shall be customs ports or customs airports for the unloading of imported goods and the loading of export goods or any class of such goods.

Section 7(aa): The places which alone shall be inland container depots (ICD's) for the unloading of imported goods and the loading of export goods or any class of such goods.

- (7) **Customs station:** As per section 2(13) of the Customs Act, customs station means any customs port, customs airport or land customs station.

As per Section 8 of the Customs Act, 1962, the Commissioner of Customs may (i) approve proper places in any customs port or customs airport or coastal port for the unloading of goods or for any class of goods; (ii) specify the limits of any customs area.

As per Section 141 of the Customs Act, 1962, all conveyances and goods in customs area are subject to control of officers of customs for enforcing the provisions of the Customs Act, 1962. The receipt/storage/delivery/dispatch/any other handling of goods (import/export) in the Customs area shall be in the prescribed



manner and the responsibility thereon lies on the persons engaged in such activities (i.e. Custodian of the said goods).

CBIC empowered to permit landing of vessels and aircrafts at any place other than customs port or customs airport [Section 29(1)] w.e.f. 10-5-2013:

The Finance Act, 2013 has amended section 29(1) to empower CBIC to permit landing of vessels and aircrafts at any place other than customs port or customs airport.

- (8) **Dutiable Goods:** As per section 2(14) of the Customs Act, the term is defined to mean any goods which are chargeable to duty and on which duty has not been paid. It means to say that the name of the product or goods should find a mention in the Customs Tariff Act,
- (9) **Entry:** As per section 2(16) of the Customs Act, entry in relation to goods means an entry made in bill of entry, shipping bill or bill of export and includes in the case of goods imported or to be exported by post, the entry referred to in section 82 or the entry made under the regulations made under section 84 of the Customs Act.
- (10) **Export:** As per section 2(18) of the Customs Act, the term export means taking out of India to a place outside India.
- (11) **Exported Goods:** As per section 2(19) of the Customs Act, the term exported goods means any goods, which are to be taken out of India to a place outside India.

Example 2:

The vessel sunk within territorial waters of India and therefore there is no export. Accordingly, no duty drawback shall be available in this case. [Union of India v Rajindra Dyeing & Printing Mills Ltd. 2005 (180) ELT 433 (SC)]. The territorial waters extend to 12 nautical miles into the sea from the base line.

- (12) **Foreign going Vessel or aircraft:** As per section 2(21) of the Customs Act, the foreign going vessel or aircraft means any vessel or aircraft for the time being in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not. The following are also included in the definition:
 - (i) A foreign naval vessel doing naval exercises in Indian waters
 - (ii) A vessel engaged in fishing or any other operation (like oil drilling by domestic vessel or foreign vessel) outside territorial waters
 - (iii) A vessel going to a place outside India for any purpose whatsoever.

Example 3:

A ONGC vessel and a vessel owned by A Ltd. of USA are drilling oil beyond 12 nautical miles in the sea. Hence, both the vessels are called as foreign going vessels.

- (13) **Goods:** As per section 2(22) of the Customs Act, the term goods includes
 - (a) Vessels, aircrafts and vehicles
 - (b) stores
 - (c) baggage
 - (d) currency and negotiable instruments and
 - (e) any other kind of movable property.

Case Law 1:

RST Ltd. imported drawings and designs in paper form through professional courier and post parcels.

However, the Assistant Commissioner of Customs valued these drawings and designs and levied duty on them.

RST Ltd. Contended that customs duty cannot be levied on drawings and designs as they do not fall in the definition of goods under the Customs Act, 1962.

Do you feel the stand taken by the RST Ltd. is tenable in law? Support your answer with a decided case law, if any.



Answer:

Associated Cement Companies Ltd. v CC 2001 (128) ELT 21 (SC)

The Apex Court observed that though technical advice or information technology are intangible assets, but the moment they are put on a media, whether paper or cassettes or diskettes or any other thing, they become movable and are thus, goods.

Therefore, the Supreme Court held that drawings, designs, manuals and technical material are goods liable to customs duty.

Therefore, the stand taken by the RST Ltd. is not correct in law.

(14) Import: As per the section 2(23) of the Customs Act, the term import means bringing into India from a place outside India.

(15) Imported Goods: As per section 2(25) of the Customs Act, the term imported goods means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.

(16) Importer: As per section 2(26) of the Customs Act, the term importer means in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer.

(17) India: As per section 2(27) of the Customs Act, "India includes the territorial waters of India". The term India is an inclusive definition and includes not only the land mass of India but also territorial waters of India. The territorial waters extend to 12 nautical miles into the sea from the base line. Therefore, a vessel not intended to deliver goods should not enter these waters. [1 Nautical Mile = 1.852 Km or 1852 M]

(18) Indian Customs Waters: As per section 2(28) of the Customs Act, the term Indian Customs Waters - means the waters extending into the sea up to the limit of Exclusive Economic Zone under section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 and includes any bay, gulf, harbour, creek or tidal river India includes the surface of sea in the territorial waters, air space above and the ground at the bottom of the sea.

Continental Shelf means the area of relatively shallow seabed between the shore of a continent and deeper ocean

(19) Indian Customs Waters extend up to 200 nautical miles from the base line. Thereby, Indian Customs Waters cover both the Indian Territorial Waters and Exclusive Economic Zone as well. Indian Territorial Waters extend up to 12 nautical miles from the base line whereas Exclusive Economic Zone extend upto 200 nautical miles from the base line.

Example 4:

If the proper officer of customs has reason to believe that any vessel in Indian Customs waters is being used in the smuggling of any goods, he may at any time stop any such vessel and examine and search any goods in the vessel (Section 106(1)(b) of the Customs Act, 1962).

(19) Stores: As per section 2(38) of the Customs Act, stores means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting.

Case Law 2:

A Big Ship carrying merchandize and stores enters the territorial waters of India but it cannot enter the port. In order to unload the merchandize lighter ships are employed. Stores are consumed on board the ship as well as by the small ships. Examine whether such consumption of stores attracts customs duty. Quote relevant section and case law if any. Stores are supplied to the above ships. Will such supplies be treated as exports and be entitled to draw back? (CMA Final Dec 2013)

Answer: Bringing of 'stores' is treated as import. However, there is special provision for stores under section 87. Imported stores consumed on board an ocean going vessel (i.e. foreign going vessel) are exempt from import duty under Section 87. Since the ship is ocean going, stores consumed on board will not attract customs duty.

Regarding the smaller ships which are employed to unload the cargo from the mother ship, they are termed as "Transhippers". These are also treated as ocean going vessels as was decided in **UOI v V M Salgaoncar AIR 1998 SC1367: 99 ELT 3 (SC)**.

Hence stores consumed by small vessels would also be exempt from customs duty.

Stores supplied to the vessel will be treated as export as per Section 89 of Customs Act and hence will be eligible



for duty drawback.

(20) Person-in-charge: As per section 2(31) person-in-charge means

(a) Vessel	Master
(b) Aircraft	Commander or Pilot in Charge
(c) Train	Conductor or Guard
(d) Vehicle	Driver
(e) Other Conveyance	Person in Charge

(21) Bill of Export: As per Section 2(5) of the Customs Act, 1962, the exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported by land, a bill of export in the prescribed form.

(22) Import Report: As per Section 2(24) of the Customs Act, 1962, the person-in-charge of a vehicle carrying imported goods or any other person as may be notified by the Central Government shall, in the case of a vehicle, deliver to the proper officer an import report within twelve hours after its arrival in the customs station, in the prescribed form.

As per Finance Act, Import Manifest Report – Amendment to IGM – Procedure:-

On receipt of representation from the Trade that owing to tedious process of IGM amendment, there is reluctance to avail the facility of advance/prior Bill of Entry, the Department of Revenue prescribing revised procedure has clarified that the responsibility of amendment in the IGM rest solely with Shipping Line/ Agent, as they file IGM with Customs under section 30 of the Customs Act, 1962, the fine/penalty impose, if any, upon adjudication in such cases, shall be payable by the Shipping Line only or such other person as specified; No fine/penalty is required to be imposed on the consignee or otherwise; and No request for any amendment in the IGM from Customs Broker/ Importer will be entertained (M.F circular No. 14/2017-Cus, dated 11-4-2017).

In case of vessel or air craft person-in-charge, deliver to the proper officer import general manifest (electronic filing mandatory w.e.f. 10-5-2013)

(23) Notification: As per Section 2(30AA) of the Customs Act, 1962, notification means notification published in the Official Gazette and the expression “notify” with its cognate meaning and grammatical variation shall be construed accordingly

(24) Tariff Value: The CBIC has the power to fix tariff values for any class of imported goods or exported goods. Fixing the tariff value for any class of imported goods or exported goods means the duty shall be chargeable with reference to such tariff value. (For example, please refer the duty based on the % of tariff value under Central Excise). [Section 2(40) of Customs Act, 1962]

(25) High Seas: An area beyond 200 nautical miles from the base line is called High Seas. All countries have equal rights in this area.

(26) Exclusive Economic Zone: Exclusive Economic Zone extends to 200 nautical miles from the base line. In this zone, the coastal State has exclusive rights to exploit it for economic purpose like constructing artificial islands for oil exploration, power generation and so on.

Note: one nautical mile = 1.1515miles or 1.853kms.

(27) Domestic Tariff Area means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the Special Economic Zones (Section 2(i) of Special Economic Zones Act, 2005), 100% Export Oriented Units (EOUs)/Electronic Hardware Technology Park (EHTP)/Software Technology Park (STP)/ Bio Technology Park (BTP).

Case Law 3:

Goods cleared from unit of DTA to Special Economic Zone (SEZ) chargeable to duty under the SEZ Act, 2005 or the Customs Act, 1962?

Answer: Tirupati Udyog Ltd. v UOI 2011 (272) ELT 209 (AP)

Decision: Customs duty can be levied only on goods imported into or exported beyond the territorial waters of India, section 12(1) of the Customs Act, 1962 (i.e. charging section) is not attracted for supplies made by a DTA unit



to a unit located within the Special Economic Zone.

Therefore, goods cleared from DTA to SEZ is not liable to export duty either under SEZ Act, 2005 or under the Customs Act, 1962.

- (27) Customs Act, 1962 and Customs Tariff Act, 1975 have been extended to whole of Exclusive Economic Zone (EEZ) and Continental Shelf of India for the purpose of (i) processing for extraction or production of mineral oils and (ii) Supply of any goods in connection with processing for extraction or production of mineral oils.

Example: 5

Goods imported by the assessee for consumption on oil rigs which are situated in Continental Shelf/ Exclusive Economic Zones of India, are deemed to be a part of Indian Territory. Therefore, the supply of imported spares or goods or equipments to the rigs by a ship will attract import duty. [Aban Lloyd Chilies Offshore Ltd. v UOI (2008) 227 ELT 24 (SC)]

- (28) **Prohibited goods:** means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

Example 6:

Pornographic and obscene materials, Maps and literature where Indian external boundaries have been shown incorrectly, Narcotic Drugs and Psychotropic Substances, Counterfeit goods and goods violating any of the legally enforceable intellectual property right, Chemicals mentioned in Schedule 1 to the Chemical Weapons Convention of U.N. 1993, Wild life products, Specified Live birds and animals, Wild animals, their parts and products, Exotic birds except a few specified ones, Beef, tallow, fat/oil of animal origin. Specified Sea-shells, Human skeleton.

w.e.f. 10-5-2013: Clause (n) of section 11(2) provided that importation/exportation of goods may be prohibited for the protection of patents, trademarks and copyrights.

The Finance Act, 2013 has expanded the scope of clause (n) to include designs and geographical indications so as to provide for protection of these legal rights also. Consequently, Central Government can now prohibit the import/export of specified goods for protection of designs and geographical indications also apart from patents, trademarks and copyrights.

1.3 CIRCUMSTANCES OF LEVY

Section 12 of the Customs Act makes it clear that import or export of goods into or out of India is the taxable event for payment of the duty of customs. Lot of problems were faced in determining the point at which the importation or exportation takes place. The root cause of the problem was the definition of India.

The Supreme Court of India has given the landmark judgments in cases of *Union of India v Apar Industries Ltd* (1999) and further in the case of *Garden Silk Mills Ltd v Union of India* (1999). The import of goods will commence when they cross the territorial waters but continues and is completed when they become part of the mass of goods within the country, and the taxable event being reached at the time when goods reach the customs barriers and bill of entry for home consumption is filed.

Taxable event for imported goods

In the case of *Kiran Spinning Mills* (1999) the Hon'ble Supreme Court of India held that import is completed only when goods cross the customs barrier. The taxable event is the day of crossing of customs barrier and not on the date when goods landed in India or had entered territorial waters of India.

Hence, taxable event in case of imported goods can be summed up in the following lines:

The taxable event occurs in the course of imports under the customs law with reference to the principles laid down by the Supreme Court in the cases of **Garden Silk Mills Ltd.**

Crossing customs barrier:

when goods are imported into India even after the goods are unloaded from the ship, and even after the goods are assessed to duty subsequent to the filing of a bill of entry, the goods cannot be regarded as having crossed the customs barrier until the duty is paid and the goods are brought out of the limits of the customs station.

v Union of India; and Kiran Spinning Mills v CC:

- (i) Unloading of imported goods at the customs port – **is not a taxable event**
- (ii) Date of entry into Indian territorial waters – **is not a taxable event**
- (iii) **Date on which the goods cross the customs barrier - is a taxable event**
- (iv) Date of presentation of bill of entry – **is not a taxable event**

No time limit for submission of bill of entry after the delivery of Import General Manifest (IGM):

As per Section 46(3) of the Customs Act, 1962 a bill of entry may be presented at any time after the delivery of import manifest or import report. Therefore, no time limit has been fixed for submission of bill of entry. Hence, no penalty can be imposed if there is delay in submission of Bill of Entry. However, cargo should be cleared from the wharf within 30 days of unloading.

W.e.f. 31-3-2017 Finance Act, 2017 Section 46 amended: Submission of Bill of entry:

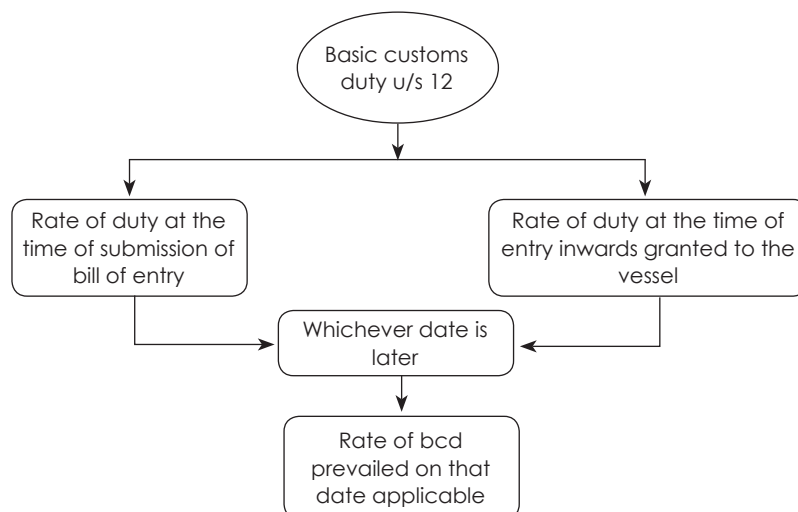
The importer shall presented the bill of entry under section 46(1) of the Customs Act, 1962 before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or for warehousing.

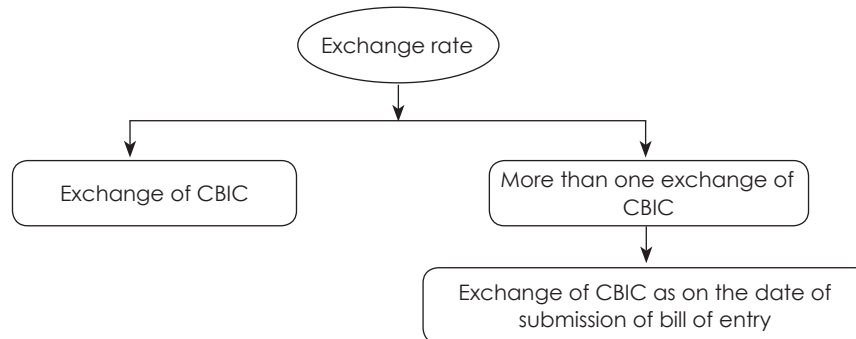
Provided that a bill of entry may be presented within 30 days of the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India.

Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for the late presentation of the bill of entry as may be prescribed.

Note: Bill of entry may be allowed to present 30 days before the entry inward granted to the vessel.

W.E.F. 6-8-2014 The first proviso to section 46(3) has now been omitted and second proviso amended to lay down that a bill of entry may be presented before the delivery of import manifest (import through vessel or aircraft) or import report (import through land route) if the vessel/aircraft/vehicle by which the goods have been shipped for importation into India is expected to arrive within 30 days from the date of such presentation.

Basic Customs Duty (BCD) on imported goods

**Exchange rate for Imported Goods****Clearance of goods for home consumption [section 47 (1) of the Customs Act, 1962]**

w.e.f. 14-5-2016, Section 47(1) Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption:

Provided that the Central Government may, by notification in the Official Gazette, permit certain class of importers to make deferred payment of said duty [i.e. duty payable under sec. 47(1)] or any charges in such manner as may be provided by rules (w.e.f. 14-5-2016).

w.e.f. 31-3-2017 Finance Act, 2017 section 47(2) amended:

Importer shall have to make payment of duty on the same day in case of self-assessed Bill of Entry and in case of re-assessment or provisional assessment, within one day after the return of Bill of Entry.

As per section 47(2) of Customs Act, the importer is liable to pay interest where –

- the importer fails to pay the import duty under this section on the same day in case of self-assessed Bill of Entry and in case of re-assessment or provisional assessment, within one day after the return of Bill of Entry from the date on which the bill of entry is returned to him for payment of duty, he shall pay interest @ 15% p.a. on such duty till the date of payment of the said duty.
- w.e.f. 14-5-2016: in the case of deferred payment under the proviso to sub-section (1), from such due date as may be specified by rules made in this behalf, he shall pay interest @15% p.a. on the duty not paid or short-paid till the date of its payment.

Note: if the CBIC satisfied that it is necessary in the public interest so to do, it may, by order for reasons to be recorded, waive the whole or part of any interest payable under this section.

Example 7:

An importer imported some goods for subsequent sale in India at \$ 10,000 on Assessable value basis. Relevant exchange rate and rate of duty are as follows:

Particulars	Date	Exchange rate declared by the CBIC	Rate of Basic Customs Duty
Date of submission of bill of entry	25th February 2018	₹ 58/USD	10%
Date of entry inwards granted to the vessel	5th March 2018	₹ 58.75/USD	12%

Calculate Assessable value and Customs Duty in Indian rupees?

**Answer:**

Relevant rate of duty for the imported goods is 12% (i.e. Date of submission of bill of entry or Date of entry inwards granted to the vessel whichever is latter)

Exchange Rate is ₹ 58 per USD (i.e. the rate of CBIC as on the date of submission of Bill of Entry by the importer)

Assessable value = ₹ 5,80,000 (i.e. USD 10,000 × ₹ 58)

Basic Customs Duty = ₹ 69,600 (i.e. ₹ 5,80,000 × 12%)

2% Education cess = ₹ 1,392 (i.e. ₹ 69,600 × 2%)

1% SAH education cess = ₹ 696 (i.e. ₹ 69,600 × 1%)

Total Customs Duty = ₹ 71,688

Taxable event for warehoused goods

The taxable event in case of warehoused goods is when goods are cleared from customs bonded warehouse, by submitting sub-bill of entry. As per Section 15(1)(b) of the Customs Act, 1962, when goods have been deposited into a warehouse, and they are removed there from for home consumption, the relevant date for determination of rate of duty is the date of presentation of ex-bond bill of entry (i.e. Sub-bill of Entry) for home consumption.

Section 15(1) has been amended to provide for determination of rate of duty and tariff valuation for imports through a vehicle in cases where the bill of entry is filed prior to the delivery of import report. The proviso to section 15(1) has been amended to lay down that if a bill of entry has been presented before the date of arrival of the vehicle by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such arrival. Therefore, under the amended provisions, the relevant date for determination of rate of duty and tariff valuation of imported goods in different cases will be as under:

Particulars	Relevant date w.e.f. 6-8-2014
Goods entered for home consumption under section 46	Date of presentation of bill of entry OR Date of entry inwards of the vessel/arrival of the aircraft or vehicle whichever is later
Goods cleared from a warehouse under section 68	Date of presentation of bill of entry for home consumption
Other goods	Date of payment of duty

Example 8:

An importer imported some goods. Entry inwards granted to the vessel on 7th February, and the goods were cleared from Chennai port for warehousing on 8th February, after assessment. The Bill of Entry was presented on 1st February for warehousing. Assessable value was US \$ 10,000. Assume that no additional duty is payable. The goods were warehoused at Chennai and were cleared from Chennai warehouse on 4th March. What is the duty payable while removing the goods from Chennai warehouse on 4th March? Exchange rates and rate of Customs Duties are as follows:

Particulars	Date	Exchange rate declared by the CBIC	Basic Customs Duty
Date of submission of bill of entry for warehousing	1st February	₹ 55/USD	10%
Date of entry inwards granted to the vessel	7th February	₹ 59/USD	15%
Date of clearance of goods from warehouse	4th March	₹ 60/USD	12%

**Answer:**

Relevant rate of duty for the imported goods warehoused is 12% (i.e. Date of submission of sub-bill of entry)

Exchange Rate is ₹ 55 per USD (i.e. the rate of CBIC as on the date of submission of Bill of Entry by the importer)

Assessable value = ₹ 5,50,000 (i.e. USD 10,000 × ₹ 55)

Basic Customs Duty = ₹ 66,000 (i.e. ₹ 5,50,000 × 12%)

2% Education cess = ₹ 1,320 (i.e. ₹ 66,000 × 2%)

1% SAH education cess = ₹ 660 (i.e. ₹ 66,000 × 1%)

Total Customs Duty = ₹ 67,980

Taxable event for exported goods

As per section 16(1) of the Customs Act, 1962, taxable event arises only when proper officer makes an order permitting clearance (i.e. entry outwards) granted — **Esajee Tayabally Kapasi (1995)(SC)** and loading of the goods for exportation took place under Section 51 of the Customs Act, 1962. In the case of any other goods, on the date of payment of duty.

Therefore, export duty rate prevailing as on the date of entry outwards granted to the vessel by the Customs Officer is relevant.

Example 9:

An assessee submitted the shipping bill on 1st January 2014. At that time the export duty was nil (i.e. duty free). Let export order (i.e. entry outwards) was granted on 5th January 2014. However, due to some problems goods could not be loaded into ship. On 25th March 2014, the shipping bills were voluntarily resubmitted by the assessee with the request to permit the shipment by a different vessel. Subsequently, on 27th March 2014, let export order was granted. However, in the mean time the duty at the rate of 12% ad valorem was levied with effect from 1st March 2014. Examine, whether exporter is liable to pay duty?

Answer:

In the given case actual export took place only after revised shipping bill was submitted on 25th March 2014, for which entry outwards granted on 27th March, 2014. Hence, the rate prevalent as on the date of entry outwards granted to the vessel is relevant for determination of rate of duty. Therefore, assessee is liable to pay export duty @12%.

Rate of foreign exchange: In case of exports, rate of exchange of the CEBC as in force on the date on which a shipping bill or bill of export, as the case may be, is presented under Sec. 50 of the Customs Act, 1962 is applicable.

FOB Value of exports:

FOB value is normally considered as 'value' for export valuation. However, this can be rejected if there is over valuation (often done to get excess export benefits).

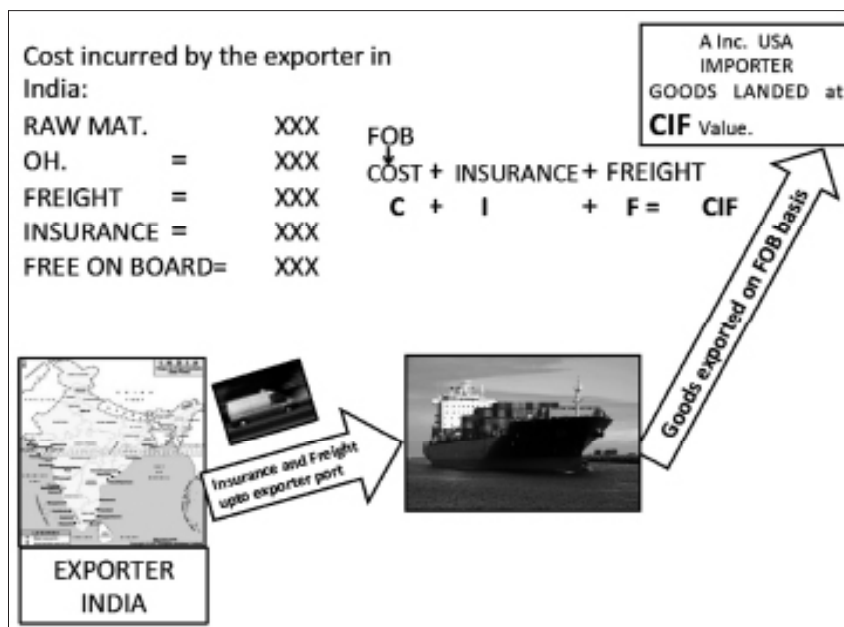
Assessable Value (for Exported Goods) = Free on Board (i.e. FOB)

Free on Board (FOB): FOB means all expenditure incurred by exporter upto the point of loading goods into the vessel or aircraft or vehicle is incurred by the exporter and hence, from importer point of view it is Free on Board.

Cost Insurance and Freight (CIF): CIF means once the goods are reached to the importer country port or air port importer has to pay Cost (i.e. FOB value) along with Insurance and Freight from exporter country to importer country.

Important point: As per our Foreign Trade Policy (2015-2020) all imports into India are measured in terms of CIF value whereas exports from India are measured in terms of FOB value.

Simplified approach:



Example 10:

Compute export duty from the following data:

- (i) FOB price of goods: US \$ 1,00,000
- (ii) Shipping bill presented electronically on 28-02-2018
- (iii) Proper officer passed order permitting clearance and loading of goods for export on 01-03-2018.
- (iv) Rate of exchange and rate of export duty are as under

	Rate of Exchange	Rate of Export
Duty		
On 28-02-2018	1 US \$ = ₹65	10%
On 01-03-2018	1 US \$ = ₹66	8%

- (v) Rate of exchange is notified for export by Central Board of Excise and Customs (Make suitable assumptions wherever required and show the workings)

Answer:

Particulars	Value in ₹	Remarks
FOB	65,00,000	1,00,000 × ₹65
Customs Duty	5,20,000	₹65 lakhs × 8%

Note: Export duty does not carry cess 2% + 1%.

Exchange rate for export of goods is the rate of CEBC at the time of submission of shipping bill.

Rate of duty for export is the date on which entry outward granted for export and loading of goods taken place.

**Example 11:**

An Exporter exported goods valuing ₹ 1,00,000 to United States of America (USA) by a vessel. Other details are as follows:

Particulars	Date of submission	Rate of export duty
Shipping Bill	1.8.2017	10%
Entry outwards granted to the vessel by the proper officer of Customs	5.8.2017	8%
Ship let for USA from the Indian port	7.8.2017	15%
Ship crossed the territorial waters of India	8.8.2017	12%

You are required to find the customs duty payable for exported goods?

Answer:

Customs Duty = ₹ 8,000 (i.e. ₹ 1,00,000 × 8%)

Note:

- (i) As per section 16(1) of the Customs Act, 1962, taxable event arises only when proper officer makes an order permitting clearance (i.e. entry outwards) granted - Esajee Tayabally Kapasi (1995)(SC). Therefore, relevant rate is 8%**
- (ii) Export duties do not carry 2% education cess and 1% SAH education cess.**

As per CBIC **Circular No. 18/2008-Cus, dated 10th November, 2008:**

with effect from 1st January, 2009, it is proposed that for the purposes of calculation of export duty, the transaction value, that is to say the price actually paid or payable for the goods for delivery at the time and place of exportation under section 14 of Customs Act 1962, shall be the FOB price of such goods at the time and place of exportation.

For example if the transaction is at ₹ 100 FOB, and the duty is 15%, the export duty will be 15% of FOB price that is ₹15. In case the transaction is on CIF basis, the FOB price may be deduced from the CIF value, and then the export duty is calculated as 15% of such FOB price.

Note: Export duties do not carry any cess.

Entry Inwards to the vessel

The Master of the vessel is not to permit the unloading of any imported goods until an order has been given by the proper officer granting Entry Inwards of such vessel. Normally, Entry Inwards is granted only after the import manifest has been delivered. This entry inward date is crucial for determining the rate of duty, as provided in section 15 of the Customs Act, 1962. Unloading of certain items like accompanied baggage, mail bags, animals, perishables and hazardous goods are exempted from this stipulation.

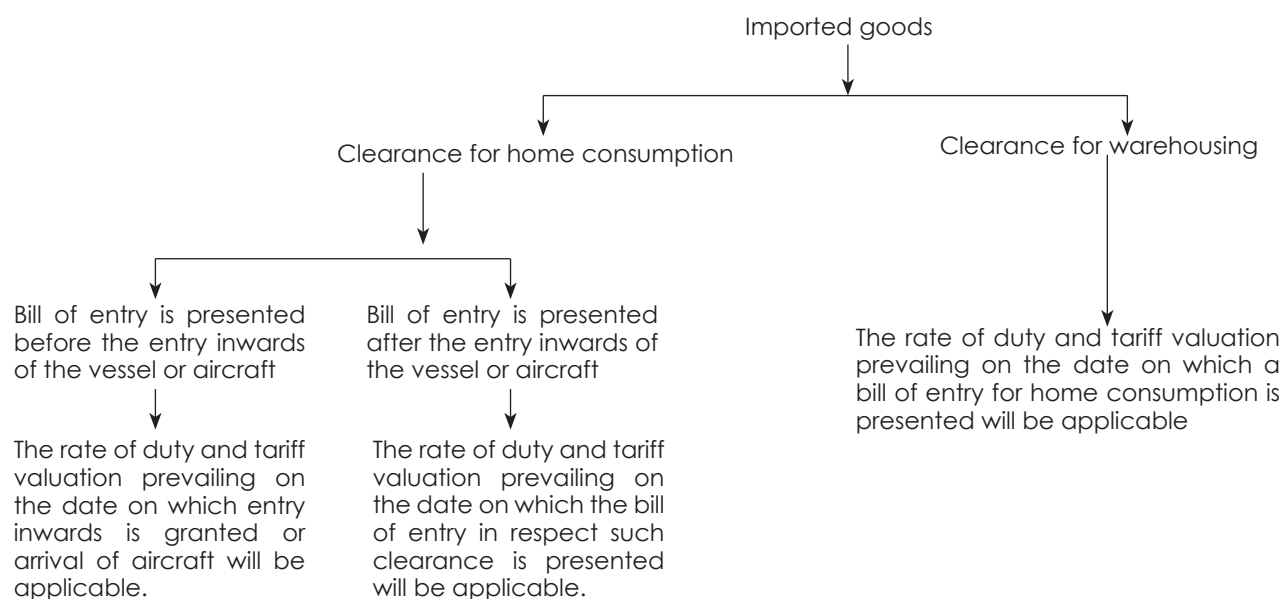
Entry outwards to the vessel

The vessel should be granted 'Entry Outward'. Loading can start only after entry outward is granted under section 39 of Customs Act, 1962. Steamer Agents can file 'application for entry outwards' 14 days in advance so that intending exporters can start submitting 'Shipping Bills'. This ensures that formalities are completed as quickly as possible and loading in ship starts quickly.

If the shipping bill has been presented before the date of entry outwards of the vessel by which the goods are to be exported, the shipping bill shall be deemed to have been presented on the date of such entry outwards. The provisions of this section shall not apply to baggage and goods exported by post.

Rate of duty and tariff valuation for imported goods

Date for determining the rate of duty and tariff valuation of imported goods will depend upon the imported goods cleared for home consumption and cleared for warehousing. The determination of appropriate rate of duty can be explained with the help of the following example:



Note: The applicable exchange rate is the rate declared by the CBIC on the date of submission of Bill of Entry. If more than one exchange of CBIC is available then consider the exchange rate which was prevailed as on the date of submission of Bill of Entry.

1.4 CIRCUMSTANCES UNDER WHICH NO DUTY WILL BE LEVIED

- (1) No duty will be levied on pilfered goods under section 13 of the Customs Act. If any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a ware house, then the importer shall not be liable to pay the duty leviable on such goods.
- (2) No duty will be levied when the goods are damaged or deteriorated before or during the course of their unloading, where it is shown to the satisfaction of the Assistant or Deputy Commissioner of Customs (Section 22).
- (3) No duty will be levied in case of warehoused goods, when the goods are damaged before their actual clearance from such warehouse, where it is shown to the satisfaction of the Assistant or Deputy Commissioner of Customs (Section 22).
- (4) No duty will be levied in case of goods lost or destroyed due to natural causes like fire, flood, etc. such loss may take place at any time before the clearance of goods for home consumption. The loss may be at the warehouse (Section 22).
- (5) No duty will be levied in case of goods abandoned by importers. Sometimes it may so happen that importer is unwilling or unable to take delivery of the imported goods due to the following reasons:
 - the said goods may not be according to the specification,
 - the goods may have been damaged during voyage,
 - there might have been breach of contract.

In all the above cases the importer has to relinquish his title to the goods unconditionally and abandon them. The relinquishment is done by endorsing the document of title to the goods in favour of the Commissioner of Customs along with invoice.

- (6) No duty will be levied, if the Central Government is satisfied that it is necessary in the public interest not to levy import duty by issuing the notification in the Official Gazette.



Transit of Goods (Section 53 of the Customs Act, 1962)

Any goods imported in any conveyance will be allowed to remain on the conveyance and to be transited without payment of duty, to any place out of India or any customs station.

Conveyance, includes a vessel, an aircraft and a vehicle

These goods should be mentioned as Transit Goods in the Import General Manifest (IGM). They are allowed by customs to be transited through Indian port without payment of duty.

However, Section 53 is not applicable in case of prohibited goods. It means to say transit of goods does not cover prohibited goods, which will not be allowed to be transited.

w.e.f. 14-5-2016:

Subject to the provisions of section 11 (i.e. power to prohibit importation or exportation of goods), where any goods imported in a conveyance and mentioned in the import manifest or the import report, as the case may be, as for transit in the same conveyance to any place outside India or to any customs station, **the proper officer** may allow the goods and the conveyance to transit without payment of duty, subject to such conditions, as may be prescribed.

Example 12:

A vessel Bhishma, sailing from U.S.A. to Australia via India. Bhishma carries various types of goods namely 'A, B, C & D'. 'A & B' are destined to Mumbai Port and balance remains in the same vessel. Subsequently vessel chartered to Australia.

Find the imported goods and transit goods?

Answer:

Imported Goods are A & B

Transit goods are C & D

The same example has been explained with the help of a diagram.



Ship at U.S.A. Port



Ship arrived at Mumbai Port
Goods 'A & B' unloaded



Ship arrived at Australian Port
Goods 'C & D' unloaded

Transshipment of Goods (Section 54 of the Customs Act, 1962)

Transshipment means transfer from one conveyance to another with or without payment of duty. It means to say that goods originally imported from outside India into India, then transhipped to another vessel to a place within India or outside India.



If the imported goods are intended for transshipment, a **'bill of transshipment'** shall be presented to the proper officer by the person-in-charge of conveyance or the person authorized by the exporter to transship along with a fee of ₹ 20 and also a bond.

If the transhipped goods are covered by an international treaty or a bilateral agreement between India and another country then a **'Declaration of Transshipment'** will be presented in the place of Bill of Transshipment.

Transshipment of goods without payment of duty under Section 54(3):

Transshipment of goods without payment of import duty is permissible only if the following conditions satisfy:

- Transshipment of goods with foreign destination
- The goods find place as Transshipment Goods in the Import of General Manifest (IGM) or Import Report in case of goods imported in a vehicle
- Bill of Transshipment or Declaration of Transshipment filed.
- Goods must be transhipped to another vessel to place outside India.

Duty on Transit or Transshipment of goods (Section 55 of the Customs Act, 1956)

Where any goods are allowed to be transited or transhipped, they shall, on their arrival at such station, be liable to duty and shall be entered in like manner as goods are entered on the first importation thereof and the provisions of this act and any rules and regulations shall, so far as may be, apply in relation to such goods.

If the goods arrive at such customs station in India as ultimate destination, then

- these goods are examined and assessed to pay duty,
- they shall be entered in the like manner as the goods are entered on the first importation and
- they are governed by the Customs Act, 1962 and the rules and regulations thereunder are same as applicable to any imported goods.

Example 13:

A vessel Bhishma, sailing from U.S.A to Australia via,, India carries various types of products namely 'A, B, C & D'. 'A & B' are destined to Mumbai Port. On account of submission of bill of transshipment product 'A' transhipped to Chennai port as ultimate destination in India and product 'B' transhipped to Srilanka.

Find the imported goods, Transshipment goods and transit goods?

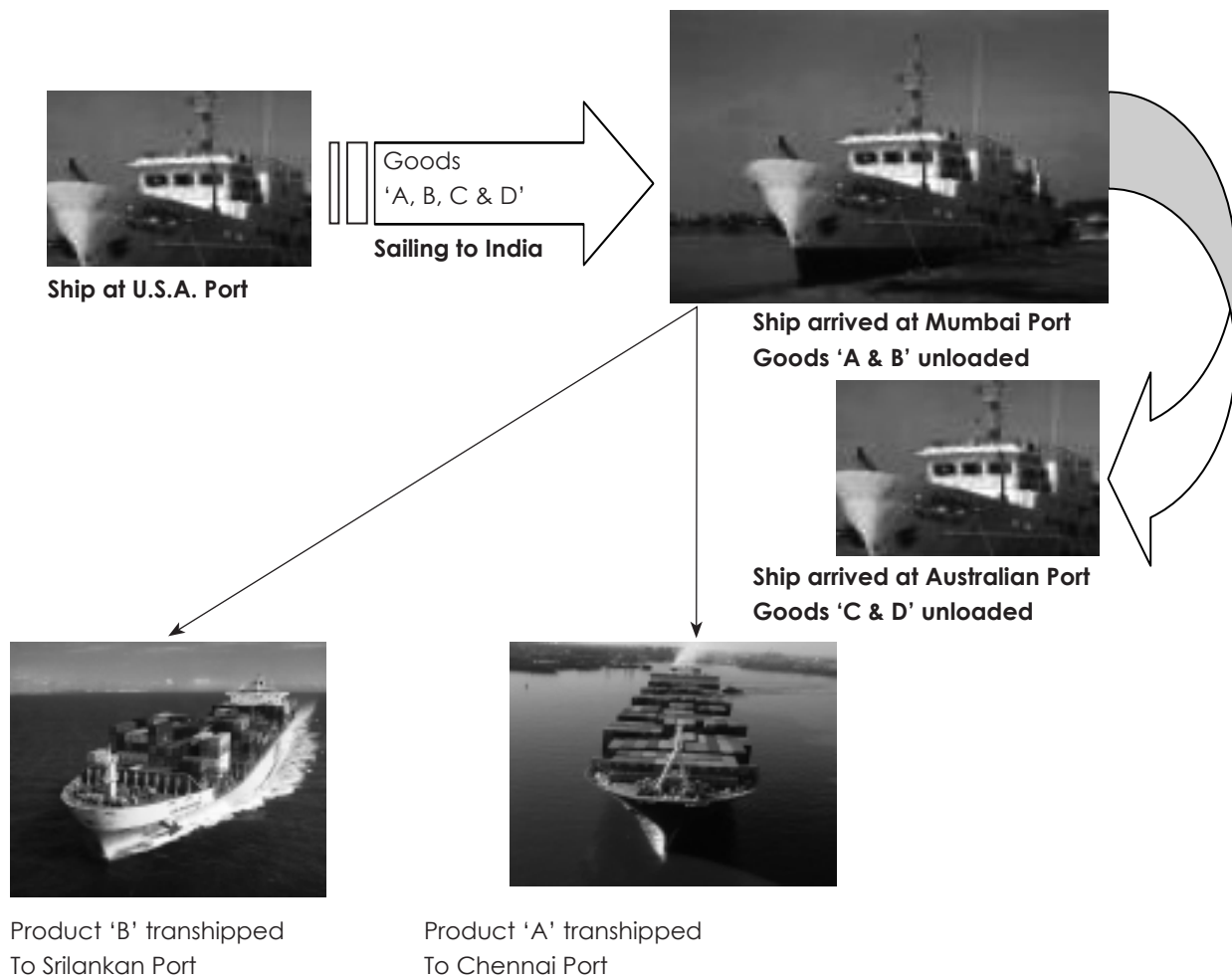
Answer:

Product 'A' is imported goods because its ultimate destination is in India.

Products 'A & B' are called as Transshipment goods, since these goods are transhipped to another vessel, Product 'A' transhipped to Chennai attracts import duty whereas product 'B' is destined to Srilanka without payment of duty.

Products C & D are transit goods since these goods remains in the same vessel Bhishma chartered to Australia.

The same example has been explained with the help of a diagram.



Pilferage: Section 13 of the Customs Act, 1962

- Pilferage means loss arising out of theft.
- No duty is payable under section 13, if the goods are pilfered
- Goods must have been pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse
- If the duty is paid before finding the pilferage, refund can be claimed if goods are found to be pilfered during examination but before order for clearance is made.
- Section 13 does not apply for the warehoused goods.

w.e.f. 10-5-2013, there shall be no duty liability on a sample of goods consumed/destroyed during the course of testing/examination.

Important points:

- If goods are pilfered after the order of clearance is made but before the goods are actually cleared, section 13 is not applicable and thus, duty would be leviable.
- Section 13 deals with only pilferage. It does not deal with loss/destruction of goods.
- Provisions of section 13 would not apply if it can be shown that pilferage took place prior to the unloading of goods.
- In case of pilferage, only section 13 applies and remission of duty under section 23(1) is not permissible.

**Example 14:**

If goods are pilfered after the order of clearance is made but before the goods are actually cleared, duty would be leviable?

Answer:

Yes. Importer has to pay duty.

Note: refund can be claimed

Example 15:

Provisions of section 13 would apply if it can be shown that pilferage took place prior to the unloading of goods?

Answer:

Section 13 would not apply in the given case.

The pilferage should have occurred after the goods are unloaded, but before the proper officer makes the order of clearance.

Remission of Duty on Loss, Destroyed or Abandoned goods: Section 23 of the Customs Act, 1962

- Section 23(1) of Customs Act provides for remission of duty on imported goods lost (other than pilferage) or destroyed, if such loss or destruction is at any time before clearance for home consumption.
- Burden of proof is on importer to prove loss or destruction under section 23
- Loss or destruction may be due to fire, accident etc, but not pilferage
- Section 23(2) provides that at any time before an order for clearance of goods for home consumption or order for permitting warehousing has been made, the owner of the goods may relinquish his title to the goods and thereupon no duty shall be levied.
- However, relinquishment of title of goods will not be permissible if offence appears to have been committed in respect of such goods under Customs Act or any other law

Importer may relinquish his title to the goods in the following cases [Section 23(2)]:

- The goods may not be according to the specifications;
- The goods may have been damaged or deteriorated during voyage and as such may not be useful to the importer;
- There might have been breach of contract and, therefore, the importer may be unwilling to take delivery of the goods.

In all the above cases, the goods having been imported, the liability to customs duty is imposed and, therefore, the importer may relinquish his title to the goods unconditionally and abandon them. If the importer does so, he will not be required to pay the duty amount.

However, the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

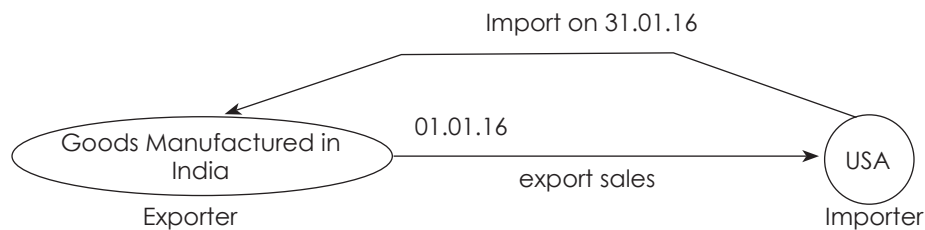
Note: It is open to the importer to exercise the option to relinquish the title on the imported goods at any time before the passing of order for clearance for home consumption or before order permitting the deposit of goods in a warehouse.

Duty liability in certain special circumstances

- Goods are imported into India after exportation therefrom.
- Imported goods have been originally exported to the overseas supplier for repairs.
- Exported goods may come back for repairs and re-export.

(1) Goods are imported into India after exportation therefrom

Goods manufactured or produced in India, which are exported and thereafter re-imported are treated on par with other goods, which are imported.



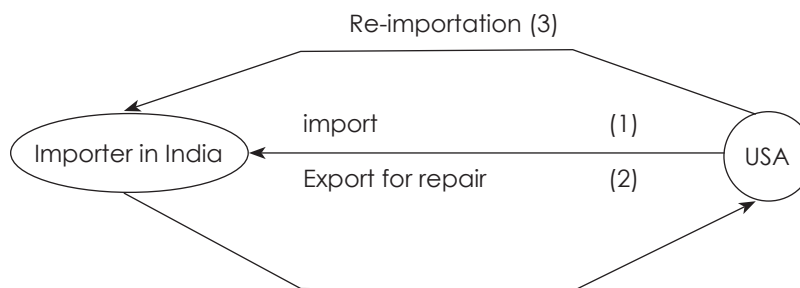
If the exporter has availed of export incentives in the nature of duty drawback, rebate under Central Excise Rules, etc., the import duty shall be restricted to the amount of incentive availed of at the time of export.

Example 16:

Mr. M manufactured goods worth ₹ 1,00,000 exported to Mr. U of USA on 1st January, 2014. Mr. M availed the duty drawback for ₹ 1,000. If Mr. M imported the same on 31st January, 2014, the import duty that can be levied on Mr. M is ₹ 1,000.

(2) Imported goods have been originally exported to the overseas supplier for repairs

If the imported goods are exported for repairs, then import duty on re-importation of such repaired goods is restricted to the cost of repairs done abroad, insurance and freight charges.



Conditions to avail the aforesaid benefit:

- the time limit for re-importation is 3 years from the date of export (extended up to 5 years)
- The exported and imported goods must be in the same form and ownership of the goods should also not have changed.
- This concept is not applicable if the repairs amount to manufacture and exports from EPZ or EOUs.

Example 17:

Mr. A imported an Air conditioner on 1st January 2018 for ₹ 5,00,000 from USA. Mr. A has paid import duty for ₹ 50,000. Due to some technical problems the same was exported for want of repairs on 31st January 2018. After incurring some additional cost for repairs and replacement worth for ₹ 1,00,000 the same was re-imported on 5th February 2018. The import duty in such case will be restricted on the value of repairs and replacement of ₹ 1,00,000.

Example 18:

A machine was originally imported from Japan at ₹ 250 lakh in August 2017 on payment of all duties of customs. The said machine was exported (sent-back) to supplier for repairs in January 2018 and re-imported without any re-manufacturing or re-processing in October, 2018 after repairs. Since the machine was under warranty period, the repairs were carried out free of cost.

However, the fair cost of repairs carried out (including cost of material ₹ 6 lakh) would have been ₹ 9 lakh. Actual insurance and freight charges (to and fro) were ₹ 3 lakh. The rate of basic customs duty is 10% and rate of IGST in India on like article is 12%.

Compute the amount of customs duty payable (if any) on re-import of the machine after repairs. The ownership of the machine has not been changed during the period.



Answer:

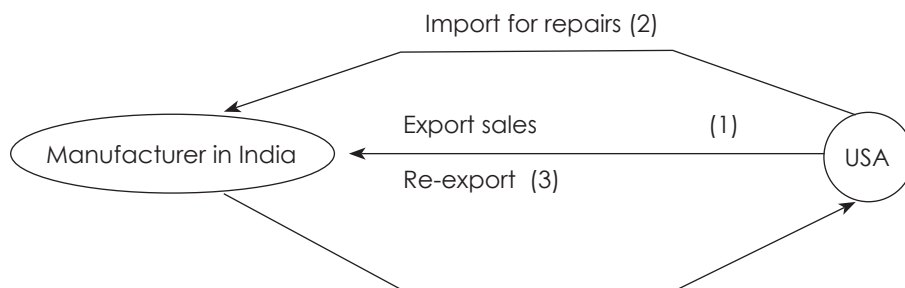
Particulars	₹
Value of goods re-imported after exports	12,00,000
[₹ 9 lakh (including cost of materials) + ₹ 3 lakh]	
Basic customs duty @ 10%	1,20,000
Cess 3% on (BCD)	3,600
Balance (i.e. Transaction value)	13,23,600
Add: IGST @12% on 13,23,600	1,58,832
Landed Value	14,82,432
Total Customs Duty	2,82,432

(3) Exported goods may come back for repairs and re-export

Sometimes exported goods come back for repairs into India, in such situation the re-imported goods can avail exemption from paying duty subject to satisfaction of some conditions.

Conditions:

- The re-importation is for repairs or reconditioning only
- The time limit for re-import should be within 3 years from the date of export. In case of export to Nepal, such time limit is 10 years.
- The time limit for re-export is 6 months from the date of import (extended upto 12 months).
- The importer at the time of importation executes a Bond.
- The re-importation is for reprocessing, refining or re-making then the time limit for re-importation should be within 1 year from the date of exportation.



Example 19:

Mr. B exported the Machinery to Mr. S of USA on 1st January, 2014 for ₹ 10,00,000. Due to technical problems Mr. S of USA returned the goods for want of repairs and the same was imported by Mr. B on 15th January, 2014. The same was repaired and brought into good condition and re-exported to Mr. S. Hence, Mr. B is not liable to pay any import duty.

Note: any loss notice during reprocessing, refining or re-making shall be exempt from the whole the customs duties subject to the satisfaction of the Assistant or Deputy Commissioner of Customs.

Goods Derelict, Wreck etc. [Section 21]

All goods, derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it be shown to the satisfaction of the proper officer that they are entitled to be admitted

duty-free under this Act.

Goods brought into India: apart from goods which are normally imported in the course of import, flotsam and jetsam, which are washed ashore, and derelict and wreck brought into India out of compulsion are also treated as par with goods brought into India.

Goods Derelict



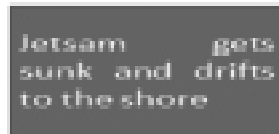
Derelict means vessel or cargo which is abandoned in sea without any hope of recovering it.

Jetsam means where goods are cast into sea to reduce weight of ship to prevent it from sinking and the thrown goods sink.

Flotsam means when goods continue to float after thrown in sea

Wreck means cargo or vessel or any property which are cast ashore by tides after ship-wreck

Jetsam means where goods are cast into sea to reduce weight of ship to prevent it from sinking and the thrown goods sink.



Flotsam means when goods continue to float after thrown in sea



Distinguish between derelict, jetsam and flotsam

Derelict	Jetsam	Flotsam
Goods abandoned by the owner of goods without any hope of recovering it.	Owner of goods has no intention to abandon	Owner of goods has no intention to abandon
Goods are not thrown from the vessel to prevent it from sinking	Goods are thrown with speed from the vessel to prevent it from sinking	Goods are thrown with speed from the vessel to prevent it from sinking
Derelict gets sunk and does not drift to the shore	Jetsam gets sunk and drifts to the shore	Flotsam does not sink but it floats and drifts to the shore.

Mangalore Refinery & Petrochemicals Ltd v CCus. 2015 (323) ELT 433 (SC):

Decision: The Supreme Court held that the quantity of crude oil actually received into a shore tank in a port in India should be the basis for payment of customs duty.

It is essential to note differences between tax planning and tax management for effective learning of tax matters.

Tax Planning	Tax Management
Tax planning primarily aims at adopting an arrangement so as to bring lesser incidence of tax.	Tax Management is dealing with compliance of statutory provisions, prospective planning etc. so as to ease the financial constraints that would arise when discharging the commitments through payment of tax, keep close watch and monitor statutory requirements etc
Tax planning may not be essential for every assessee.	Tax management is essential for every tax paying person otherwise he may become liable for penalty. For example, improper import of goods attract penalty.
Tax planning essentially looks at future benefits arising out of present actions.	Tax management relates to past, present and future. For Example: (i) appeals, revisions, rectification of mistakes deal with the past. (ii) maintenance of records, self assessment, filing of returns and other documents are present activities.
Tax planning is focusing on saving taxes by choosing best among the alternatives.	Tax management is focusing on compliance with legal formalities: e.g. filing of return, payment of tax, documentation, records, maintenance of accounts etc.



Study Note - 2

CLASSIFICATION UNDER CUSTOMS



This Study Note includes

2.1 Customs Tariff Act, 1975

2.2 General Rules for the Interpretation of Import Tariff

2.1 CUSTOMS TARIFF ACT, 1975

Duties of customs will be levied by the customs department by referring Customs Tariff Act, 1975. The Customs Tariff Act, 1975 has been divided into 21 sections (i.e. XXI sections) and 99 chapters out of which chapter 77 is blank. It is pertinent to note that goods are classified under Central Excise Tariff Act, 1985 and Customs Tariff Act, 1975 based on the Harmonised System of Nomenclature (HSN). The Customs Tariff Act, 1975 contains five columns —

1. Tariff Item
2. Description of goods
3. Unit
4. Standard Rate of Duty
5. Rate of duty for Preferential Area.

Rate of duty for Preferential Area means Government of India may charge lower customs duty than that of standard rate of duty for some specified goods if imported from friendly countries like Myanmar, Bangladesh, Mauritius, Seychelles, Nepal, Tonga etc.

Classification of goods

Under the Customs Tariff Act, 1975 goods are classified into FOUR digit system, these are called as HEADINGS. Further TWO digits are called as sub-classification, which are termed as SUB-HEADINGS. Further more TWO digits are added for sub-classification, which is known as TARIFF ITEM. Rate of duty is indicated against each tariff item and not against heading or sub-heading

Each section is divided into chapters and each chapter contains goods of one class. These chapters are divided into sub-chapters. Each chapter and sub-chapter further divided into various headings depending on different types of goods belonging to same class of products.

Coding of dashes

As per Customs Tariff Act, 1975, dashes are very useful to classify the commodities into classification, sub-classification and so on.

Single dash (i.e. -) = Primary classification of article covered by the heading

Double dash (i.e. - -) = sub-classification of primary classification

Triple dash (i.e. - - -) = sub-sub classification of primary classification or sub-classification of primary classification.

Quadruple dash (i.e. - - - -) = sub-sub classification of primary classification or sub-classification of primary classification.

Note: Both three dashes or four dashes are used to indicate EIGHT digit classification known as tariff item.

**Schedules to the Customs Tariff Act, 1975**

The Customs Tariff Act, 1975, contains following two schedules namely:

First Schedule	Deals with import tariff, showing import duties leviable.
Second schedule	Deals with export tariff, showing export duties leviable.

Specimen sheet of the Customs Tariff Act, 1975**Section-XVI****Chapter-85**

Tariff Item	Description of goods	Unit	Standard Rate of duty	Preferential Areas Rate of duty
1	2	3	4	5
8512	Electrical lighting or signalling Equipment (excluding articles of Heading 8539), windscreen wipers, Defrosters and demisters, of a kind Used for cycles or motor vehicles			
8512 10 00	Lighting or visual signalling equipment of a kind used on bicycles	U	10%	—
8512 20	Other lighting or visual signalling equipment:			
8512 20 10	Head lamps, tail lamps, stop lamps, side lamps and blinkers	U	10%	—
8512 20 20	Other automobile lighting equipment	U	10%	—
8512 20 90	Other	U	7.5%	—
8512 30	Sound signalling equipment:			
8512 30 10	Horns	U	10%	—
8512 30 90	Other	U	7.5%	—
8512 40 00	Windscreen wipers, defrosters and demisters	U	10%	
8512 90 00	Parts	Kg.	7.5%	
8513	Portable electric lamps designed to Function by their own source of energy (for Example, dry batteries, accumulators, Magnetos), other than lighting equipment of heading 8512			
8513 10	Lamps :			
8513 10 10	Torch	U	10%	—
8513 10 20	Other flash-lights excluding those for photographic purposes	U	7.5%	—
8513 10 30	Miners' safety lamps	U	7.5%	—
8513 10 40	Magneto lamps	U	7.5%	—
8513 90 00	Parts	Kg.	7.5%	—

2.2 GENERAL RULES FOR INTERPRETATION OF IMPORT TARIFF

Classification of goods as per the Customs Tariff Act, 1975 shall be governed by the following principles:

These rules come into play only if there is an ambiguity or confusion in classification.

Rule 1: No ambiguity in classifications:

The titles of Sections and Chapters are provided for ease of reference only; for legal purposes, refer the heading and sub-heading. Read corresponding Section Notes and Chapter Notes. If there is no ambiguity or confusion in classification of the goods then the classification is final.

**Rule 2(a): Incomplete or unfinished goods:**

Even if the goods are incomplete or unfinished, if they have **essential character** of finished goods, then classify them under same heading.

Example 1:

- *Passenger Aircraft not fitted with seats will still be a passenger Aircraft.*
- *Motor Car not fitted with wheels or tyres will be classified under the heading of Motor Vehicle*
- *Parts of air conditioning machines removed in completely knocked down (CKD) or semi knocked down (SKD) packs will be classified as complete machine, if it contains essential elements of air conditioning machines. Because CKD or SKD is only for convenience of transport. [note that assembly at site does not amount to manufacture, these goods have already been manufactured in the factory]*

Rule 2(b): Mixture or Combinations of goods falls under different classifications:

Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

Example 2:

The Motor Car contains the stereo (music system), here two different products namely Motor Vehicle and Electronic System, hence we have to refer the Rule 3 for solution. It means to say that if Rule 2(b) is not applied for any reason then classification shall be under Rule 3.

Rule 3(a): Specific Description:

The heading which provides the most specific description shall be preferred to one of providing a general description. It means to say that a specific heading should be preferred over a general heading [CCE v Maharshi Ayurveda Corporation Ltd (SC) (2006)].

Example 3:

Electrical lighting used for motor vehicles is more specifically classified under the heading 8512 but not under the heading 8513.

Lamps or torch used with dry batteries is more specifically classified under the heading 8513 but not under the heading 8512.

Rule 3(b): Essential Character:

If the product consists of different materials or made up of different components, mixtures or composite goods and cannot be classified based on Rule 3(a), it should be classified as if they consisted of material or component which gives them their essential character.

Example 4:

Cell phone which also contains a calculator will be called as Cell phone and not a calculator. It means to say that the classification should be done according to its main function and additional function may be ignored.

Example 5:

Software loaded into a laptop can be classified as laptop and considered as one unit. The essential character here is the laptop.



Example 6:

ABC Info Tech. developed a software and the same was loaded into a hard disc drive. The value of software is ₹ 100 lakhs and the value of hard disc drive is ₹ 1 lakh. Hence, the computer software gives the essential character and the drive is only a packing material. Therefore, the entire value of goods will be classified as software. [Sprint RPG India Ltd v Commissioner of Customs (SC) (2000)].

Rule 3(c): Latter the Better:

When goods cannot be classified by reference to rule 3(a) or rule 3(b), they shall be classified under the heading which occurs last in the numerical order among those which equally merit consideration. It means to say that, where two or more headings seem equal, priority should be given to the essential character.

Example 7:

If a product by virtue of its essential character comes under two headings namely 8512 and 8513 equally then the said product can be classified under the heading 8513 (i.e. Latter the better)

Rule 4: Most Akin Goods:

Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are **most akin**.

As per the Oxford dictionary 'Most Akin' can be understood as the majority of similar character or most related character. This means relationship between twins can be understood as most akin.

Example 8:

Manufacturer manufacturing the following products can be understood as most akin products:

- (a) Window mirror of the car**
- (b) Front mirror of the car**

Rule 5: Packing Materials:

In addition to the forgoing provisions namely Rule 1, 2, 3 and 4, the following sub rules shall apply in respect of the goods referred therein.

Rule 5(a): packing material used as cases for camera, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers special shaped or fitted to contain a specific article or set of articles, suitable for long term use, will be classified along with that article, if such articles are normally sold along with such cases.

Rule 5(b): subject to the provisions of Rule 5(a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. [Rule 5(a) or (b) does not apply in case the packing material is for repetitive use].

Rule 6: Goods compared at the same level of sub-headings:

The classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub-headings and any related sub-heading Notes and, *mutatis mutandis*, to the above rules, on the understanding that only sub-headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

This means to say that if one heading contains 4-5 sub-headings, these sub-headings can be compared with each other. However, sub-heading under one heading should not be compared with the sub-heading of another heading.

Trade Parlance Theory:

If a product is not defined in the Schedules and Section Notes and Chapter Notes of the Customs Tariff Act, 1975, then it should be classified according to its popular meaning or meaning attached to it by those dealing with it i.e., in its commercial sense.

Example 9:

Glass mirror cannot be classified as Glass and Glassware because glass loses its basic character after it is converted into mirror. It means that mirror has the reflective function [Atul Glass Industries Ltd v CCE (SC) (1986)]

**Example 10:**

Where the Tariff headings itself uses highly scientific or technical terms, goods should be classified in scientific or technical sense. It means that if the tariff entry is used in a scientific or technical manner then the Trade Paralance Theory does not apply [Akbar Badruddin Jiwani v CC (SC) (1990)].

Case law 5:

Where a classification (under a Customs Tariff head) is recognized by the

Government in a notification at any point of time, can the same be made applicable in a previous classification in the absence of any conscious modification in the Tariff?

Keihin Penalfa Ltd. v Commissioner of Customs 2012 (278) ELT 578 (SC)

Facts of the Case: Department contended that 'Electronic Automatic Regulators' were classifiable under Chapter sub-heading 8543.89 whereas the assessee was of the view that the aforesaid goods were classifiable under Chapter sub-heading 9032.89. An exemption notification dated 1-3-2002 exempted the disputed goods by classifying them under chapter sub-heading 9032.89. The period of dispute, however, was prior to 01.03.2002.

Point of Dispute: The dispute was on classification of Electronic Automatic Regulators.

Decision: The Apex Court observed that the Central Government had issued an exemption notification dated 1-3-2002 and in the said notification it had classified the Electronic Automatic Regulators under Chapter sub-heading 9032.89. Since the Revenue itself had classified the goods in dispute under Chapter sub-heading 9032.89 from 1-3-2002, the said classification needs to be accepted for the period prior to it.

- Vicco Laboratories

Self-Examination Questions**1. Theoretical Questions with Answers**

Q1. Answer the following with reference to the provisions of section 14 of the Customs Act, 1962 and the rules made thereunder:

- (i) What shall be the value, if there is a price rise between the date of contract and the date of actual importation?
- (ii) Whether the payment for post-importation process is includible in the value if the same is related to imported goods and is a condition of sale of the imported goods?
- (iii) Bill of entry was filed on 27.10.2017. Will you apply the exchange rate notified by the Central Board of Excise and Customs on 25.9.2017 or notified on 25.10.2017?

Answer:

- (i) The valuation under section 14(1) of the Customs Act, 1962, namely transaction value is applicable.
- (ii) The payment for post importation process is includible in the value of the imported goods if the same is related to such imported goods and is a condition of the sale thereof.
- (iii) The relevant exchange rate for imported goods is the rate which is in force on the date of presentation of bill of entry. CBEC declares the exchange rate applicable for a month which is generally notified in the preceding month. Therefore, in the given case, the bill of entry was submitted by the importer on 27.10.2017. Hence, relevant exchange rate is the rate prevailing on 25.09.2017.

Q2. An importer filed a bill of entry after 60 days of filing Import General Manifest. The Deputy Commissioner of Customs imposed a penalty of ₹ 10,000 by endorsement on the bill of entry. Since, importer wants to clear the goods he paid the penalty. Can penalty be imposed for late filing of the bill of entry? Examine the issue in the light of relevant statutory provisions.

Answer:

W.e.f. 31-3-2017 Finance Act, 2017 Section 46 amended: Submission of Bill of entry:

The importer shall presented the bill of entry under section 46(1) of the Customs Act, 1962 before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or for warehousing.



Provided that a bill of entry may be presented within 30 days of the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India.

Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for the late presentation of the bill of entry as may be prescribed.

In the given case penalty of ₹ 10,000 is valid. Hence, as per the provisions of the Customs Act, 1962, penalty can be imposed for late filing of the bill of entry.

Q3. What are the provisions relating to effective date of notifications issued under Section 25 of the Customs Act, 1962?

Answer: The Central Government of India has the power to issue Notification under Section 25 of the Customs Act, 1962 to exempt the excisable goods from the duty either by way of generally

- Subject to such conditions
- Whole or any part of duty

The exemption Notification issued U/S 25 of Customs Act, 1962, is not applicable if the EOU or SEZ unit cleared the goods for domestic tariff area, unless a specific provision is mentioned under the notification.

Provisions under Section 5A of the Central Excise Act, 1944 and provisions under Section 25 of the Customs Act, 1962 (i.e. power to grant exemption from customs duty) are one and the same. The notification becomes effective on the date it is issued for publication in Gazette or the date specified in the said notification as the case may be.

Q4. Section 26A of the Customs Act, 1962 provides for refund of import duty paid if goods are found defective or not as per specifications. Discuss the conditions governing such refund in brief.

Answer: Please refer Point (B) of 17.5

Q5. Explain the meaning of the term "Bill of export" and "import report" under the provisions of the Customs Act, 1962.

Answer:

Bill of Export	Import Report
As per Section 2(5) of the Customs Act, "Bill of export" means a bill of export referred to in section 50 of the Customs Act, 1962	As per Section 2(24) of the Customs Act, "Import manifest" or "import report" means the manifest or report required to be delivered under section 30 of the Customs Act, 1962
The exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in the prescribed form.	The person in charge of a vehicle carrying imported goods or any other person as may be notified by the Central Government shall, in the case of a vehicle, deliver to the proper officer an import report within 12 hours after its arrival in the customs station, in the prescribed form.

Q6. Distinguish between Tax planning and Tax Management.

Answer: Please refer point no. 16.7

Q7. Write a note on self-assessment under section 17 of the Customs Act, 1962?

Answer: Please refer point no. 16.10

Case Studies

Classification

Q1. M/s Hind IT Co. imported laptops with Hard Disc Drives (HDD) preloaded with operating software like Windows XP, XP home etc. The department has claimed that the said laptop along with the operating software was classifiable and assessable as a single unit. It is the claim of the assessee that the software loaded HDD should be classified and assessed separately as an exemption is available as per notification issued under section 25(1) of the Customs Act, 1962. Decide with a brief note whether the action proposed by the department is correct in law.

**Answer:**

The pre-loaded operating systems recorded in Hard Disc Drive in the laptop (item of import) forms an integral part of the laptop as the laptop cannot work without the operating system. A laptop without an operating system is like an empty building. Hence, laptop should be treated as one single unit classifiable under the Customs Tariff Act, 1975.

The Apex Court held that when a laptop is imported with in-built pre-loaded operating system recorded on HDD, the said item forms an integral part of laptop (computer system). Hence, laptop should be treated as one single unit classifiable under Heading 84.71.

However, if the operating system is imported as packaged software like an accessory, then it would be classifiable under Heading 85.24. There will be no question of adding the cost of the software. **[CCus. v Hewlett Packard India Sales (P) Ltd. (2007) 215 ELT 484 (SC)]**

The Department action is correct in the eyes of the law.

Q2. ABC Ltd., imported artemia cyst (i.e. brine shrimp eggs). The same has been classified as 'prawn feed' under the heading 2309 (i.e. Heading 2309 of the Customs Act, 1975, includes products of a kind used in animal feeding, not elsewhere specified or included, obtained by processing vegetable or animal materials to such an extent that they have lost the essential characteristics of the original material, other than vegetable waste, vegetable residues and by-products of such processing.) which includes products used as animal feed. However, the Department contended that this product was classifiable under the heading 0511.99 (i.e. which refers to other products in the category of non edible animal products). The contention of importer was that these imported cysts contained little organisms/embryos which later became larva that prawns feed on. Therefore, according to them, the nature and character of the product was not changed by nurturing or incubation. You are required to examine whether the contention of the Department is justified in law.

Answer:

If a product undergoes some change after importation till the time it is actually used, it is immaterial, provided it remains the same product and it is used for the purpose specified in the classification. Therefore, in the given case, it examined whether the nature and character of the product remained the same.

The Hon'ble High Court held that if the embryo within the egg was incubated in controlled temperature and under hydration, a larva was born. This larva did not assume the character of any different product. Its nature and characteristics were same as the product or organism which was within the egg.

Hence, the Court in the case of **Atherton Engineering Co. Pvt. Ltd. v UOI 2010-TIOL-271-HC-Kol-Cus.**, held that the said product should be classified as feeding materials for prawns under the heading 2309. These embryos might not be proper prawn feed at the time of importation but could become so, after incubation.

The contention of the Department is not justified in law.

Q3. X Ltd. is an Indian company manufacturing motor cars and had imported from A Ltd. of USA a shipment of 50 CKD packs (Completely Knocked down Condition) of motor car components. X Ltd. filed bill of entry for clearing the goods, by classifying these goods as components of motor cars. Thereby, X Ltd. also claimed benefit of a notification exempting components, including components of motor cars in semi-knocked down packs and completely knock down packs.

The Customs Officer held that the imported components being complete cars in Completely Knocked down Condition packs had the essential character of the finished goods and as such the entire consignment were to be treated as motor cars and not components. Hence, customs department contended that X Ltd. was not entitled to the benefit of the notification as the notification was only for components.

You are required to examine whether the contention of the Department is justified in law.

Answer:

As per Rule 2(a) of the Interpretative Rules, if the goods are incomplete or unfinished provided these goods have **essential character** of finished goods, then classify in same heading.

Example:

- Passenger Aircraft not fitted with seats will still be a passenger Aircraft.
- Motor Car not fitted with wheels or tyres will be classified under the heading of Motor Vehicle
- Parts of air conditioning machines removed in completely knocked down (CKD) or semi knocked down (SKD) packs will be classified as complete machine, if it contains essential elements of air conditioning machines.



Because CKD or SKD is only for convenience of transport. [note that assembly at site does not amount to manufacture, these goods have already been manufactured in the factory]

In the given case X Ltd. imported car components in CKD packs. The components imported had the essential character of complete car even though presented in unassembled form. Hence, the Hon'ble Supreme Court of India in the case of **CC. v Maestro Motors Ltd. (2004) (SC)**, held that the components in CKD packs would be classified as motor car.

With regard to exemption notification, exemption is granted with reference to tariff items in the First Schedule to the Customs Tariff Act, 1975, and then the Rules of Interpretation must apply.

In the given case the notification exempted components, including components of fuel efficient motor cars in semi-knocked down packs and completely knocked down packs. As per the Customs Tariff Act, 1975 interpretative rules Rule 2(a), for the purpose of levy of customs duty the components in a completely knocked down pack would be considered as cars. Therefore, exemption notification which is applicable to components also applicable to components in completely knocked down packs.

From the above, it is concluded that the components in CKD packs imported by X Ltd. would get exemption under the said Notification, even though for the purpose of classification and clearance they may be considered to be motor cars.

Hence, the contention of the Department is not sustainable in the eyes of the law.

Q4. Assessee imported Compact Disk Read Only Memory (CD ROMs) containing images of drawings and designs of engineering goods. The Appellant (i.e. assessee), filed a Bill of Entry for the clearance of the CD ROM containing drawings, designs of engineering goods. The assessee claimed classification under Custom Tariff heading 4906, or, heading 4911, or, as Information Technology Software, or as CD ROM, where exemption is given from duty.

However, the Department classified the same under Customs Tariff heading 8524.39 thereby recorded CD ROMs, liable to duty.

Discuss in the light of decided case law, if any, whether the classification of the department is correct in law?

Answer:

The Hon'ble Supreme Court held that "What is made duty free is the Compact Disk Read Only Memory (CD-ROM) as it is and not a disc containing certain drawings and designs". It further said that the data in a compact disk does not fall within the meaning of the term 'software' to entail the benefit (i.e. nil rate of duty).

Software is a computer program, which enables the computer to function. The drawings and designs of engineering goods recorded on a CD ROM could not be regarded as a "computer program" or "instructions" meant for functioning of computer. In fact, they are "output" of computer software, which generate such drawings and designs. Therefore, they are not Information Technology Software.

The Supreme Court has ruled that the department can impose appropriate duty on the import of CD ROMs containing images of drawing and designs of engineering goods. The assessee cannot claim clearance of such goods at zero duty, said the apex court in the case of **M/s L.M.L. Ltd v Commissioner of Customs (2010)**.

Therefore, the classification of the department is correct in law.

Q5. National Instruments Systems imported various products from its Holding Company and supplies the same to its customers in India. The imported products are PXI Controllers, Input/output Modules, Signal Converters, chassis and its parts. Assessee claims that these products were computer based instrumentation products. Accordingly N.I. Systems filed 64 bills of entries, under Customs Tariff Headings 8471, 8473 and other headings falling under Chapter 84.

However, on verification of the technical data (including the catalogue and the webcast of the importer), Department observed that the subject goods were not structurally designed to function as a computer. PXI Controllers, I.O. Modules and Chassis are parts and accessories of a system/instrument which are suitable for use solely or mainly with a number of machines, instruments, apparatus of the same Heading, i.e., 9032 like sensors, thermostats etc.

Discuss in the light of decided case law, if any, whether the view of the department is correct in law?

Answer:

The Apex Court in the case of **N.I. Systems (India) Pvt. Ltd. (2010) (SC)**, has held that imported goods were rightly classified by the Department under Chapter 90 (i.e. sensors, thermostats etc.).

Because, the imported goods were manufactured for a special purpose and that purpose was either measurement or control for industrial use and not as Automatic Data Processing (ADP) Machines. As per the test of common parlance the subject goods are measuring/controlling instruments.

Therefore, the view of the Department was right in classifying the Input/output Modules and Chassis as parts and accessories of Automatic Regulating or Controlling Instruments and Apparatus (i.e. the technical equipment or machinery needed for a particular activity or purpose) in terms of the Customs Tariff Heading 9032.90.00.



Indian Customs Waters

Q6. Customs Officers located a vessel which is carrying smuggled goods in the sea when it was around 8 nautical miles away from the outer limit of territorial waters. The Customs Officers stopped the vessel and examine and search the goods in the vessel. Examine the case whether the customs officers are authorize to stop the vessel and examine the goods in the vessel?

Answer:

As per section 106 of the Customs Act, 1962, if any conveyance including animal in India or within Indian Customs Waters is believed to be engaged in smuggling, it may be stopped, for conducting search of its parts, examination and search of goods.

In the given case, since the vessel is within the Indian Customs Waters, the customs officers are authorized to stop the vessel and examine and search the goods in the vessel.

Continental Shelf/Exclusive Economic Zones of India

Q7. Eva Offshore Ltd. is engaged in drilling operations for exploration of offshore oil, gas and other related activities under contracts. The drilling operations are carried out at oil rigs/vessels which are situated outside the territorial waters of India. Until around November, 1993, the company was permitted to transship stores to the oil rigs without levy of any customs duty regardless of the fact whether oil rigs were operating within a designated area or non-designated area. Whether oil rigs engaged in operations in the exclusive economic zone/continental shelf of India, falling outside the territorial waters of India, are 'foreign going vessels' as defined by section 2(21) of the Customs Act, 1962, and are entitled to consume imported stores thereon without payment of customs duty in terms of section 87 of the Customs Act, 1962?

Answer:

The Apex Court namely the Supreme Court of India in the case of **Aban Lloyd Chilies Offshore Ltd. v UOI (2008) 227 ELT 24 (SC)**, had held that the goods imported by the assessee for consumption on board on oil rigs 'were stores', as they were for use on oil rigs, which are vessels. However, the oil rigs proceeding to or carrying out operations in, continental shelf/ exclusive economic zones of India, which are deemed to be a part of Indian territory, would not be a foreign going vessels, as the oil rigs proceed from the territory of India to an area which also deemed to be a part of the territory of India.

Thereby, neither the 'oil rigs nor the ship employed for transshipment of the goods to the oil rigs were foreign going vessel'. Therefore, the stores transshipped to the oil rigs and consumed thereon were not entitled to exemption u/s. 87 of the Customs Act, 1962. Therefore, the supply of imported spares or goods or equipments to the rigs by a ship will attract import duty.

In the given case, Eva Offshore Ltd. is liable to pay duty on imported stores.

Relevant Date for Customs Duty in case of Export

Q8. The shipping bill in respect of an export consignment was presented to the Customs Officer on 25th May



2013. The Customs Officer granted 'entry outwards' to the ship on 3rd June 2013, the loading of the goods in the ship had commenced only after 17th June 2013. A notification was issued by the Government of India under the Customs Act, 1962 exempting the export item from customs duty on 17th June 2013. The assessee contends that since the loading of the goods in the ship had commenced after 17th June 2013, the export consignment is eligible for the benefit of the exemption notification.

You are required to examine whether the contention of the exporter is justifiable in the law.

Answer:

As per Section 16 of the Customs Act, 1962, '**Relevant Date**' for customs duty in connection with export of goods would be the rate which prevailed when "**entry outwards**" for the vessel which ultimately exported the goods was effected and subsequent change in the rate of duty would be irrelevant. In other words rate of duty as on the date of entry outwards was granted. The same view has been expressed by Hon'ble Supreme Court of India in case of **Esajee Tayabally Kapasi (1995)**.

Therefore, the assessee is not entitled to seek exemption under notification dated 17th June 2013 since the "entry outwards" had been made on 3rd June 2013.

Rejection of Refund

Q9. M/s. HIL imports copper concentrate from different suppliers. At the time of import, the seller issues a provisional invoice and the goods are provisionally assessed under section 18 of the Customs Act, 1962 based on the invoice. When the final invoice is raised, based on the price prevalent in the London Metal Exchange on a predetermined date based on the covenant in the contract between the buyer and seller, the assessments are finalized on such invoices. M/s HIL had filed two refund claims arising out of the finalization of the bills of entry by the authorities on 01.03.2014 and on 15.03.2014. With effect from 13.07.2014 (Presidential assent on 13.07.2014) section 18 of the Customs Act, 1962 was amended with the insertion of certain provisions in terms of which it became necessary for the assessee to prove that they had not passed on the amount to their customers. Based on this amendment, the department has rejected the refund claims. Discuss in the light of decided case law, if any, whether the action of the department is correct in law?

Answer:

As per the provisions of the Customs Law, any notification issued by the Government of India is effective with effect from the date mentioned in it unless such notification is effective with effect from a retrospective date.

In the given case notification is effective w.e.f. 13.7.2014. Section 18 of the Customs Act, 1962 was amended with the insertion of certain provisions in terms of which it became necessary for the assessee to prove that they had not passed on the amount to their customers. Prior to 13.07.2014, in order to claim refund arising out of finalization of provisional assessment, it was not necessary to prove that incidence of duty has not been passed on to the customers. The said requirement has been inserted in section 18 with effect from 13.07.2014. However, the amendment, by which the provisions of unjust enrichment are incorporated in section 18 has come into effect from 13.07.2014.

Therefore, M/s HIL will not be required to refer something as evidence or proof that in respect of the bills of entry finalized on 01.03.2014 and 15.03.2014 they have not passed on the incidence of such duty to their customers (**M/s Oriental Exports v Commissioner of Customs New Delhi (2006) 200 ELT A/138 (SC)**).

Hence, the action of department is not correct in law.

Goods Lost while in custody of the Port-Trust

Q10. Rishi Alloys Ltd., imported during June, 2013, by sea, a consignment of metal scrap weighting 3,000 M.T. (metric tones) from U.K. They filed a bill of entry for home consumption and the Assistant Commissioner of Customs passed an order for clearance of goods, and applicable duty was also paid. The importer thereafter found on taking delivery from the port trust authorities, that only 2,500 M.T. of scrap were available at the docks although they had paid duty for the entire 3,000 M.T., since there was no short-landing of cargo. The short-delivery of 500 M.T. was also substantiated by the Port-Trust Authorities, who gave a "weighment certificate" to the importer.

On filing a representation to the Customs Department, the importer has been directed in writing to justify as to which provision of the Customs Act, 1962 governs their claim for restoration of duty on 500 M.T. scrap not delivered by Port-Trust. You are approached by the importer as "counsel" for an opinion or advice. Examine the issues and tender your opinion as per law, giving reasons.

Answer:

In the given case it is clear that 500 M.T. scrap has been lost while in custody of the Port-Trust and the weighment



certificate also substantiate the fact of loss.

Hence, the assessee or importer intimate the Department by a representation about the facts and legal position supra, justifying their claim for refund or restoration of duty under Section 23 of the Customs Act, 1962 (i.e. Section 23 deals with those cases where goods are lost after the proper officer has made an order for home consumption, but before the goods are cleared by the importer, such as in the instant case) read with Section 27 of the Customs Act, 1962, which deals with general refunds.

Doctrine of Unjust Enrichment

Q11. Venus Udyog Ltd. imported copper scrap for using it as raw material in the manufacture of copper oxy-chloride. It cleared the imported goods by paying the applicable customs duties including additional customs duty. However, on coming to know that imported copper scrap was exempt from payment of additional customs duty under Notification No. 35/81 dated 1st March, 1981, it filed an application for refund of the same. The refund claim was rejected on the ground of unjust enrichment. The contention of the company is that the doctrine of 'unjust enrichment' is not applicable in case of captive consumption of imported material. Discuss the validity of the contention of the company in the light of the decided case law, if any.

Answer:

As per the Hon'ble Supreme Court of India in the case of **Union of India (UOI) v Solar Pesticide Pvt. Ltd. (2000) (SC)**, the doctrine of unjust enrichment is attracted even if the incidence of duty is passed on to another person indirectly as in the case of captive consumption of imported materials. Refund of import duty is made to the importer provided he has not passed on the incidence of duty to any other directly or indirectly (Section 27(2) of the Customs Act, 1962).

In the given case Venus Udyog Ltd. imported copper scrap by paying customs duties, not allowed as refund under said notification even though imported goods are used for captive consumption. It means to say that the principle of unjust enrichment applies even in the case of captive consumption of goods.

Therefore, contention of Venus Udyog Ltd. is not valid in law.

Remission of Duty

Q12. The assessee had imported resin and impregnated paper and had bonded the same in the warehouse. The assessee had also sought the extension of the said warehousing period by contending that the goods were in good condition but could not be used for manufacture due to recession in the market and the extension was granted. Thereafter another application was made at a later date by contending that the resin impregnated papers which were stored in the ware house had lost its shelf life and had become unfit for use on account of non-availability of orders for clearance and accordingly an application for remission of duty was made.

The department rejected the remission of duty claim on the grounds that section 23 is applicable only when the imported goods have been lost or destroyed at any time before clearance for home consumption.

Discuss in the light of decided case law, if any, whether the department is correct in law?

Answer:

CCE v Decorative Laminates (I) Pvt. Ltd. 2010 (257) ELT 61 (Kar)

The High Court held that the circumstances made out under section 23 of the Customs Act, 1962, were not applicable to the present case since the destruction of the goods or loss of the goods had not occurred before the clearance for home consumption within the meaning of that section.

There will be no remission of duty if the goods had become unfit for use on account of non-availability of orders for clearance within the period or extended period as given by the authorities, their continuance in the warehouse will not attract section 23 of the Act.

Therefore, from the above it is evident that the department is correct.

Refund of Duty

Q13. B Ltd. filed a Bill of Entry and paid the higher duty in ignorance of notification which allowed him the payment of duty at a concessional rate. No assessment order was passed because the assessee simply filed Bill of Entry and paid the duty. B Ltd. filed a refund claim under section 27 of the Customs Act, 1962 of the excess duty paid by it. The Revenue contended that a refund in appeal could be asked for under section 27 of the Customs Act, 1962 only if the payment of duty had been made pursuant to an assessment order which was not so in the instant case.

Do you think that Revenue's contention is valid in law?

Answer: A refund claim can be made u/s 27 if the payment of higher duty and interest in ignorance of a notification



which allowed payment of duty at a concessional rate even if there was no assessment order and the payment u/s 27(i) has not been made pursuant to an assessment order. Section 27(ii) covers those classes of cases where the duty is paid by a person without an order of assessment. It means a refund claim can be filed under section 27 of the Customs Act, 1962 even if the payment of duty has not been made pursuant to an assessment order [**Aman Medical Products Ltd. v CCus., Delhi 2010 (250) ELT 30 (Del)**].

Therefore, Revenue's contention is not valid in law.

Note: this case is pending before Apex Court (S.C.) in the case of Commissioner v Aman Medicals Products Ltd.

Q14. Importer imported "Kari Mayer High Speed Draw Warping Machine" claimed exemption notification.

Department contended that exemption notification is for "High Speed Warping Machine" but not for Drawing Unit.

Importer further stated that as per opinion of the expert (i.e. Textile Commissioner) the goods imported is covered under Exemption Notification.

Answer: Commissioner of Customs (Import) v Konkan Synthetic Fibres 2012(278) ELT 37 (SC):

When no statutory definition was provided in respect of an item in the Customs or Central Excise the opinion of the expert cannot be ignored, rather it should be given due importance.

Decision is in favour of the importer and against the department

Q15. The importer entered into contract for supply of crude sunflower seed oil U.S. \$ 435 C.I.F./Metric ton. Under the contract, the consignment was to be shipped in the month of July, 2013. The period was extended by mutual agreement and goods were shipped on 5th August, 2013 at old agreed prices.

In the meanwhile, the international prices had gone up due to volatility in market, and other imports during August, 2013 were at higher prices.

Department sought to increase the assessable value on the basis of the higher prices as contemporaneous imports.

Decide whether the contention of the department is correct. You may refer to decided case law, if any, for your decision.

Answer: Commissioner of Cus., Vishakhapatnam v Aggarwal Industries Ltd. 2011 ELT 641 (SC):

Decision: No. Department view is not correct.

It is true that the commodity involved had volatile fluctuations in its price in the international market, but having delayed the shipment; the supplier did not increase the price of the commodity even after the increase in its price in the international market. There was no allegation of the supplier and importer being in collusion.

Thus, the appeal was allowed in the favour of the respondent-assessee.

Q16. Case law:

Parimal Ray v CCus. 2015 (318) ELT 379 (Cal)

Facts of the case: The petitioners imported tunnel boring machines which were otherwise fully exempt from customs duty. However, owing to erroneous classification of such machines, they paid large amount of customs duty.

After expiry of more than 3 years, the petitioners filed a writ petition claiming the refund of the amount so paid. The said refund claim was rejected on the ground that the petitioners failed to make a proper application of refund under section 27 of the Customs Act, 1962 within the stipulated period of 1 year of payment of duty.

Decision: The High Court held that law of limitation under section 27 of the Customs Act, 1962 is applicable to duty or interest paid under the Act. However, any sum paid into the exchequer by the assessee is not duty or excess duty but is simply money paid into the account of Government. Therefore, the assessee is entitled to refund of the sum paid by it to the customs authorities.

Study Note - 3

TYPES OF DUTIES



This Study Note includes

- 3.1 Introduction
- 3.2 Types of Duties
- 3.3 When can Provisional Measures Imposed
- 3.4 Refund of Anti-dumping Duty
- 3.5 Deferred Payment of Import Duty Rules, 2016
- 3.6 Imports and Input Tax Credit (ITC)
- 3.7 Project Imports and Eligible Projects

3.1 INTRODUCTION

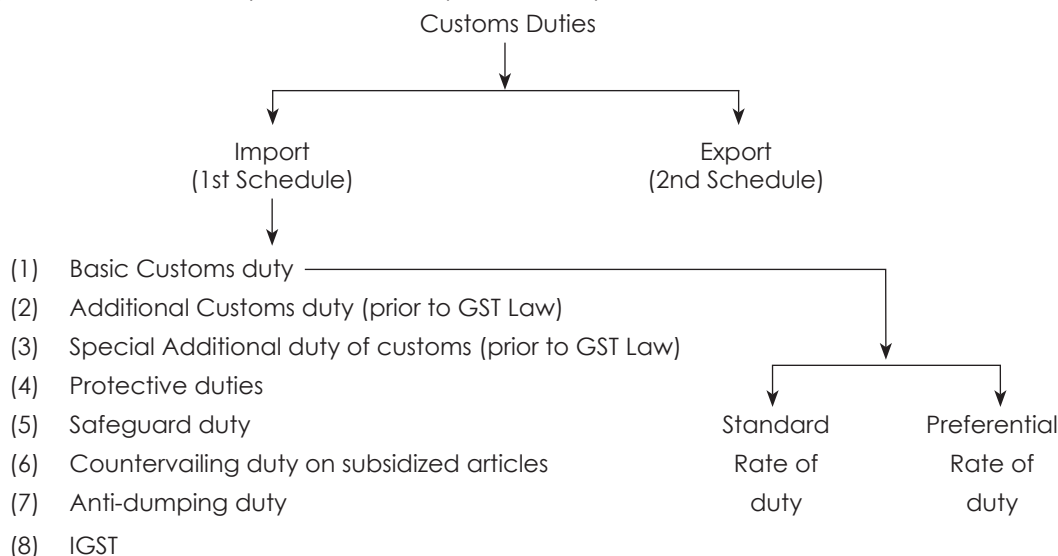
Under the Customs Act, 1962 import duty can be levied on almost all imports, whereas only few goods export duty levied. However, it is important to understand various types of duties under Customs Law, for the purpose of import and export of goods.

As per section 12 of Customs Act, 1962, Basic Customs Duty [BCD] can be levied on the value of goods. Section 2 of the Customs Tariff Act, 1975 provides the rate of duty to be applied on the value of goods. Basically section 2 of the Customs Tariff Act, 1975 provides following:

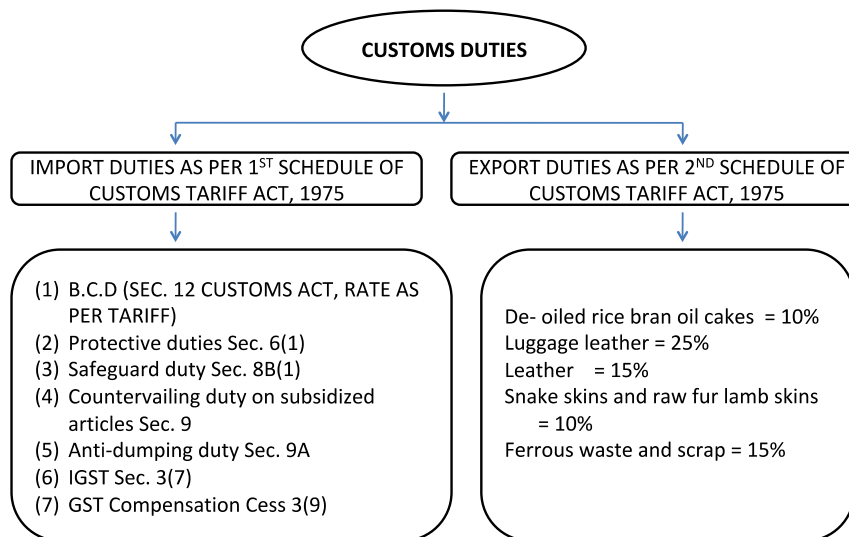
- First Schedule - Goods liable for import duty
- Second Schedule - Goods liable for export duty

3.2 TYPES OF DUTIES

The following duties are leviable by the customs department as per the Customs Tariff Act, 1975



After GST Law:



(1) Basic customs duty

The Basic Customs Duty is levied under section 12 of the Customs Act, 1962. As per section 12 of the Customs Tariff Act, 1975 preferential rate of duty is always lesser than standard rate of duty. The importer has to satisfy certain conditions to avail the preferential rate of duty on imported goods.

Example 1:

Mr. X imported Cashewnuts shelled then the import duty will be as follows:

- Standard rate of duty @30%
- Preferential rate of duty @20%

"Preferential area" means any country or territory which the Central Government may, by notification in the Official Gazette, declare to be such area.

If Mr. X wants to avail the preferential rate of duty he has to satisfy the following conditions as otherwise the generally standard rate of duty is applicable.

- Specific claim for the preferential rate must made by the importer
- The import must be from the preferential area.
- The area must be notified by the Customs Tariff Act, 1975 to be a preferential area.
- The goods are produced or manufactured in such preferential area.

Example 2:

Mr. X imported the goods from China worth USD 10,000. The Basic Customs Duty @12%, Education Cess @2% and Secondary and Higher Education Cess @1%. The exchange rate was 1 US \$ = ₹ 44 on date of presentation of Bill of Entry. Find the total Customs Duty.

Answer:

The assessable value of Imported Goods = ₹4,40,000 [US \$ 10,000 x ₹ 44]

Basic Excise Duty [₹ 4,40,000 x 12%] = ₹ 52,800

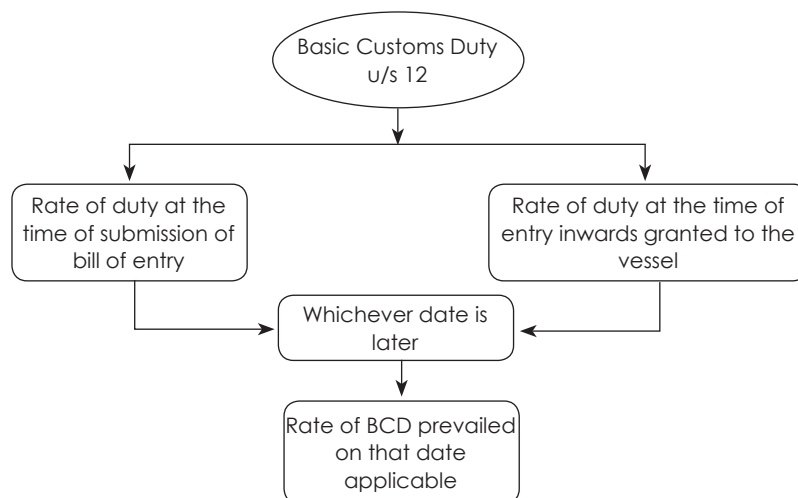
Education Cess [₹ 52,800 x 2%] = ₹ 1,056

Secondary and Higher Education Cess = ₹ 528 [₹ 52,800 x 1%]

Total value of imported goods = ₹ 4,94,384

Therefore the total value of customs duty = ₹ 54,384

- Note:** (1) Importer imports machinery as well as accessories which are classifiable under two different headings of Customs Tariff Act with different rate of duties. If so, the accessories are essential for machinery then the rate of duty applicable for machinery is also applicable for accessories.
- (2) If the accessories are not essential for operation of machinery then rate of duties as applicable for machinery as well as accessories will apply separately. Hence, the common expenditure of packing charges, freight charges, insurance charges etc., will be apportioned in the ratio of the value of accessories and machinery.



(2) Integrated Goods and Services Tax (IGST)

IGST (Integrated Goods and Services Tax) is a component under GST law, which is levied on goods being imported into India from other country. It has subsumed various customs duties including Countervailing Duty (CVD) and Special Additional Duty of Customs (SAD).

In the GST regime, IGST will be levied on imports by virtue of sub - section (7) of Section 3 of the Customs Tariff Act, 1975. IGST wherever applicable, would be levied on cargo that would arrive on or after 1 st July, 2017. It may also be noted that IGST would also be levied on cargo, which has arrived prior to 1st July, but a bill of entry is filed on or after 1 st July 2017.

Similarly ex - bond bill of entry filed on or after 1 st July 2017 would attract IGST, as applicable. In the case where cargo arrival is after 1 st July and an advance bill of entry was filed before 1 st July along with the payment of duty, the bill of entry may be recalled and reassessed by the proper officer for levy of IGST as applicable.

Example 3:

Suppose Assessable Value (A.V.) including landing charges = ₹ 100/-

(1) BCD - 10%

(2) IGST - 12%

(3) Education cess - 2%

(4) Higher education cess - 1%

In view of the above parameters, the calculation of duty would be as below:

(a) BCD = ₹ 10 [10% of A.V.]

(b) Education cess - ₹ 0.2 [2% of (a)]

(c) Higher education cess - ₹ 0.1 [1% of (a)]

(d) IGST - ₹ 13.236 [A.V. + (a) + (b) + (c)] x 12%

Note: The inclusion of anti - dumping duties and safeguard duty in the value for levy of IGST and Compensation Cess is an important change. These were not hitherto included in the value for the levy of additional duty of customs (CVD) or Special Additional Duty (SAD). The IGST paid shall not be added to the value for the purpose of calculating Compensation Cess.

**Case Law 1:**

CVD (now called as IGST) on an imported product be exempted if the excise duty (now GST) on a like article produced or manufactured (now called as supply) in India is exempt?

Aidek Tourism Services Pvt. Ltd. v. CCus. 2015 (318) ELT 3 (SC)

Decision: Supreme Court held that rate of additional duty leviable under section 3(1) of the Customs Tariff Act, 1975 would be only that which is payable under the Central Excise Act, 1944 on a like article. Therefore, the importer would be entitled to payment of concessional/ reduced or nil rate of countervailing duty if any notification is issued providing exemption/ remission of excise duty with respect to a like article if produced/ manufactured in India.

Example 4:

Compute the duty payable under the Customs Act, 1962 for an imported equipment based on the following information:

- (i) Assessable value of the imported equipment US \$10,100.
- (ii) Date of Bill of Entry 25.4.2018 basic customs duty on this date 12% and exchange rate notified by the Central Board of Excise and Customs US \$ 1 = ₹ 65.
- (iii) Date of Entry inwards 21.4.2018 Basic customs duty on this date 16% and exchange rate notified by the Central Board of Excise and Customs US \$ 1 = ₹ 60.
- (iv) IGST u/s 3(7) of the Customs Tariff Act, 1975: 12%.

Educational cess @ 2% in terms of the Finance Act (No. 2), 2004 and secondary and higher educational cess @ 1% in terms of the Finance Act, 2007.

Make suitable assumptions where required and show the relevant workings and round off your answer to the nearest Rupee.

Answer:

	₹	
A.V	6,56,500.00	(10,100 × 65)
Add: BCD 12% on 6,56,500	78,780.00	
Add: 2% EDU. CESS	1,575.60	(78,780 × 2%)
ADD: 1% SAH EDU. CESS	787.80	(78,780 × 1%)
Balance	7,37,643.40	
Add: IGST 12% on 7,37,643.40	88,517.21	
Value of Imported goods	8,26,160.61	
Customs Duty	1,69,661.00	(i.e 8,26,160.61 – 6,56,500)

**Example 5:**

Compute the assessable value and Customs duty payable from the following information:

- (i) F.O.B value of machine 8,000 UK Pounds
- (ii) Freight paid (air) 2,500 UK Pounds
- (iii) Design and development charges paid in UK 500 UK Pounds
- (iv) Commission payable to local agents @ 2% of F.O.B in Indian Rupees
- (v) Date of bill of entry 24.10.2017
(Rate BCD 12%; Exchange rate as notified by CBIC ₹ 68 per UK Pound)
- (vi) Date of entry inward 20.10.2017
(Rate of BCD 18%; Exchange rate as notified by CBIC ₹ 70 per UK Pound).
- (vii) IGST payable 18%.
- (ix) Insurance charges actually paid but details not available.

Answer:

		UK Pounds
FOB value	=	8,000
Add: Design and Development (paid in UK)	=	500
Add: Commission to local agent (2% on 8,000 UKP)	=	160
FOB value as per customs	=	8,660
Add: Air freight (8,660 x 20%)	=	1,732
Add: Insurance (8,660 x 1.125%)		97.425
CIF value/Assessable value	=	10,489.425
Assessable value (10,489.425 x 68)	=	7,13,281

Statement showing customs duties

Particulars	Value ₹	Working note
Assessable value	7,13,281	
Add: BCD	85,593.72	(7,13,281 x 12%)
Add: Edu. Cess	1,711.87	(85,593.72 x 2%)
Add: Sec. Hr. Edu. Cess	855.94	(85,593.72 x 1%)
Balance	8,01,442.53	
Add: IGST	1,44,259.66	(8,01,442.53 x 18%)
Landed value	9,45,702.19	
Total Customs duties	2,32,421	(9,45,702.19 – 7,13,281)

**Example 6:**

Liberty International Group has imported a machine by air from United States. Bill of entry is presented on 18.07.2017. However, entry inwards is granted on 7.08.2017.

The relevant details of the transaction are provided as follows:

CIF value of the machine imported *\$ 13,000*

Airfreight paid *\$ 2,800*

Insurance charges paid *\$200*

Rate of exchange as

Announced by *As on 18.07.2017* *As on 7.08.2017*

CBIC *1 US \$ = ₹ 66* *1 US \$ = ₹ 65.80*

RBI *1 US \$ = ₹ 66.10* *1 US \$ = ₹ 66.10*

Calculate the assessable value (in rupees) for the purposes of levy of customs duty as well as total customs duty.

BCD = Nil

IGST = 18%

Make suitable assumptions wherever necessary.

Answer:

Particulars	Amount in US\$	Remarks	Workings
CIF value	13,000		
Less: Air freight	2,800	Air freight should not be more than 20% on FOB	
Less: insurance	200		
F O B value	10,000		
Add: Air freight	2,000	Air freight restricted to 20% on the FOB value	10,000 x 20% = 2,000
Add: Insurance	200		
C I F value/ Assessable value	12,200		US\$ (10,000 + 2,000 + 200)
	Amount in ₹		
Assessable value	8,05,200	CBIC exchange rate as on the date of submission of bill of entry is relevant.	US\$12,200 x 66 = ₹ 8,05,200
Add: BCD	Nil		
Add: Cess 3%	Nil		
Balance	8,05,200		
Add: IGST	1,44,936		(8,05,200 x 18%)
Landed value	9,50,136		

**Example 7:**

Compute the assessable value and total customs duty payable under the Customs Act, 1962 for an imported machine, based on the following information:

	US \$
(i) Cost of the machine at the factory of the exporter	20,000
(ii) Transport charges from the factory of exporter to the port for shipment	800
(iii) Handling charges paid for loading the machine in the ship	50
(iv) Buying commission paid by the importer	100
(v) Lighterage charges paid by the importer	200
(vi) Freight incurred from port of entry to Inland Container depot	1,000
(vii) Ship demurrage charges	400
(viii) Freight charges from exporting country to India	5,000

Date of bill of entry 20.02.2018 (Rate BCD 20%;
Exchange rate as notified by CBIC
₹ 60 per US \$)

Date of entry inward 25.01.2018 (Rate of BCD 12%;
Exchange rate as notified by CBIC
₹ 65 per US \$)

IGST payable under section 3(7) of
the Customs Tariff Act, 1975 12%
Also find the eligible input tax credit to the importer.

Answer:

Statement showing Assessable and customs duty:

Particulars	US \$	Remarks
Cost of the machine	20,000	
Add: transport charges from factory of exporter to the port for shipment	800	
Add: handling charges	50	
FOB	20,850	
Add: buying commission	Nil	Not addable
FOB of the Customs	20,850	
Add: Insurance	234.5625	20,850 x 1.125%
Add: Freight	5,000	
Add: Lighterage charges	200	
Add: Ship demurrage	400	
CIF Value/Assessable Value	26,684.5625	

	₹	
Assessable Value	16,01,074	26,684.5625 USD x ₹ 60
Add: BCD 20%	3,20,215	₹ 16,01,074 x 20%
Add: 3% Cess	9,606	(3,20,215 x 3%)
Balance	19,30,895	
Add: IGST	2,31,707	₹ 19,30,895 x 12%
Landed value of imported goods	21,62,602	
Total customs duty	5,61,528	

Note: Importer is eligible to avail input tax credit of IGST portion (i.e. ₹ 2,34,024) under GST Law provided he is using these goods for his business.

(3) GST Compensation cess:

Under GST regime, Compensation Cess will be charged on luxury products like high-end cars and demerit commodities like pan masala, tobacco and aerated drinks for the period of 5 years in order to compensate states for loss of revenue.

In the GST regime, IGST will be levied on imports by virtue of sub - section (9) of Section 3 of the Customs Tariff Act, 1975.

GST Compensation cess, wherever applicable, would be levied on cargo that would arrive on or after 1st July 2017. Similarly ex-bond bill of entry filed on or after 1st July 2017 would attract GST Compensation cess, as applicable. In the case where cargo arrival is after 1st July and an advance bill of entry was filed before 1st July along with the payment of duty, the bill of entry may be recalled and reassessed by the proper officer for levy of GST compensation Cess, as applicable.

The value of the imported article for the purpose of levying GST Compensation cess shall be, assessable value plus Basic Customs Duty levied under the Act, and any sum chargeable on the goods under any law for the time being in force, as an addition to, and in the same manner as, a duty of customs. These would include education cess or higher education cess as well as anti - dumping and safeguard duties.

GST Compensation Cess applicable goods:

GST Cess will be levied on supply of certain notified goods – mostly belonging to the luxury and demerit category.

Items	GST Rate Applicable	GST Cess Range	GST Cess Ceiling
Coal	5%	INR 400 / tonne	INR 400 / tonne
Pan Masala	28%	60%	135%
Tobacco	28%	61% – 204%	INR 4170 / thousand
Aerated Drinks	28%	12%	15%
Motor Vehicles	28%	1% – 22%	22%

Input tax credit be availed on GST Compensation Cess paid on inward supplies:

Yes, input tax credit can be availed on GST Compensation Cess paid on inward supplies of the above-mentioned notified goods. However, the credit of GST Compensation Cess paid can be utilized only towards payment of the GST Compensation Cess liability.

**Example 8:**

Suppose Assessable Value (A.V.) including landing charges = ₹ 100/-

- (1) BCD - 10%
- (2) IGST - 12%
- (3) Education cess – 2%
- (4) Higher education cess - 1%
- (5) Compensation cess - 10%

In view of the above parameters, the calculation of duty would be as below:

- (a) BCD = ₹ 10 [10% of A.V.]
- (b) Education cess - ₹ 0.2 [2% of (a)]
- (c) Higher education cess - ₹ 0.1 [1% of (a)]
- (d) IGST - ₹ 13.236 [A.V. + (a) + (b) + (c)] x 12%
- (e) Compensation cess - ₹ 11.03 [A.V. + (a) + (b) + (c)] x 10 %

Where product attract CVD, IGST & Compensation cess:

Example 9:

Suppose Assessable Value (A.V.) including landing charges = ₹ 100/-

- (1) BCD - 10%
- (2) CVD - 12%
- (3) IGST - 28%
- (4) Education cess – 2%
- (5) Higher education cess - 1%
- (6) Compensation cess - 10%

In view of the above parameters, the calculation of duty would be as below:

- (a) BCD = ₹ 10 [10% of A.V.]
- (b) CVD = ₹ 13.2 [12% of (A.V. + BCD)]
- (c) Education cess - ₹ 0.464 [2% of (BCD + CVD)]
- (d) Higher education cess - ₹ 0.232 [1% of (BCD + CVD)]
- (e) IGST - ₹ 34.69 [A.V. + (a) + (b) + (c) + (d)] x 28%
- (f) Compensation cess - ₹ 12.389 [A.V. + (a) + (b) + (c) + (d)] x 10%

Note:

- (1) In cases where imported goods are liable to Anti - Dumping Duty or Safeguard Duty, calculation of Anti - Dumping Duty or Safeguard duty would be as per the respective notification issued for levy of such duty. It is also clarified that value for calculation of IGST as well as Compensation Cess shall also include Anti - Dumping Duty amount and Safeguard duty amount.
- (2) The inclusion of anti - dumping duties and safeguard duty in the value for levy of IGST and Compensation Cess is an important change. These were not hitherto included in the value for the levy of additional duty of customs (CVD) or Special Additional Duty (SAD). The IGST paid shall not be added to the value for the purpose of calculating Compensation Cess.

Example 10:

X Transport company imported Rolls Royce car for the purpose of providing output services by way of transportation of passengers ₹ Following are the cost & other details-

Particulars	Amount (INR)
Cost of vehicle (Assessable value)	300,00,000
Custom duty	10%
IGST	28%
Compensation cess	20%

X Transport company is eligible to take Input tax credit and have output IGST liability of INR 120 Lakh. Calculate tax liability towards Custom duty & GST liability?

Answer:

Particulars	Calculation	Amount (INR)
Cost of Vehicle-(A)		300,00,000
Custom duty-(B)	10%	30,00,000
Cess-(C)	3% on (B)	90,000
Total custom duty payable- (D)	(B+C)	30,90,000
Total Cost after Custom duty-(E)	(A+D)	330,90,000
IGST-(F)	28% on (E)	92,65,200
Compensation cess-(G)	20% on (E)	66,18,000
Total cost-(H)	(E+F+G)	489,73,200

- Input tax credit available to set off against output IGST is INR 92,65,200
- Compensation cess paid cannot be set off against output tax liability of IGST
- Total tax payable by X Ltd after adjusting IGST ITC is INR 27,34,800 (INR 120,00,000 - INR 92,65,200)

Prior to GST Law
Additional Duty of Customs or Countervailing Duty (CVD)

As per sec 3(1) of the Customs Tariff Act, 1975, any article which is imported into India is subject to liable to duty (in addition to BCD) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India.

This duty can be levied only if the article is such that, it could be manufactured or produced in India.

CVD cannot be levied, if exemption from central excise duty is based on goods manufactured by SSI unit or goods manufactured without aid of power
CC v Malwa Industries (2009) 235 ELT 214 (SC)

As held by the Honorable Supreme Court of India in the case of **Hyderabad Industries Ltd. v Union of India (1999) (SC)**, in order to attract additional duty of customs it is not necessary that the like goods should have been manufactured in India and so long as the imported goods are the one capable of manufactured or produced, it attracts additional duty of customs even it is not actually manufactured in India.

However, if goods manufactured in India are exempt from excise duty, then there is no Additional Duty of Customs [CCE v J K Synthetics (2000) (SC)].

w.e.f. 17-3-2012, cvd is equal to basic excise duty (excluding cess).

If imported goods attract excise duty in India as per Section 4A of the Central Excise Act, then the CVD will be calculated as per the MRP basis only.

**The following points are important to note:**

(A) CVD will be calculated on the value of goods is as follows:

	₹
Value of goods Imported (Assessable Value)	= xxxx
Add: Basic Customs Duty	= xxxx
Add: National Calamity Contingent Duty [NCCD]	= xxxx

Balance	= xxxx
Add: Additional Customs Duty (CVD)	
On the above Balance	= xxxx

Balance	= xxxx
Add: Education Cess 2% on BCD + NCCD + CVD	= xxxx
Add: Secondary and Education Cess	
1% on BCD + NCCD + CVD	= xxxx

Value of Imported Goods	= xxxx

Note:

- (i) NCCD of Customs is levied on imports of Pan Masala, chewing tobacco and cigarettes. Subsequently 1% NCCD has been imposed on PFY, motor cars, multi utility vehicles and two wheelers and ₹ 50 per ton on crude oil vide section 169 of Finance Act, 2003.
- (ii) The payment for post importation process is includible in the value of the imported goods if the same is related to such imported goods and is a condition of the sale thereof.
- (iii) The excise exemption notification provided that exemption will be available if the goods are used in 'same factory'. Hence, the imported goods are used by the importer in the same factory or factory belonging to the importer, then no CVD attracted on such imported goods. **CC v Malwa Industries (2009) 235 ELT 214 (SC).**

Case Law 2:

M/s Bharti Telemedia Ltd. v Commissioner of Customs (Import), Nhava Sheva 2016 (331) ELT 138 (Tri.-Mumbai):

Issue: Set top boxes (STBs) are imported by a Direct to Home (DTH) broadcasting service provider and provided free of cost to the consumers of DTH service.

The issue is whether, in such conditions, the value for the purposes of calculation of CVD be determined on the basis of retail sale price (RSP) in terms of proviso to section 3(2) of the Customs Tariff Act, 1975?

Note: Set top boxes abatement 22%.

Decision: Hon'ble Tribunal has been held that one of the conditions to be met for CVD to be levied on retail sale price is that under the Legal Metrology Act, there should be requirement to declare on the package, the retail sale price (RSP) of the goods.

There appears to be no sale in the use of the set top box by the ultimate consumer. After detailed analysis, the Tribunal held that in the given circumstances CVD would not be leviable on the basis of retail sale price.

Therefore, Imported set top boxes to be valued under section 4 of the Central Excise Act, 1944 for the purpose of computing CVD.

Prior to GST Law:**Special additional customs duty (Under section 3(5) Customs Tariff Act)**

The imported goods shall in addition to basic customs duty and additional duty shall also be liable to special additional duty, which shall be levied at a rate to be specified by the Central Government. Such rate shall be notified by the central govt. having regard to the maximum sales tax, local tax or any other charge. At present the special CVD rate is 4%.



For a trader Spl. CVD is allowed as refund provided he suffered VAT in the state on these goods.

In respect of the following imported goods, Spl. CVD under Section 3(5) of the Customs Tariff Act, 1975 is fully exempted:

- (i) Goods packed for retail sales covered under Standards of Weights and Measurement Act.
- (ii) Wrist watches and pocket watches
- (iii) Telephones for cellular networks
- (iv) Articles of apparel excluding parts of made-up clothing accessories.

(4) Protective duties (Section 6(1) of the Customs Tariff Act, 1975)

Protective duties are levied by the central govt. upon the recommendation made by the Tariff Committee and upon it being satisfied that circumstances exist which render it necessary to take immediate action to provide protection to any INDUSTRY established in India. While calculating protective duties we should not calculate the education cess and secondary and higher education cess. As per WTO, protective duty is not supposed to be levied, hence, at present this duty is not in force.

(5) Safeguard duty (Section 8B(1) of the Customs Tariff Act, 1975)

Safeguard duty is imposed for the purpose of protecting the interests of any domestic industry in India. It is product specific. While calculating *Safeguard duty* we should not calculate the education cess and secondary and higher education cess. The Central Government of India can impose provisional safeguard duty, pending final determination upto 200 days.

The duty imposed under this section shall be in force for a period of 4 years from the date of its imposition and can be extended with the total period of levy not exceeding 10 years.

w.e.f. 6-8-2014 if imported goods are cleared in DTA, then safeguard duty will be payable.

Provisional Safeguard Duty:

The Central Government may, pending the determination under sub-section (1) of Section 8B, impose a provisional safeguard duty under this sub-section on the basis of a preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry;

Provided that where, on final determination, the Central Government is of the opinion that increased imports have not caused or threatened to cause serious injury to a domestic industry, it shall refund the duty so collected;

Provided further that the provisional safeguard duty shall not remain in force for more than two hundred days from the date on which it was imposed.

Example 11:

When shall the safeguard duty under section 8B of the Customs Tariff Act, 1975 be not imposed? Discuss briefly.

Answer:

The safeguard duty under section 8B of the Customs Tariff Act, 1975 is not imposed on the import of the following types of articles:

- (i) **Articles originating from a developing country, so long as the share of imports of that article from that country does not exceed 3% of the total imports of that article into India;**
- (ii) **Articles originating from more than one developing country, so long as the aggregate of imports from developing countries each with less than 3% import share taken together does not exceed 9% of the total imports of that article into India;**
- (iii) **Articles imported by a 100% EOU or units in a Free Trade Zone or Special Economic Zone unless the duty is specifically made applicable on them.**

Note: "developing country" means a country notified by the Central Government in the Official Gazette for the purposes of this section.

**Example 12:**

Determine the safeguard duty payable by X Ltd., under section 8B of the Customs Tariff Act, 1975 from the following:

X Ltd imported Sodium Nitrite from a developing country from 26th February, 2015 to 25th February, 2016 (both days inclusive) ₹50 crores.

Total imports of Sodium Nitrite (including developing country) is ₹2,500 crores.

Note: Safeguard duty is @ 30%.

Whether your answer is different in case of import of Sodium Nitrite from a developing country ₹80 crores?

Answer:

Since, import from a developing country does not exceeds 3% (i.e. 2% only) of total import of that article in to India, Safeguard duty is Nil.

In the given case safeguard duty will be payable by X Ltd.

Safeguard duty = ₹24 crores (i.e. ₹80 crores x 30%)

Since, import from a developing country exceeds 3% (i.e. 3.2%)

Example 13:

Determine the safeguard duty payable by X Ltd., Y Ltd., Z Ltd. and A Ltd. under section 8B of the Customs Tariff Act, 1975 from the following:

Import of Sodium Nitrite from developing and developed countries from 26th February, 2015 to 25th February, 2016 (both days inclusive) are as follows:

Importers	Country of Import	₹ Scores
X Ltd.	Developing country	70
Y Ltd.	Developing country	72
Z Ltd.	Developing country	52
A Ltd.	Developing country	50
Others	Developed country	2,256
	Total	2,500

Note: Safeguard duty 30%

Answer:

Importer	Country of import	₹ in crores	% of imports
X Ltd.	Developing country	70	2.8%
Y Ltd.	Developing country	72	2.88%
Z Ltd.	Developing country	52	2.08%
A Ltd.	Developing country	50	2%
Others	Developed country	2,256	
	Total	2,500	9.76%

Safeguard duty is as follows:

XLtd		21	70 x 30%
YLtd		21.60	72 x 30%
ZLtd		15.60	52 x 30%
A Ltd		15	50 x 30%

Articles originating from more than one developing countries and imports from each developing country is less than 3%, safeguard duty can be imposed if imports from all all such developing countries taken together exceeds 9% of total imports of that article in India.

Example 14:

Determine the safeguard duty payable by X Ltd., Y Ltd., and Z Ltd., and A Ltd. under section 8B of the Customs Tariff Act, 1975 from the following:

Import of Sodium Nitrite from developing and developed countries from 26th February, 2015 to 25th February, 2016 (both days inclusive) are as follows:

Importer	Country of Import	₹ in crores
X Ltd.	Developing country	70
Y Ltd.	Developing country	82
Z Ltd.	Developing country	52
A Ltd.	Developing country	50
Others	Developed country	2,246
	Total	2,500

Note: Safeguard duty 30%.

Answer:

Importer	Country of import	₹ in crores	% of imports	
X Ltd.	Developing country	70	2.8%	
Y Ltd.	Developing country	82		3.28%
Z Ltd.	Developing country	52	2.08%	
A Ltd.	Developing country	50	2%	
Others	Developed country	2,246		
	Total	2,500	6.88%	3.28%

Safeguard duty is as follows:

X Ltd.		Nil	70 x 30%
Y Ltd.		24.60	82 x 30%
Z Ltd.		Nil	52 x 30%
A Ltd.		Nil	50 x 30%

Articles originating from more than one developing countries (each with less than 3% import share), then the aggregate of imports from all such countries taken together does not exceed 9% (i.e. in the given case 6.88%) of the total imports of that article into India. Therefore, Safeguard duty is not applicable to X Ltd., Z Ltd., and A Ltd.

**Circular No. 23/2015-Cus, dated 29.09.2015]****Safeguard duties are rebatable as duty drawback (section 75 of the Customs Act).**

Since safeguard duties are not taken into consideration while fixing All Industry Rates of drawback, the drawback of the same can be claimed under an application for Brand Rate under rule 6 or rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995.

This implies that drawback shall be admissible only where the inputs which suffered safeguard duties were actually used in the goods exported as confirmed by the verification conducted for fixation of Brand Rate.

Further, where imported goods subject to safeguard duties are exported out of the country as such, then the drawback payable under section 74 of the Customs Act would also include the incidence of safeguard duties as part of total duties paid, subject to fulfillment of other conditions.

(6) Countervailing Duty on Subsidized articles (Section 9 of the Customs Tariff Act, 1975)

Duty levied if the articles are imported into India by getting the subsidies from other country. While calculating *Countervailing Duty on Subsidized articles* we should not calculate the education cess and secondary and higher education cess.

It shall be in force for a period of 5 years from the date of its imposition and can be extended for a further period of 5 years.

(7) Anti-dumping duty (Section 9A of the Customs Tariff Act, 1975)

This duty is country specific. It is imposed on imports of a particular country. Dumping exists when a product is exported from one country to another country at an export price which is less than its normal value prevailing in the exporting country. The difference between the normal value and the export price is the dumping margin based on which the Anti Dumping Duty is imposed. While calculating *Anti-dumping duty* we should not calculate the education cess and secondary and higher education cess.

Example 15:

A commodity is imported into India from a country covered by a notification issued by the Central Government under section 9A of the Customs Tariff Act, 1975. Following particulars are made available:

CIF value of the consignment: US\$25,000

Quantity imported: 500 kgs.

Exchange rate applicable: ₹ 60 = US\$1

Basic customs duty: 12%

Education and secondary and higher education cess as applicable as per the Finance Act, 2008.

As per the notification, the anti-dumping duty will be equal to the difference between the cost of commodity calculated @ US\$70 per kg. and the landed value of the commodity as imported.

Appraise the liability on account of normal duties, cess and the anti-dumping duty.

Assume that only 'basic customs duty' (BCD) and education and secondary and higher education cess are payable. IGST @12% is also be applicable.

Answer:

Statement showing landed value of imported goods and customs duties:

Particulars	US \$
CIF value	25,000

	Value in ₹
Assessable value (i.e. 25,000 × ₹60)	15,00,000
Add: Customs duty 12.36% on Assessable value	1,85,400
Landed value (or value of imported goods)	16,85,400
Anti-dumping duty (21,00,000 – 16,85,400)	4,14,600
Market value of imported goods (500 kgs x ₹60 x US \$70) = 21,00,000	
Open Market Value	21,00,000
Add: IGST @12% on ₹ 21,00,000	2,52,000
Total	23,52,000

Total customs duty payable is ₹ 8,52,000 (i.e. 1,85,400 + 4,14,600 + 2,52,000)

Note: In cases where imported goods are liable to Anti - Dumping Duty or Safeguard Duty, calculation of Anti - Dumping Duty or Safeguard duty would be as per the respective notification issued for levy of such duty. It is also clarified that value for calculation of IGST as well as Compensation Cess shall also include Anti - Dumping Duty amount and Safeguard duty amount

3.3 WHEN CAN PROVISIONAL MEASURES IMPOSED

Provisional Anti Dumping Measures can be imposed only after 60 days from the date of the intimation of anti dumping investigation namely The Directorate General of Anti Dumping and Allied Duties (DGAD).

The Central Government has power to levy anti-dumping duty on dumped articles in accordance with the provisions of section 9A of the Customs Tariff Act, 1975 and the rules framed thereunder. In a case where provisional duty is imposed under section 9A(2), the date of commencement of anti-dumping duty will be the date of publication of notification, imposing provisional duty under section 9A(2), in the Official Gazette. In a case where no provisional duty is imposed, the date of commencement of antidumping duty will be the date of publication of notification, imposing anti-dumping duty under section 9A(1), in the Official Gazette.

Where anti-dumping duty is imposed retrospectively under section 9A(3) from a date prior to the date of imposition of provisional duty, the date of commencement of anti-dumping duty will be such prior date as may be notified in the notification imposing anti-dumping duty retrospectively, but not beyond 90 days from the date of such notification of provisional duty.

3.4 REFUND OF ANTI-DUMPING DUTY

According to the provisions of section 9AA of the Customs Tariff Act, 1975, where an importer proves to the satisfaction of the Central Government that he has paid any antidumping duty imposed on any article, in excess of the actual margin of dumping in relation to such article, he shall be entitled to refund of such excess duty.

However, the importer will not be entitled for refund of provisional anti-dumping duty under section 9AA as it is refundable under section 9A(2) of the said Act.

Example 16:

Mr. X an importer imported certain goods CIF value was US \$ 20,000 and quantity 1,000 Kgs. Exchange rate was 1 US \$ = ₹ 50 on date of presentation of Bill of Entry. Customs Duty rates are— (i) Basic Customs Duty 12% (ii) Education cess 2% (iii) SAH Education cess 1%. There is no excise duty payable on these goods if manufactured in India. As per Notification issued by the Government of India, anti-dumping duty has been imposed on these goods. The anti-dumping duty will be equal to difference between amount calculated @ US \$ 30 per kg and 'landed value' of goods. Compute Customs Duty liability and anti-dumping liability.

**Answer****Part I**

₹

Total CIF Price/Assessable Value US \$ 20,000 x ₹ 50 = **10,00,000**

Basic duty @ 12% = **1,20,000**

Sub total = **11,20,000**

Add: Education cess 2% on 1,20,000 = **2,400**

Add: Secondary and Higher Education Cess = **1,200**

[@1% on 1,20,000]

Value of imported goods = **11,23,600**

Total Customs Duty payable is ₹ 1,23,600.

Part II

Rate as per Anti Dumping Notification is ₹ 15,00,000 [US \$ 30 per kg x 1,000 Kgs x ₹ 50]

Part III**Computation of anti-dumping duty**

Rate as per Anti Dumping Notification = ₹ **15,00,000**

Less: Value of imported goods as computed above = ₹ **(11,23,600)**

Anti Dumping Duty payable = ₹ **3,76,400**

3.5 DEFERRED PAYMENT OF IMPORT DUTY RULES, 2016

Deferred Payment of Import Duty Rules, 2016 (w.e.f. 16.11.2016)

Notification No. 134/2016 Customs (NT) dt. 02.11.2016

It is based on the principle 'Clear first-Pay later'. As a part of the ease of doing business focus of the Government of India, the Central Board of Excise and Customs (CBEC) has rolled out the AEO (AUTHORIZED ECONOMIC OPERATOR) programme. This scheme is in force w.e.f. 16 Nov 2016. AEO means Authorised Economic Operator certified by the Directorate General of Performance Management under CBEC.

Eligible importers:

This benefit is currently being extended to importers holding AEO T-2 or T-3 status.

AEO-T2 CERTIFICATE: This certificate may be granted only to an importer or to an exporter. For the purpose of this certificate, the economic operator should fulfill the criteria set out by the Board.

AEO-T3 CERTIFICATE: This certificate may be granted only to an importer or to an exporter. For the purpose of this certificate, the economic operator must have continuously enjoyed the status of AEO-T2 for at-least a period of two years preceding the date of application for grant of AEO-T3 status or the economic operator must be an AEO-T2 certificate holder, and its other business partners namely importers or exporters, Logistics service providers, Custodians / Terminal operators, Customs Brokers and Warehouse operators are holders of AEO-T2 or AEO-LO



certificate or any other equivalent AEO certificate granted by a foreign Customs.

Note: For the economic operators other than importers and the exporters, the new programme offers only one tier of certification (i.e. AEO-LO) whereas for the importers and the exporters, there will be three tiers of certification (i.e. AEO-T1, AEO-T2 and AEO-T3).

Intimation about intent to avail benefit of notification:

An eligible importer who intends to avail the benefit of deferred payment shall intimate to the Principal Commissioner of Customs or the Commissioner of Customs, as the case may be, having jurisdiction over the port of clearance, his intention to avail the said benefit.

Once, Customs Authority satisfied with the eligibility of the importer allow him to pay the duty by due dates.

Registration to pay duty under deferred payment scheme:

Every importer certified as AEO-T2/AEO-T3 shall obtain ICEGATE (Indian Customs Electronic Commerce/Electronic Data interchange (EC/EDI) Gateway) Login which is essential to avail benefits envisaged in the Duty Deferment Scheme.

Electronic payment of duty:

The eligible importer shall pay the duty electronically: However, the Assistant/Deputy Commissioner of Customs may for reasons to be recorded in writing, allow payment of duty by any mode other than electronic payment.

Deferred payment not to apply in certain cases:

If there is default in payment of duty by due date more than once in three consecutive months, this facility of deferred payment will not be allowed unless the duty with interest has been paid in full.

The benefit of deferred payment of duty will not be available in respect of the goods which have not been assessed or not declared by the importer in the bill of entry.

Due dates for payment of duty:

The eligible importer has to pay the duty by the dates mentioned below inclusive of the period (excluding holidays) as mentioned in section 47(1):-

For the period From 16.11.2016 to 30.03.2017	
For goods corresponding to bill of entry returned for payment from	Duty to be paid by
1 st to 15 th day of any month	17 th day of that month
16 th day till the last day of any month other than March	2 nd day of the following month
16 th day till the 29 th day of March	31 st March
30 th March to 31 st March	2 nd April
For the period From 31.03.2017	
1 st to 15 th day of any month	16 th day of that month
16 th day till the last day of any month other than March	1 st day of the following month
16 th day till the 31 st day of March	31 st March

3.6 IMPORTS AND INPUT TAX CREDIT (ITC)

In GST regime, input tax credit of the integrated tax (IGST) and GST Compensation Cess shall be available to the importer and later to the recipients in the supply chain, however the credit of basic customs duty (BCD) would not be available. In order to avail ITC of IGST and GST Compensation Cess, an importer has to mandatorily declare GST Registration number (GSTIN) in the Bill of Entry. Provisional IDs issued by GSTN can be declared during the transition



period.

However, importers are advised to complete their registration process for GSTIN as ITC of IGST would be available based on GSTIN declared in the Bill of Entry. Input tax credit shall be availed by a registered person only if all the applicable particulars as prescribed in the Invoice Rules are contained in the said document, and the relevant information, as contained in the said document, is furnished in FORM GSTR - 2 by such person.

Customs EDI system would be interconnected with GSTN for validation of ITC. Further, Bill of Entry data in non - EDI locations would be digitized and used for validation of input tax credit provided by GSTN.

3.7 PROJECT IMPORTS

This concept has been introduced by the Government under the heading 9801 of the Customs Tariff to cover all machinery, instruments apparatus and appliances, components or raw materials for initial setting up or expansion of existing units for the purpose of following eligible projects:

- (i) Industrial plant,
- (ii) Irrigation project,
- (iii) Power project,
- (iv) Mining project,
- (v) Oil & other mineral exploration project
- (vi) Other projects as notified by the Central Government. The spare parts of machinery and raw material etc can be imported upto 10% of value of good can be imported.

The duties on project imports are as follows:

Basic Customs Duty (BCD) 5% (whereas normal rate of BCD @10%)

IGST as applicable has to pay.

BCD is 'NIL' for mega power projects, nuclear power projects and water supply projects for agricultural and industrial use.

There is no minimum investment requirement for project Imports with effect from 2.01.2007.

In case of project imports requirement of security deposit has been replaced by a bank guarantee of maximum One crore w.e.f. 8-4-2011.

Currently for items imported under project import scheme (i.e. CTH 9801), unique heading under the Central Excise Tariff, for the purposes of levy of CVD does not exist. Therefore, under the Central Excise Tariff, each item is getting classified in a heading as per its description and duty is paid on merit.

In the GST regime, for the purpose of levying IGST all the imports under the project import scheme will be classified under heading 9801 and duty shall be levied @ 18%.



Study Note - 4

VALUATION UNDER CUSTOMS



This Study Note includes

- 4.1 Introduction
- 4.2 Transaction Value
- 4.3 Valuation for Export Goods
- 4.4 Valuation of Imported Goods

4.1 INTRODUCTION

Once the duty liability arises, such duty can be calculated only on the assessable value. As per section 2(41) of the Customs Act, 1962 the term value means in relation to any goods as the value thereof determined in accordance with the provisions of sections 14(1) and sections 14(2) of the Customs Act, 1962. There are basically specific duties based on the quantity of the goods like ₹ 5,000 per Kg of Steel or Ad valorem rate of duty expressed as percentage of the value of the goods say 20% *ad valorem*. However, Government of India will lose its revenue if it follows specific rate of duty due to continuous upward trend in the price of goods.

As per the World Trade Organization (WTO), Transaction Value (i.e. *ad valorem*) is the base and our Customs Valuation Rules were prepared based on these lines. The Central Board of Excise and Customs (CBE&C) empowers to fix tariff values of imported goods or export goods by issuing notifications under section 14(2).

4.2 TRANSACTION VALUE

As per section 14(1) of the Customs Act, 1962 valuation based on transaction value is applicable for export as well as imported goods

Transaction Value means:

- Price at which such or like goods are ordinarily sold or offered for sale
- for delivery at the time and place of importation
- in the course of international Trade
- When Seller and buyer have no interest in the business of each other and
- Price is the sole consideration for sale
- At rate of exchange as on the date of presentation of Bill of Entry as fixed by the CBEC.

The conditions laid down above are common to imports as well as exports. Export goods are to be valued as per section 14(1) of the Customs Act, 1962. If any one of the above conditions are not satisfied valuation for export goods should be done based on the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

However, in case of imported goods, assessable value is to be determined in accordance with the Customs (Determination of Price of Imported Goods) Rules, 2007. Basically there is no conflict between section and rules because main focus is on transaction value which is arrived at based on the valuation rules either in case of export or import.



4.3 VALUATION OF EXPORT GOODS

Valuation is essential for export goods even though many products are exempted from export duty under the Customs Law.

Importance of valuation of export goods:

- Duty Drawback
- Export incentives like DEPB License
- Refund of CENVAT credit, if any.
- Payment of duty on export, if any.

The Customs Valuation (Determination of Value of Export Goods) Rules, 2007 is applicable only if the aforesaid conditions are not satisfied:

- Rule 1:** (i) These rules may be called the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.
- (ii) They shall come into force on the 10th day of October, 2007.
- (iii) They shall apply to export goods.

Rule 2: Definitions

Some important definitions are:

- (a) **“goods of like kind and quality”** means export goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the same functions or are commercially interchangeable with the goods being valued, produced by the same person or a different person; and
- (b) **“transaction value”** means the value of export goods within the meaning of sub-section (1) of section 14 of the Customs Act, 1962.

Rule 3: Determination of the method of valuation

1. Subject to rule 8, the value of export goods shall be the transaction value.
2. The transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.
3. If the value cannot be determined under the provisions of sub-rule (1) and sub-rule (2), the value shall be determined by proceeding sequentially through rules 4 to 6.

Rule 4: Determination of export value by comparison

- (1) The value of the export goods shall be based on the transaction value of goods of like kind and quality exported at or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation adjusted in accordance with the provisions of sub-rule (2).
- (2) In determining the value of export goods under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including—
 - difference in the dates of exportation,
 - difference in commercial levels and quantity levels,
 - difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared,



- difference in domestic freight and insurance charges depending on the place of exportation

Rule 5: Computed value method

If the value cannot be determined under rule 4, it shall be based on a computed value, which shall include the following:—

- cost of production, manufacture or processing of export goods;
- charges, if any, for the design or brand;
- An amount towards profit.

Rule 6: Residual method

Subject to the provisions of rule 3, where the value of the export goods cannot be determined under the provisions of rules 4 and 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods.

Rule 7: Declaration by the exporter

The exporter shall furnish a declaration relating to the value of export goods in the manner specified in this behalf.

Rule 8: Rejection of declared value

- (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods, he may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response from such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be deemed to have not been determined in accordance with sub-rule (1) of rule 3.
- (2) At the request of an exporter, the proper officer shall intimate the exporter in writing the ground for doubting the truth or accuracy of the value declared in relation to the export goods by such exporter and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Presently the following goods are subject to export duty:

Commodity	Rate of Duty
Luggage leather	25%
Hides, Skins and leather	15%
Snake skins and lamb skins	10%
Steel product [w.e.f. 10-5-2008]	15%
Iron ores	₹ 300 per metric tonne
Chromium ores	₹ 2,000 per metric tonne

Refund of Export duty:

Refund of export duty is permissible in the following circumstances subject to satisfaction of certain conditions

- Goods are reimported within one year from the date of export
- These goods are not for resale
- Refund claim is lodged within six months from the date of clearance by Customs Officer for re-importation



4.4 VALUATION OF IMPORTED GOODS

Rule 1: Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

Rule 2: Various terms defined like Relative, Transaction Value, Computed Value, Deductive Value, Similar Goods, and Identical Goods etc., Some important definitions are ,

(1) In these rules, unless the context otherwise requires, -

(c) "goods of the same class or kind", means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and includes identical goods or similar goods;

(d) "identical goods" means imported goods -

(i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods;

(ii) produced in the country in which the goods being valued were produced; and

(iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person,

but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

(f) "similar goods" means imported goods -

(i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;

(ii) produced in the country in which the goods being valued were produced; and

(iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person,

but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

(2) For the purpose of these rules, persons shall be deemed to be "related" only if -

(i) they are officers or directors of one another's businesses;

(ii) they are legally recognised partners in business;

(iii) they are employer and employee;

(iv) any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family.

Explanation I. - The term "person" also includes legal persons.

Explanation II. - Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.

**Example 1:**

M/s. IES Ltd. (assessee) imported certain goods at US \$ 20 per unit from an exporter who was holding 30% equity in the share capital of the importer company. Subsequently, the assessee entered into an agreement with the same exporter to import the said goods in bulk at US \$ 14 per unit. When imports at the reduced price were effected pursuant to this agreement, the Department rejected the transaction value stating that the price was influenced by the relationship and completed the assessment on the basis of transaction value of the earlier imports i.e. at US \$20 per unit under rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, viz transaction value of identical goods. State briefly, whether the Department's action is sustainable in law, with reference to decided cases, if any.

Answer:

Persons shall be deemed to be "related" if one of them directly or indirectly controls the other. The word "control" has nowhere been defined under the said rules. As per the common parlance, the control is established when one enterprise holds at least 51% of the equity shareholding of the other company. However, in the instant case, the exporter company held only 30% of shareholding of the assessee. Thus, Exporter Company did not exercise a control over the assessee. So, the two parties cannot be said to be related.

The fact that assessee had made bulk imports could be a reason for reduction of import price. The burden to prove under-valuation lies on the Revenue and in absence of any evidence from the Department to prove under-valuation, the price declared by the assessee is acceptable. Therefore the Departmental action is not sustainable in law.

Rule 3: Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10.

Transaction Value of import goods under section 14(1) of the Customs Act and Rule 3(1) of the Imported Goods Rules:

This method is applicable only when importer satisfies the following conditions:

- There are no restrictions as to the disposition or use of the goods by the buyer,
- The sale or price is not subject to some conditions or considerations for which a value cannot be determined in respect of the goods being valued,
- No part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of **rule 10** of these rules, and
- The buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of rule 3(3).

Case Law 1:

Commissioner of Cus., Vishakhapatnam v Aggarwal Industries Ltd. 2011 ELT 641 (SC):

Statement of Facts: The importer entered into contract for supply of crude sunflower seed oil U.S. \$ 435 C.I.F./Metric ton. Under the contract, the consignment was to be shipped in the month of July, 2011. The period was extended by mutual agreement and goods were shipped on 5th August, 2011 at old agreed prices.

In the meanwhile, the international prices had gone up due to volatility in market, and other imports during August, 2011 were at higher prices.

Department sought to increase the assessable value on the basis of the higher prices as contemporaneous imports.

Decide whether the contention of the department is correct. You may refer to decided case law, if any, for your decision.
(CA FINAL MAY 2013)



Decision: No. Department view is not correct. It is true that the commodity involved had volatile fluctuations in its price in the international market, but having delayed the shipment; the supplier did not increase the price of the commodity even after the increase in its price in the international market. There was no allegation of the supplier and importer being in collusion.

Thus, the appeal was allowed in the favour of the respondent- assessee.

Statement Showing Computation of Assessable value for Imported Goods

	₹
Value of Material (at ex-factory price)	= xxxx
Carriage/freight/insurance upto the port (sea/air) of shipment in the exporter's country	= xxxx
Charges for loading on to the ship at the shipping port in the exporter's country	= xxxx

Free on Board (FOB)	= xxxx

FOB	= xxxx
Add: If not included in the above [Rule 10(1)]	
Commission and brokerage (except buying commissions)	= xxxx
Packing cost (except cost of durable and returnable packing)	= xxxx
Cost of engineering, development and plan or sketches (Undertaken outside India)	= xxxx
Royalties and license fee	= xxxx
Value of subsequent re-sale if payable to foreign supplier	= xxxx
Value of material supplied by the buyer free of cost	= xxxx

FOB value as per the Customs	= xxxx
Cost of freight if not specified @ 20% of FOB value as per Customs [Rule 10(2)]	= xxxx
Ship demurrage charges on chartered vessels, lighterage or barge charges [Rule 10(2)]	= xxxx
Insurance if not specified @ 1.125% of FOB value as per Customs [Rule 10(2)]	= xxxx

Cost, Insurance and Freight (CIF)/Assessable Value	= xxxx

Note: (1) The term "buying commissions" means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.

- (2) Any expenditure like right to reproduce the imported goods in India shall not be added. However, if importer imports software and pays license fee with permission to use its copies at various branches, making additional copies for its own use at various branches does not amount to reproduction. Right to use countrywide is not right to reproduce. Therefore, the whole license fee is includible in assessable value [*State Bank of India v Commissioner of Customs* (2000) (SC)].
- (3) Cost of actual air freight exceeds @ 20% of FOB, only @ 20% of FOB price will be added for Customs Valuation. However, cost of transport within India is not to be included in the Assessable Value of imported goods.
- (4) Apportioning cost of tools are not consumed immediately by the importer, in such a case he may request Customs Officer to apportion full cost of tooling on first consignment itself.

Example 2:

Cost of tooling is ₹ 2,00,000 and the tool expected to produce 20,000 pieces. If the importer imports 2,000 pieces in the first lot, 10% of cost of such tooling i.e. ₹ 20,000 may be apportioned to the 2,000 pieces and ₹ 20,000 may be added to transaction value for ascertaining assessable value.

- (5) The cost of transport of the imported goods includes the ship demurrage charges on chartered vessels,



lighterage or barge charges. Some times the ship is not brought upto jetty because deep draught at port or ports are very busy or Odd dimensional or heavy lifts or hazardous cargo discharged at anchorage. Hence, charges for bringing goods from outer anchorage to the jetty are called as barging/lighterage charges.

- (6) However, demurrage charges payable to port trust authorities for delay in clearing goods are not to be added in the transaction value.
- (7) Free on Board (FOB): FOB means 'Term of sale' under which the price invoiced or quoted by a seller includes all charges up to placing the goods on board a ship at the port of departure specified by the buyer.
- (8) Exchange Rate: we should consider the exchange rate of CBE&C for finding assessable value in Indian Rupees.

Amendment in Customs Valuation

As per Notification No. 91/2017-CUSTOMS (N.T.), dt. 26.09.2017, the following changes are made to the Customs Valuation (Determination of Value of Imported Goods) Rules 2007 (or CVR, 2007), namely:-

- (1) "place of importation" means the customs station, where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse;"
- (2) the value of the imported goods shall include –
 - (a) the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation;
 - (b) the cost of insurance to the place of importation

Provided that where the cost referred to in (a) is not ascertainable, such cost shall be twenty per cent of the free on board value of the goods:

Provided further that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in (b) is ascertainable, the cost referred to in (a) shall be twenty per cent of such sum:

Provided also that where the cost referred to in (b) is not ascertainable, such cost shall be 1.125% of free on board value of the goods:

Provided also that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in (a) is ascertainable, the cost referred to in (b) shall be 1.125% of such sum:

Provided also that in the case of goods imported by air, where the cost referred to in (a) is ascertainable, such cost shall not exceed twenty per cent of free on board value of the goods:

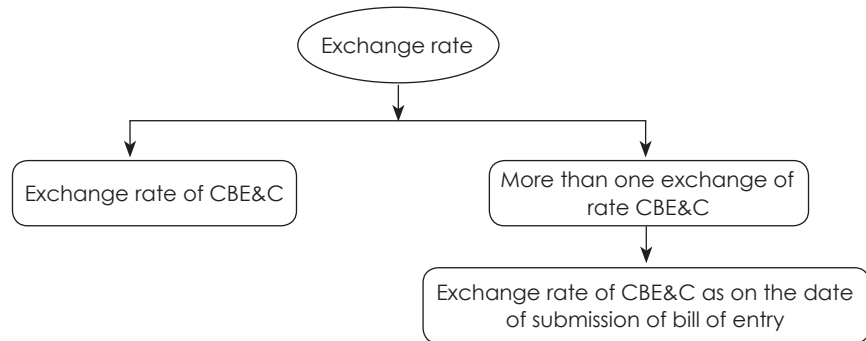
Provided also that in the case of goods imported by sea or air and transshipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded.

Explanation:

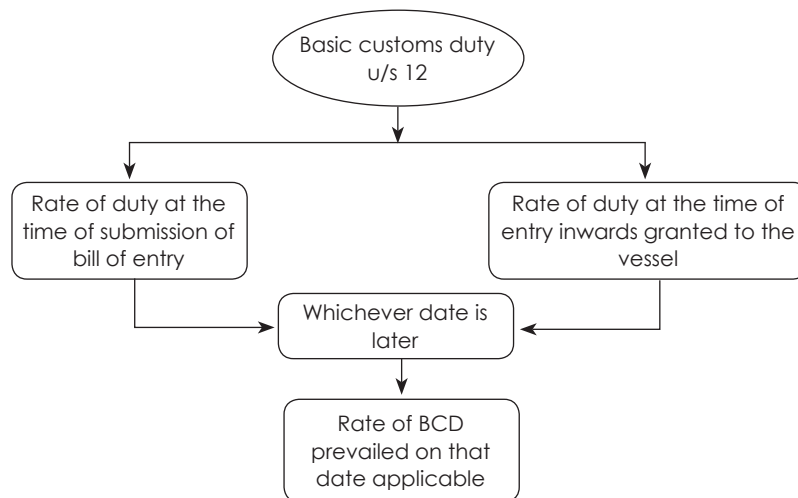
The cost of transport of the imported goods referred to in (a) includes the ship demurrage charges on chartered vessels, lighterage or barge charges."

As per Circular No. 39 / 2017-Customs, dt. 26.09.2017, the treatment of the loading, unloading and handling charges will be:

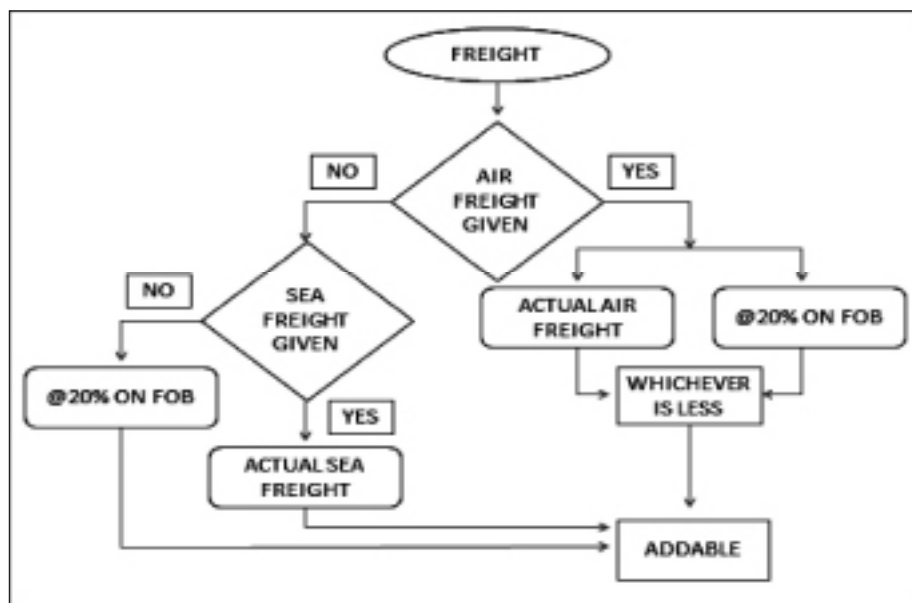
- (1) The Hon'ble Supreme Court had ruled in the case of M/s Wipro Ltd. Vs Assistant Collector of Customs-2015 (319) ELT 177 (S.C.) dated 16/04/2015 that the landing charges to be added to the value of goods, should be based on actual charges incurred, and not a notional charge of 1% as has been provided in the Rules.
- (2) By virtue of the amendment now carried out to the CVR, 2007, the loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation, shall no longer be added to the CIF value of the goods.
- (3) The phrase "loading, unloading and handling charges" is to be understood as "the cost of transport of the imported goods to the port or place of importation". Thus, only charges incurred for delivery of goods "to" the place of importation (such as the loading and handling charges incurred at the load port) shall now be includible in the transaction value.



(9) Rate of determination of Basic Customs Duty:



(10) Freight from the exporter country to importer port or airport addable into assessable value.

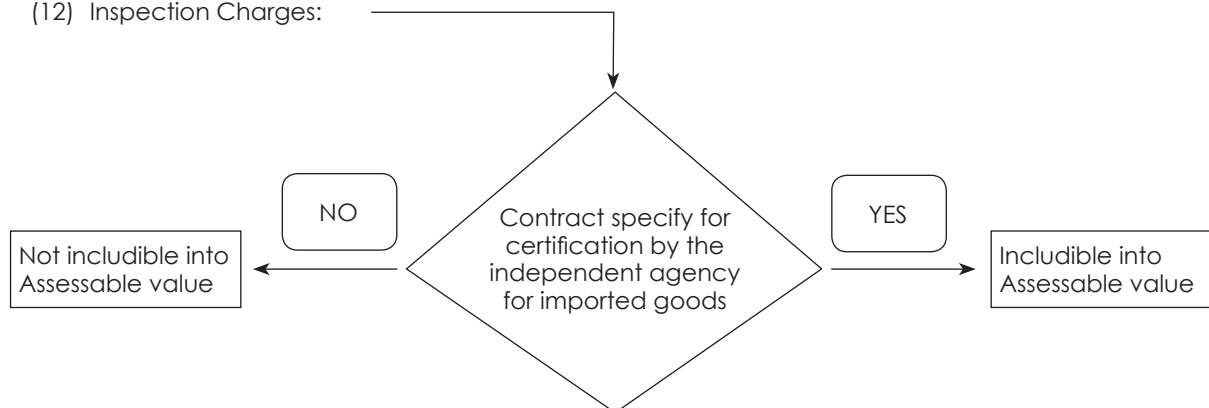


(11) Service charges paid to canalizing agent: It is includible in the assessable value of imported goods.

Canalizing agent: Since the canalizing agent is not the agent of the importer nor does he represent the importer abroad, purchases by canalizing agency from foreign seller and subsequent sale by it to Indian importer are independent of each other.

The importer may either place the order directly or through the agent. In case of canalized items, he obtains the imports through the canalizing agency. Canalisation means channelization of goods through a government agency like Metals and Minerals Trading Corporation of India (MMTC). The importer cannot directly import such canalized items. They have to place an order with the canalizing agency who shall import and supply the same.

(12) Inspection Charges:



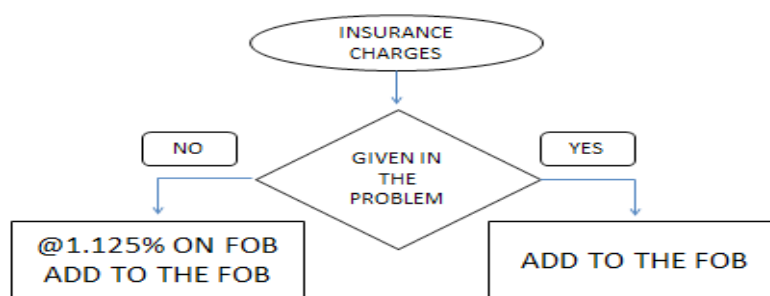
Case Law 2:

Commissioner of Central Excise, Mangalore v Mangalore Refinery & Petrochemicals Ltd. {(2016) 66 taxmann. com 108 (SC)}

Revenue contended that demurrage charges paid by the assessee are includible in the assessable value for the levy of custom duty.

Decision: Demurrage charges are incurred after the goods reached at Indian Ports, thus it is a post-importation event; relying on the case of *Commissioner of Customs v Essar Steel Ltd.* (2015) 51 GST 181/58 taxmann.com 191, the Apex Court has held that Demurrage charges are not includible in assessable value of imported goods.

(13) Insurance charges:



Demurrage charges:

Case Law 3:

Commissioner of Central Excise, Mangalore v Mangalore Refinery & Petrochemicals Ltd. {(2016) 66 taxmann. com 108 (SC)}

Revenue contended that demurrage charges paid by the assessee are includible in the assessable value for the levy of custom duty.



Decision: Demurrage charges are incurred after the goods reached at Indian Ports, thus it is a post-importation event; relying on the case of *Commissioner of Customs v Essar Steel Ltd.* (2015) 51 GST 181/58 taxmann.com 191, the Apex Court has held that Demurrage charges are not includible in assessable value of imported goods.

Example 3:

From the particulars given below, find out the assessable value of the imported goods under the Customs Act, 1962.

	US \$
(i) Cost of the machine at the factory of the exporting country	10,000
(ii) Transport charges incurred by the exporter from his factory to the port for shipment.	500
(iii) Handling charges paid for loading the machine in the ship	50
(iv) Buying commission paid by the importer	50
(v) Freight charges from exporting country to India	1,000
(vi) Exchange Rate to be considered 1\$ = ₹ 65	

Answer:

Statement showing assessable value for imported goods:

S.No.	Particulars	Value US \$	Workings
(i)	Cost of the machine at the factory of the exporting country	10,000	
(ii)	Transport charges incurred by the exporter from his factory to the port for shipment	500	
(iii)	Handling charges paid for loading the machine in the ship	50	
	FOB Value of Exporter	10,550	
(iv)	Buying commission paid by the importer	-	Not addable into the assessable value
(v)	Cost of insurance	118.6875	@1.125% on FOB value
(vi)	Freight charges from exporting country to India	1,000	
(vi)	CIF Value/Assessable Value	11,668.6875	
(vii)	Assessable value (in INR)	₹ 7,58,465	₹ 65 x US \$ 11,668.6875

Example 4:

XYZ Industries Ltd., has imported certain equipment from Japan at an FOB cost of 2,00,000 Yen (Japanese). The other expenses incurred by M/s. XYZ Industries in this connection are as follows:

- (i) Freight from Japan to India Port 20,000 Yen
- (ii) Insurance paid to Insurer in India ₹ 10,000
- (iii) Designing charges paid to Consultancy firm in Japan 30,000 Yen
- (iv) M/s. XYZ Industries had expended ₹ 1,00,000 in India for certain development activities with respect to the imported equipment
- (v) XYZ Industries had incurred road transport cost from Mumbai port to their factory in Karnataka ₹ 30,000
- (vi) The Central Board of Excise and Customs had notified for purpose of section 14(3)* of the Customs Act, 1962 exchange rate of 1 Yen = ₹ 0.3948. The inter bank rate was 1 Yen = ₹ 0.40
- (viii) M/s XYZ Industries had effected payment to the Bank based on exchange rate 1 Yen = ₹ 0.4150
- (viii) The commission payable to the agent in India was 5% of FOB cost of the equipment in Indian Rupees Arrive at the assessable value for purposes of customs duty under the Customs Act, 1962 providing brief notes wherever required with appropriate assumptions.



Answer:

Statement showing computation of Assessable Value for the imported goods

Particulars	Amount in Yen	Remarks	Working note
Free on Board (FOB)	2,00,000		
Designing charges	30,000	Addable into the assessable value	
Development charges	—	Not addable into the assessable value, because these are post shipment expenses	
Road transport charges	—	Not addable into the assessable value, because these are post shipment expenses	
Commission	10,000	Addable into the assessable value	$2,00,000 \times 5\% = 10,000$
FOB value of the Customs	2,40,000		
	Amount in Rupees		
Total	94,752	Exchange rate of the Central Board of Excise and Customs (CBE&C) is relevant	$2,40,000 \text{ Yen} \times 0.3948$
Insurance	10,000	Addable into the assessable value	
Freight	7,896	Addable into the assessable value	$20,000 \times .3948$
Total CIF value/ Assessable Value	1,12,648		

Example 5:

BSA & Company Ltd. have imported a machine from U.K. From the following particulars furnished by them, arrive at the assessable value for the purpose of customs duty payable:

(i) F.O.B. cost of the machine	10,000 U.K. ounds
(ii) Freight (air)	3,000 U.K. Pounds
(iii) Engineering and design charges paid to a firm in U.K.	500 U.K. Pounds
(iv) License fee relating to imported goods payable by the buyer as a condition of sale	20% of F.O.B. Cost
(v) Materials and components supplied by the buyer free of cost valued	₹ 20,000
(vi) Insurance paid to the insurer in India	₹ 6,000
(vii) Buying commission paid by the buyer to his agent in U.K.	100 U.K. Pounds

Other Particulars:

- (i) Inter-bank exchange rate as arrived by the authorized dealer: ₹ 72.50 per U.K. Pound.
- (ii) CBEC had notified for purpose of Section 14 of the Customs Act, 1944, exchange rate of ₹ 70.25 per U.K. Pound.
- (iii) Importer paid ₹ 5,000 towards demurrage charges for delay in clearing the machine from the Airport.

(Make suitable assumptions wherever required and show workings with explanations)

**Answer:**

	UK Pounds
FOB value	= 10,000
Add : Engineering and Design charges (paid in UK)	= 500
Add : License fee (20% on 10,000 UKP)	= 2,000
Sub-total	= 12,500
	Value in ₹
Sub-total (12,500 UKP × ₹ 70.25)	= 8,78,125
Add : Material supplied by the buyer freely	= 20,000
FOB value as per customs	= 8,98,125
Add : Air freight (8,98,125 × 20%)	= 1,79,625
Add : Insurance	= 6,000
CIF value/Assessable Value	= 10,83,750

Rule 4: Transaction value of Identical Goods

Identical goods means the goods must be same in all respects, including physical quantity

This method is applicable only when following conditions are satisfied:

- Identical goods can be compared with the other goods of the same country from which import takes place.
- These goods must be valued at a price which is produced by the same manufacturer.
- If price is not available then the price of other manufacturers of the same country is to be taken into account.
- If more than one value of identical goods is available, lowest of such value should be taken.

A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities.

Example 6:

A consignment of 800 metric tonnes of edible oil of Malaysian origin was imported by a charitable organization in India for free distribution to below poverty line citizens in a backward area under the scheme designed by the Food and Agricultural Organization. This being a special transaction, a nominal price of US\$ 10 per metric tonne was charged for the consignment to cover the freight and insurance charges. The Customs House found out that at or about the time of import of this gift consignment, there were following imports of edible oil of Malaysian origin:

S. No.	Quantity imported in metric tonnes	Unit price in US \$ (CIF)
1.	20	260
2.	100	220
3.	500	200
4.	900	175
5.	400	180
6.	780	160

The rate of exchange on the relevant date was 1 US \$ = ₹ 63.00 and the rate of basic customs duty was 15% ad valorem. There is no IGST. Calculate the amount of duty leviable on the consignment under the Customs Act, 1962 with appropriate assumptions and explanations where required.

**Answer:****Calculation of amount of duty payable:—**

exchange rate of \$ 1 = ₹ 63

CIF Value (800 metric tonnes x 160 USD x ₹ 63)/Assessable Value = ₹ 80,64,000

15% Basic Customs duty on ₹ 80,64,000 = ₹ 12,04,600

Add: Education cess @ 2% on 12,09,600 = ₹ 24,192

Add: Secondary and higher education cess @ 1% 12,09,600 = ₹ 12,096

Total custom duty payable = ₹ 12,45,888

Notes: more than one transaction value for identical goods are given, we are supposed to take the lowest price of the quantity which is nearest to the quantity of import.

Notes: more than one transaction value for identical goods are given, we are supposed to take the lowest price of the quantity which is nearest to the quantity of import.

Example 7:

If the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognised that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to be made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a value under the provisions of rule 4 is not appropriate.

Case Law 4:**Gira Enterprises v CCus. 2014 (307) ELT 209 (SC)**

Can the value of imported goods be increased if Department fails to provide to the importer, evidence of import of identical goods at higher prices?

Facts of the Case: The appellant imported some goods from China. On the basis of certain information obtained through a computer printout from the Customs House, Department alleged that during the period in question, large number of such goods were imported at a much higher price than the price declared by the appellant. Therefore, Department valued such goods on the basis of transaction value of identical goods as per rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and demanded the differential duty along with penalty and interest from the appellant. However, Department did not provide these printouts to the appellant.

Decision: The Supreme Court held that mere existence of alleged computer printout was not proof of existence of comparable imports. Even if assumed that such printout did exist and content thereof were true, such printout must have been supplied to the appellant and it should have been given reasonable opportunity to establish that the import transactions were not comparable.

Thus, in the given case, the value of imported goods could not be enhanced on the basis of value of identical goods as Department was not able to provide evidence of import of identical goods at higher prices.

Rule 5: Transaction value of Similar Goods

"Similar goods" includes—

- Which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;



- Produced in the country in which the goods being valued were produced; and
- Produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

Difference between Identical and Similar Goods

Identical goods	Similar goods
Goods must be same in all respects, except for minor differences in appearance	Goods have like characteristics and components and perform same functions
For an example: Hero Honda two Wheeler Products namely Splendor and Passion	For an example: Hero Honda Splendor and Bajaj scooter.

Rule 6: Determination of value

If the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8.

Rule 7: Deductive Value

Based on the request of the importer if the Customs Officer approves, either deductive method or computed value method as the case may be can be adopted.

In case of deductive method the valuation is as follows:

- Assessable is calculated by reducing the post-importation costs and expenses from this selling price.

Example 8:

Selling price minus selling commission, transportation, insurance associated costs within India and duties and taxes paid in India.

- **This method may be used when goods are extracted on High Seas (e.g. minerals, crude oil etc.) and brought into India for sale. It will be import and dutiable.**

Example 9:

Valuation where various quantities are sold at various prices.

(a) Sales

Sale quantity	Unit price
40 units	100
30 units	90
15 units	100
50 units	95
Sale quantity	Unit price
25 units	105
35 units	90
5 units	100



(b) Totals	
Total quantity Sold	Unit price
65	90
50	95
60	100
25	105

In this example, the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is ₹ 90.

Example 10:

X Ltd., imported 500 units of minerals from High Seas for sale in India. Selling price exclusive of duties and taxes. Freight from port to depot in India is ₹ 10,150 and Insurance ₹ 1,250.

Sale quantity	Unit price ₹
400 units	100
300 units	90
150 units	100
500 units	95
250 units	105
350 units	90
50 units	100

Basic Customs Duty 12% and education cess as applicable. Calculate total customs duty as per Rule 7 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Assume there is no IGST applicable for the product.

Answer:

Total quantity Sold	Unit price
650	90
500	95
600	100
250	105

The greatest number of units sold at a particular price is 650 units;

Therefore, the unit price in the greatest aggregate quantity is ₹ 90.

	₹
Selling Price	= 45,000 (i.e. 500 units x ₹ 90)
Less: Freight (post shipment)	= (10,150)
Less: Insurance (post shipment)	= (1,250)
Assessable Value	= 33,600
	=====

Total Customs Duty = ₹ 4,153 (i.e. 33,600 x 12.36%)

Example 11:

A Ltd., sell in India from a price list which grants favourable unit prices for purchases made in larger quantities.

Sale quantity	Unit price in ₹ (Exclusive of duties and taxes)	Number of sales
1-10 units	100	10 sales of 5 units 5 sales of 3 units
11-25 units	95	5 sales of 11 units
Over 25 units	90	1 sale of 30 units 1 sale of 50 units

The selling price includes the following post shipment expenses:

Freight from port to factory in India for ₹ 24,000

Insurance to cover transit damage from port to factory in India for ₹ 6,000

Number of units imported from high seas 5,000 units. Find the assessable value and total customs duty.

Note: BCD @12%.

**Answer:**

Sale quantity	Unit price in ₹ (exclusive of duties and taxes)	Total quantity sold at each price
1-10 units	100	65
11-25 units	95	55
Over 25 units	90	80

The greatest number of units sold 80, therefore, the unit price in the greatest aggregate quantity is ₹ 90.

	₹
Sale value	= 4,50,000 (i.e. ₹ 90 x 5,000 units)
Less: Freight & insurance	= 30,000
Assessable value	= 4,20,000
	=====
Total customs duty	= ₹ 51,912 (₹ 4,20,000 x 12.36%)

Rule 8: Computed Value

The value of imported goods shall be based on a computed value, which shall consist of the sum of:—

- The cost or value of materials and fabrication or other processing employed in producing the imported goods;
- an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;
- The cost or value of all other expenses under sub-rule (2) of rule 10.

This method is normally possible when the importer in India and foreign exporter are closely associated and the foreign exporter is willing to give necessary costing.		₹
	Cost of Materials and General Expenses for producing the imported good	= xxx
	Add: profit of the exporter	= xxx
	Add: all expenditure as per Rule 10	= xxx
	Assessable Value	= <u>XXX</u>

Rule 9: Residual method

Residual method is also called as Best Judgment Method. This method is applicable when all aforesaid methods are not applicable. The value determined under this method cannot exceed normal price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in course of International Trade, when seller or the buyer are non-relatives and the price is sole consideration for such sale.

While determining Assessable Value, we should not consider the following

- The selling price in India of the goods produced in India;
- A system which provides for the acceptance for customs purposes of the highest of the two alternative values;
- The price of the goods on the domestic market of the country of exportation;
- The cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;
- The price of the goods for the export to a country other than India;
- Minimum customs values; or
- Arbitrary or fictitious values.

**Rule 10: Cost of Services:**

The following shall be added to the invoice price (i.e. FOB value) to determine the transaction value for imported goods:

	Value in Rupees
Commission and brokerage (except buying commissions)	= xxxx
Packing cost (except cost of durable and returnable packing)	= xxxx
Cost of engineering, development and plan or sketches (Undertaken outside India)	= xxxx
Royalties and license fee	= xxxx
Value of subsequent re-sale if payable to foreign supplier	= xxxx
Cost of freight and insurance up to place of importation	= xxxx
Cost of freight if not specified @ 20% of FOB	= xxxx
Insurance if not specified @ 1.125% of FOB	= xxxx
Ship demurrage charges on chartered vessels, lighterage or barge charges	= xxxx

	= xxxx

The following shall not be added to the invoice price (i.e. FOB value) to determine the transaction value for imported goods:

Value in Rupees

Duties and taxes in India	= xxx
Cost of erection charges in India	= xxx
Cost of transport and insurance from port to factory of importer in India	= xxx
Cost of development charges in connection with imported machinery	= xxx
Port demurrage charges and unloading charges in India	= xxx
Any other charges incurred after importation (i.e. Post shipment charges, unless such post shipment charges are pre-condition for importation)	= xxx

**Important points for imported goods:****Point 1: Where Cost of Insurance and Cost of Transportation are not ascertainable**

S.No.	Rule	Particulars	Treatment	Remarks
1.	10(2) proviso 1	Cost of transport is not ascertainable	20% on FOB value	It is applicable even if goods are imported by air or sea.
2.	10(2) proviso 3	Cost of insurance is not ascertainable	1.125% on FOB value	It is applicable even if goods are imported by air or sea.

Point 2: Where FOB value; Cost of Insurance and Cost of Transportation are not ascertainable:

S.No.	Rule	Particulars	Treatment	Remarks
1.	10(2) proviso 2	Cost of transport (i.e. Freight not known)	$20\% \times (\text{FOB value} + \text{Cost of Insurance})$	$\text{CIF value} \times 20/120$
2.	10(2) proviso 4	Insurance (i.e. not known)	$1.125\% \times (\text{FOB value} + \text{Cost of transport})$	$\text{CIF value} \times 1.125/101.125$
3.	10(2) proviso 3	FOB value	$\text{CIF value} - \text{cost transport} - \text{cost of insurance}$	

Point 3: Cost of freight in case of goods imported by air:

In the case of goods imported by air, where the cost of freight is ascertainable, such cost shall not exceed 20% of free on board value of the goods:

Point 4: Cost of freight in case of goods imported by sea:

In case of goods imported by sea, stuffed in a container for clearance in an Inland Container Depot (ICD) or Container Freight Station (CFS), cost of freight from the port of entry to ICD or CFS shall not be included in the cost of transport referred to in rule 10(2)(a).

Rule 11: Declaration by the Importer:

As per this rule, the importer shall declare value and furnish all documents or information called for by the proper officer for the purposes of valuation. Wrong declaration of value under Rule 10 may call for penal provisions in Customs Act, 1962

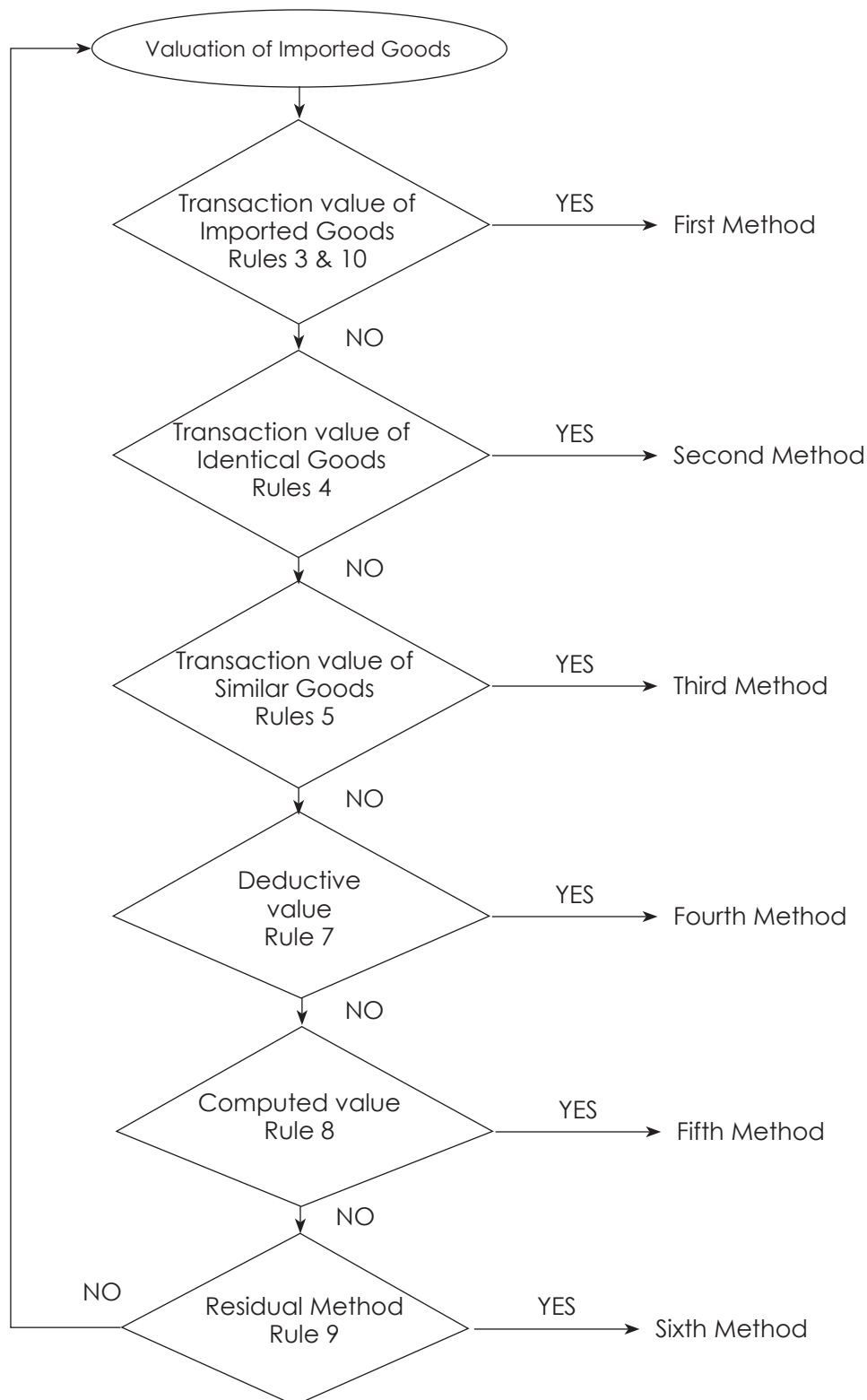
Rule 12: Rejection of Declared Value:

If the proper officer feels that the declaration made under Rule 11 are not fair values he may reject it as not suitable in the determination of Transaction value under Rule 3, after procuring further information or documents. However, final decision under Rule 12 shall be taken after proper hearing only.

Rule 13: Interpretative Notes:

These notes specified in the schedule to these rules are meant to render help in the interpretation of these rules. These interpretative notes are explained already in the aforesaid rules.

The following methods can be applied in sequential order for imported goods



**Self-Examination Questions****1. Theory Questions**

Q1. Explain the procedure to be followed for finding the transaction value with reference to Assessable Value?

Answer 1: please refer point no. 4

Q2. When is the residual method applicable?

Answer 2: Answer 1: please refer point no. 4

Q3. State the points of difference between valuation of imported goods under Customs Act, 1962 and imported services under Finance Act, 1994 and valuation of imported goods and services, as per relevant Accounting Standard.

Answer 3: Difference between valuation of imported goods and imported services:

S.No.	Imported goods	Imported Services
(i)	Valuation for imported goods as per Customs Valuation (Determination of Value of Imported Goods) Rules, 2007	Valuation for imported services should be as per Service Tax (Determination of Value) Rules, 2006
(ii)	Related person concept plays vital role under customs	Related person concept has no importance
(iii)	CBE & C exchange rate as on the date of submission of bill of entry is relevant	There is no such concept
(iv)	Imported goods should be valued for the balance sheet purpose as per Accounting Standard -2.	Imported services no Accounting Standards so far.
(v)	Closing stock should be valued inclusive of all taxes and duties unless credit allowed.	Service should be valued inclusive of all taxes and duties unless credit allowed.

2. Practical Problems with Answers**FOB, CIF and Assessable Value (Rule 3 read with Rule 10)****Illustration 1:**

Following particulars are available in respect of consignment of goods imported:

- (i) Cost at the factory of the exporter : US\$ 20,000
- (ii) Carriage/freight/insurance upto the port of shipment in the exporter's country : US\$ 400
- (iii) Charges for loading on to the ship at the shipping port : US\$ 100
- (iv) Freight charges of the ship for transport upto the Indian port : US\$ 1,200
- (v) Bill of entry submitted by the importer as on 18.7.2010

Compute the assessable value for the purpose of levy/payment of customs duty.



Rate of exchange as announced by	As on 18.07.2010	As on 7.08.2010
CBEC	1 US \$ = ₹ 46	1 US \$ = ₹ 45.80
RBI	1 US \$ = ₹ 46.10	1 US \$ = ₹ 46.10

Solution:**Statement showing assessable of imported goods**

Particulars	Value in US\$	Workings
Cost at the factory (ex-factory price)	20,000	
Carriage/freight/insurance upto the port of shipment	400	
Charges for loading on the ship at the shipping port	100	
Free On Board (FOB)	20,500	
Insurance charges @1.125% on FOB	230.625	US\$ 20,500 x 1.125% = US \$ 230.625
Freight charges	1,200	Actual taken into account
CIF Value/Assessable Value	21,930.625	
	Value in ₹	
Assessable Value	10,08,809	US\$ 21,930.625 x ₹ 46

Transaction value of Imported Goods (Rule 3 read with Rule 10)**Illustration 2:**

An importer imported some goods by air for subsequent sale in India at \$12,000 on FOB basis. Insurance is \$135 and freight for \$3,000. Relevant exchange rate as notified by the Central Government and RBI was ₹ 45 and ₹ 45.50 respectively.

Arrive at the Assessable value

Solution:

Particulars	Amount in \$	Remarks	Workings
F O B value	12,000		
Add: Insurance	135	Addable into the assessable value	
Add: Air Freight	2,400	Air freight restricted to 20% on FOB	\$12,000 x 20% = \$2,400
CIF value/Assessable Value	14,535		
	Value in ₹		
Assessable value	6,54,075	Exchange rate of Central Board of Excise and Customs is relevant. If this rate is not given then we have to take the Government of India exchange rate	\$14,535 x ₹ 45

Illustration 3:

Following particulars are available in respect of certain goods imported into India:

FOB price: US\$30,000

Exchange rate:

Notified by RBI ₹ 50 = US\$1

Notified by CBEC ₹ 48 = US\$1

Compute the assessable value as per the Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.



Solution: Statement showing assessable value:

Particulars	US \$
FOB	30,000.00
Add: Insurance @1.125% on FOB	337.50
Add: Freight 20% on FOB	6,000.00
CIF value/Assessable Value	36,337.50
	Value in ₹
Assessable value (i.e. US \$ 36,337.50 x ₹ 48)	17,44,200

Post Shipment Expenses

Illustration 4:

Care Energy Ltd. imported a lift from England at an invoice price of ₹ 20,00,000. The assessee had supplied raw material worth ₹ 5,00,000 to the supplier for the manufacture of said lift. Due to safety reasons, the lift was not taken to the jetty in the port but was unloaded at the outer anchorage. The charges incurred for such unloading amounted to ₹ 25,000 and the cost incurred on transport of the lift from outer anchorage to the jetty was ₹ 50,000. The importer was also required to pay ship demurrage charges ₹10,000. The lift was imported at an actual cost of transport ₹ 45,000 and insurance charges ₹ 20,000. Compute its assessable value.

Solution:

Value goods	= ₹ 20,00,000
Add: Raw material supplied	= ₹ 5,00,000
FOB	= ₹ 25,00,000
Charges for bringing the goods from Outer anchorage to jetty is known as Barging/lighterage or barge charges	= ₹ 50,000
Ship demurrage on chartered vessels (i.e. Demurrage is payable when ship was not unloaded within specified time)	= ₹ 10,000
Freight charges (Transport charges)	= ₹ 45,000
Insurance charges	= ₹ 20,000

Cost, Insurance and Freight (CIF)/ Assessable Value	= ₹26,25,000

Note: actual amount of unloading charges or stevedoring charges are not addable into the assessable value.

Revised CIF Value:

Illustration 5: Liberty International Group has imported a machine by air from United States. Bill of entry is presented on 18.07.2016. However, entry inwards is granted on 7.08.2016.

The relevant details of the transaction are provided as follows:—

CIF value of the machine imported	\$ 13,000
Air freight paid	\$ 2,800
Insurance charges paid	\$200



Rate of exchange as announced by	As on 18.07.2016	As on 7.08.2016
CBEC	1 US \$ = ₹ 46	1 US \$ = ₹ 45.80
RBI	1 US \$ = ₹ 46.10	1 US \$ = ₹ 46.10

Calculate the assessable value (in rupees) for the purposes of levy of customs duty.

Make suitable assumptions wherever necessary.

Solution:

Particulars	Amount in US\$	Remarks	Workings
CIF value	13,000		
Less: Air freight	2,800	Air freight should not be more than 20% on FOB	
Less: insurance	200		
F O B value	10,000		
Add: Air freight	2,000	Air freight restricted to 20% on the F O B value	10,000 x 20% = 2,000
Add: Insurance	200		
CIF value/Assessable Value	12,200		US\$ (10,000 + 2,000 + 200)
	Amount in ₹		
Assessable value	5,61,200	CBEC exchange rate as on the date of submission of bill of entry is relevant.	US\$12,200 x 46 = ₹ 5,61,200

Illustration 6:

A Ltd. imported a machine at an invoice price of GBP (Great British Pound) £ 10,000.

This sum includes £ 2,000 attributable to post importation activities to be carried out by the seller. A Ltd. had supplied raw materials worth £500 to the seller for the manufacture of the said machine. The importer imported these goods by vessel and actual cost of transport is £1,500 and lighterage and barge charges in India are ₹ 50,000. Ship demurrage charges of ₹ 10,000. The importer also incurred in India ₹ 25,000 for transportation of goods from port of entry to Inland Container Depot (ICD). Insurance charges not known.

Exchange rate 1£ = ₹ 66.

Note: post shipment expenditure is not pre-condition for such import.

Solution :

Particulars	Value in GBP (£)	Remarks
Value of Machine	10,000	
Less: Cost of post shipment expenditure	2,000	It is not pre-condition for importation, hence deducted from the value of machine. Value of post shipment expenditure is addable to the assessable value if such expenditure is pre-condition for such import.
Add: cost of material supplied	500	Cost of material supplied is also addable into the assessable value.
Sub-total	8,500	



Particulars	Value in GBP (£)	Remarks
	Value in ₹	
Sub-total	5,61,000	8,500 x ₹ 66
Add: ship demurrages	10,000	
Add: lighterage and barge charges	50,000	
Add: transportation of goods from port of entry to ICD	Nil	transportation of goods from port of entry to Inland Container Depot (ICD), not addable in assessable.
FOB value of the Customs	6,21,000	
Add: Insurance charges	6,986.25	₹6,21,000 x 1.125% = 6,986.25
Add: Freight charges	99,000	1,500 x ₹66
Cost Insurance and Freight (CIF) value/ Assessable Value	7,26,986.25 or, 7,26,986	

Illustration 7:

An importer imported some goods for subsequent sale in India. The Customs Officer assessed value of goods for ₹ 10,19,090.

The above value includes the following:

Air Freight 25% on Free on Board (FOB)

Insurance @1.125%

Importer approached you to find correct assessable value for his import.

Solution:

Assessable value (AV) = (FOB + Insurance + Air freight)

Let assume FOB	= X
Add: Air Freight	= 0.25X
Add: Insurance	= 0.01125X

CIF Value/Assessable value	= 1.26125X
	=====

₹

FOB value	= 8,08,000 (₹ 10,19,090 ÷ 1.26125)
Add: Air freight 20% on FOB	= 1,61,600
Add: Insurance @1.125%	= 9,090

CIF Value/ Assessable value	= 9,78,690
	=====

Illustration 8:

Following particulars are available in respect of certain goods imported into India:

CIF value: US\$10,000

Exchange rate:



Notified by RBI ₹ 50 = US\$1

Notified by CBEC ₹ 48 = US\$1

Compute the following:

- FOB value
- Cost of insurance
- Cost of freight and
- Assessable value in rupees as per the Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Solution:

As per Rule 10(2) proviso 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, where FOB value of goods and Cost of Insurance and Freight are not ascertainable, then the cost of insurance and transport shall be computed as follows:

Particulars	As per Rule 10(2) proviso 3	Working
Cost of transport (i.e. Freight not known)	20% x (FOB value + Cost of Insurance)	CIF value x 20/120
Insurance (i.e. not known)	1.125% x (FOB value + Cost of transport)	CIF value x 1.125/101.125
FOB value	CIF value – cost transport – cost of insurance	

CIF value in ₹ 4,80,000 (i.e. US \$ 10,000 x ₹ 48)

₹

(a)	FOB value	=	3,94,660	(i.e. ₹ 4,80,000 – 80,000 – 5,340)
(b)	Cost of insurance	=	5,340	(i.e. ₹ 4,80,000 x 1.125/101.125)
(c)	Cost of transport (i.e. Freight)	=	80,000	(i.e. ₹ 4,80,000 x 20/120)
(d)	Assessable value	=	4,80,000	

Illustration 9:

Following particulars are available in respect of consignment of goods imported:

- Cost at the factory of the exporter: US\$ 20,000
- Carriage/freight/insurance upto the port of shipment in the exporter's country: US\$ 400
- Charges for loading on to the ship at the shipping port: US\$ 100
- Freight charges of the ship for transport upto the Indian port: US\$ 1,200

Compute the assessable value for the purpose of levy/payment of customs duty.

Solution :

Statement showing assessable of imported goods

Particulars	Value in US\$	Workings
Cost at the factory (ex-factory price)	20,000	
Carriage/freight/insurance upto the port of shipment	400	
Charges for loading on the ship at the shipping port	100	
Free On Board (FOB)	20,500	
Insurance charges @1.125% on FOB	230.625	US\$ 20,500 x 1.125% = 230.625



Particulars	Value in US\$	Workings
Freight charges	1,200	Actual taken into account
CIF Value/ Assessable value	21,930.625	

Note: Since exchange rate is not given; therefore it is difficult to calculate the assessable value in Indian Rupees.

Illustration 10:

From the particulars given below, find out the assessable value of the imported goods under the Customs Act, 1962.

	US \$
(i) Cost of the machine at the factory of the exporting country	10,000
(ii) Transport charges incurred by the exporter from his factory to the port for shipment.	500
(iii) Handling charges paid for loading the machine in the ship	50
(iv) Buying commission paid by the importer	50
(v) Freight charges from exporting country to India	1,000
(vi) Exchange Rate to be considered 1\$ = ₹ 45	

Solution: Statement showing assessable value for imported goods:

S.No.	Particulars	Value US \$	Workings
(i)	Cost of the machine at the factory of the exporting country	10,000	
(ii)	Transport charges incurred by the exporter from his factory to the port for shipment	500	
(iii)	Handling charges paid for loading the machine in the ship	50	
	FOB Value	10,550	
(iv)	Buying commission paid by the importer	-	Not addable into the assessable value
(v)	Cost of insurance	118.6875	@1.125% on FOB value
(vi)	Freight charges from exporting country to India	1,000	
(vi)	CIF Value	11,668.6875	
(vii)	Assessable value	₹ 5,25,091	₹ 45 x US \$ 11,668.6875

Illustration 11. M/s Arman Ltd. a manufacturer has imported a machinery along with accessories required for the said machinery on 15th June, 2013. Details of information related to import of machinery are given below. Please

Particulars	Amount
Machinery imported from USA by air (FOB price)	US\$. 5000
Accessories compulsorily along with the machinery	US\$. 1000
Air freight	US\$. 1800
Insurance charges	Not available
Local agent's commission to be paid in India currency	₹ 9300
Transportation from India Airport to factory	₹ 4000
Exchange Rate notified by CBDT --- US\$1 = ₹ 62	
Exchange Rate as per RBI --- US\$1 = ₹ 59.50	

- Compute the assessable value for purpose of determination of customs duty.
- Provide explanations where necessary.

**Solution:**

Particulars	Machinery ₹	Accessories ₹	Workings
FOB value	3,10,000	62,000	
Commission	7,750	1,550	Allocated in the ratio of FOB 5:1
FOB value of the customs	3,17,750	63,550	
Air freight	63,550	12,710	Should not exceeds 20% on FOB
Insurance	3,575	715	1.125% on FOB
CIF Value/ Assessable value	3,84,875	76,975	

3. Case Studies with Answers

Q 1. The assessee-respondent had been importing "Orange Shock Tube" from the exporter at a unit price of US\$0.0150 per ft till November, 2000 when the price was reduced to US\$0.0141 per ft. However, in June, 2001, the importer declared the value of the imported tubes at a unit price of US\$0.0100 per ft. Revenue contended that declared value was substantially lower than the actual value i.e. the assessee had under-valued the goods. Therefore, the value had to be determined as per erstwhile rule 5 of Customs Valuation Rules, 1988 [now rule 4 of Customs Valuation (Determination of value of Imported Goods) Rules, 2007], viz., transactional value of identical goods. In this regard, the assessee provided the explanation that the reduction in price was subject to mutual agreement that he would purchase 100% of its annual requirement from the same exporter.

Answer: There is no undervaluation and hence, transactional value should be accepted as assessable value. **[CCus. v Initiating Explosives Systems (I) Ltd. 2008 (224) ELT 343 (SC)]**

Q 2. The assessee was a manufacturer of printers. The shuttle, an integral part of a printer, was imported by him. The question which arose for determination was whether the adjudicating authority was entitled to load the royalty/ license fee payment on the price of the imported goods, viz., shuttle by taking its peak price.

Answer: Any post shipment expenses is includible in the assessable value only when it is pre-requisite to the sale or purchase. Hence, in the given case the royalty was not a pre-requisite condition for sale of shuttle. Therefore, the Department's contention is not tenable in the eyes of law. **[Wep Peripherals Ltd. v CCus., Chennai 2008 (224) ELT 30 (SC)]**

Q 3. The goods initially exported by the assessee were re-imported back to India on being rejected by the foreign buyer as defective. The assessee initially claimed in the Bills of Entry the benefit of notification no. 158/95-Cus and also executed bonds for re-export, as required under the said notification. The assessee could not re-export the goods due to recessionary conditions in the textile industry. It claimed before the adjudicating authority that since it was not possible for it to re-export the goods, it should be allowed the benefits of another Notification No. 94/96-Cus. which was in force at the time of clearance from the factory originally. The main contention raised by the assessee was that if the benefits were available under the two notifications to the assessee, then the assessee could avail of the benefits under either of them.

Revenue's reply to the said contention was that it was not correct to say that if two notifications were applicable, assessee after having opted to take the benefit under one of the notifications could change its option and avail the benefit under the other scheme because of the nature and contents of the notification. Whether the assessee can change its option and avail the benefit under other notification?

Answer: Once the assessee had claimed the Notification No. 158/95 for import of goods without payment of duty, then he has to fulfil all conditions mentioned in the said notification. Therefore, it is not open to the assessee to opt for another notification because he had not fulfilled the conditions of the earlier notification. **[CCus., Calcutta v Indian Rayon & Industries Ltd. 2008 (229) ELT 3 (SC)]**



Q 4. Gujarat Dry Fruits Limited imported dry fruits and declared the value as under—

Date of imports	Quantity (MT)	Declared value ₹ per MT	Country of import
November 2017	250	25,000	Egypt
November 2017	150	25,000	Egypt

It was found that imports were also made by some other dealers as indicated below:

Date of Imports:	Quantity (MT)	Declared Value	Country of import
And importer		₹ per MT	
September 2017	50	35,000	Dubai
Mumbai Intil			
October 2017			
Chennai Fruits Ltd	20	40,000	Persia

The Customs Department has sought to assess the imports made by the Gujarat Dry Fruits Ltd. as Contemporaneous imports under section 14 read with Rule 4 of the Customs Valuation Rules, 2007. Briefly examine whether the action proposed by the Department is correct.

Answer: The goods are said to be identical only if the goods to be valued have been produced in the same country. In the given question, the goods in question have been imported from Egypt, while other importers have imported goods from other countries. Therefore, the department action is not correct.

Q 5. The assessee M Ltd. entered into a joint venture with a foreign collaborator N for promotion and selling of antennas, accessories and other communication equipment. The agreement between them indicates that N owned majority of equity shares in M Ltd. Technical Services were provided by N to M Ltd, for various functions that were carried out in respect of manufacture of antenna system in India, for which technical services fee was paid to N by M Ltd. Based on the above facts, the department opined that both M Ltd. and N were related persons in terms of rule 2(2)(1) and 2(2)(iv) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 and that the technical fee paid by M Ltd. was includible in the assessable value of the imported components in terms of Rule 9(1)(c) of the Rules. Decide referring to decided case law.

Answer: Technical fee cannot be added simply because the importer and exporter are 'Related Persons'. It can be added only if it is related to imported goods itself. Here, import was for components while technical fee was for manufacture of antenna systems. The fee is not connected to imported goods. Hence, not includible. **[CCus. v Prodelin India (P) Ltd. (2006) 202 ELT 13 (SC)]**

Study Note - 5

IMPORT AND EXPORT PROCEDURE



This Study Note includes

- 5.1 Introduction
- 5.2 Import Procedure
- 5.3 Export Procedure
- 5.4 Deemed Exports
- 5.5 Customs Brokers
- 5.6 Inland Container Depot (ICD) and Container Freight Station (CFS)
- 5.7 Stores
- 5.8 Costal Goods
- 5.9 Imports/Procurement by SEZs
- 5.10 High Seas Sales

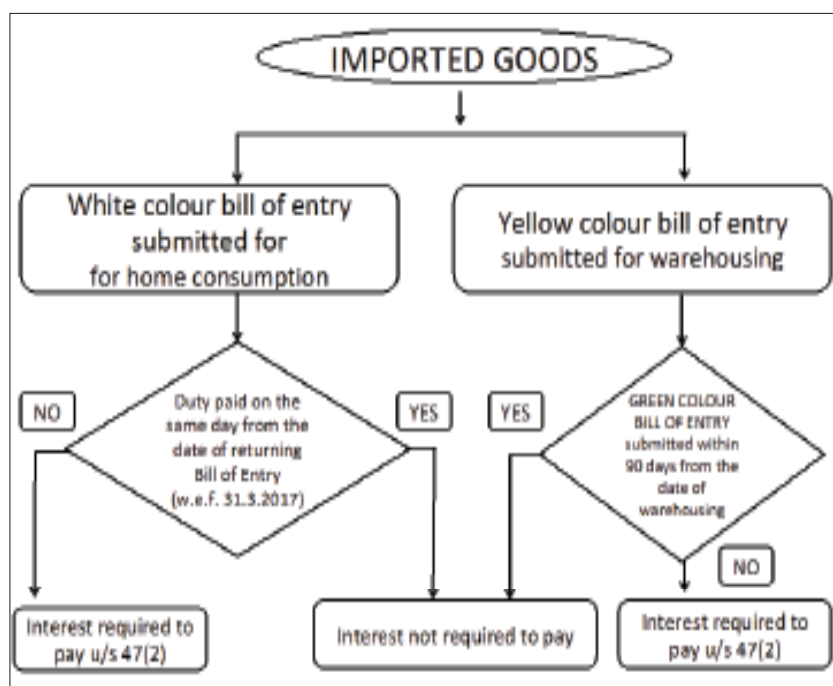
5.1 INTRODUCTION

Customs Duty is on import and on export. Hence, it is essential to have better understanding of the provisions of import and export. Import may take place in any of the following modes:

- By Sea
- By Air
- By Land
- By Post
- By Passengers as their Baggage
- By way of Ship stores considered as import

5.2 IMPORT PROCEDURE

Imported goods can be cleared by the importer either for home consumption by paying customs duty on the value of imported goods or he may request to the Customs department for warehousing. If the goods are warehoused, later they will be cleared for Domestic Tariff Area (DTA) or for export as the case may be.



“Domestic Tariff Area” means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the Special Economic Zones (Section 2(i) of Special Economic Zones Act, 2005), 100% Export Oriented Units (EOUs)/Electronic Hardware Technology Park (EHTP)/Software Technology Park (STP)/Bio Technology Park (BTP).

Goods cleared for Home Consumption

Importer has to pay the import duty on the value of goods imported by him before clearing from the Customs Authorities by submitting the Bill of Entry after the entry inwards granted to the Vessel or 30 days before the entry inwards granted to the vessel. The importer files Bill of Entry for all imported goods under section 46(1) of the Customs Act, 1962. No Bill of Entry for Transit Goods and Transshipment Goods.

Time limit for filling Bill of Entry:

As per Section 46(3) of the Customs Act, 1962 a bill of entry may be presented at anytime after the delivery of import manifest or import report. Therefore, no time limit has been fixed. Hence, no penalty can be imposed if there is delay in submission of Bill of Entry.

However, goods should be cleared for home consumption, or warehoused or transhipped within 30 days from the date of the unloading thereof at the Customs Station.

The importer is required to declare in the Bill of Entry amongst other things the following:

- The particulars of packages,
- The description of the goods,
- The description given in the Customs Tariff.

According to section 46(3) a bill of entry is to be normally filed after the delivery of the Import manifest (vessel/ aircraft)/import report (vehicle). However, the bill of entry can be presented even before the delivery of the import manifest if vessel is expected to arrive within 30 days from the date of such presentation.

Bill of Entry consists of the following copies:

- Original meant for the customs authorities for assessment and collection of duty;



- Duplicate, indented as an authority to the custodian of the cargo to release cargo;
- Triplicate, as a copy for record for the importer; and
- Quadruplicate, as a copy to be presented to the bank

Types of Bill of Entry:

- Form I (white) - for home consumption
- Form II (yellow) - for warehousing
- Form III (green) - for ex-bond clearance for home consumption (from the warehousing)

Bill of Entry must be submitted electronically, unless manual submission is specifically permitted by Commissioner of Customs (w.e.f. 8-4-2011).

W.e.f. 31-3-2017 Finance Act, 2017 Section 46(3) amended:

Submission of Bill of entry:

The importer shall presented the bill of entry under section 46(1) of the Customs Act, 1962 before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or for warehousing.

Provided that a bill of entry may be presented within 30 days of the expected arrival of the aircraft or vessel or vehicle, which has shipped the goods for importation into India.

Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for the late presentation of the bill of entry as may be prescribed.

Furthermore by Notification No 26/2017 Customs dated 31-3-2017 and Notification 27/2017 Customs dated 31-3-2017 Bill of Entry (electronic Integrated Declaration) Regulations, 2011 and Bill of Entry (Forms) Regulations, 1976 has been amended to prescribe late charges for delayed filing. Entry Inwards date at sea ports and date of arrival of cargo at the ICD, airport, Land Port (i.e. Land Customs Station) etc., would be the relevant date for determination the said charges, if any. It has also been clarified in both the regulations that no charges for late presentation of Bill of Entry shall be liable to be paid where the goods have arrived before the enactment of Finance Bill, 2017 (i.e. 31-3-2017).

Notification No. 24/2017 Customs dated 31-3-2017:

As per the Handling Cargo in Customs Area Regulations, 2009 it is mandatory for the Customs Cargo Service providers to provide the information about arrival of cargo to the Customs.

As per Notification No. 25/2017 Customs dated 31-3-2017, Additional / Joint Commissioner as the proper officer considering the request for waiver of late charge under second proviso to Section 46(3) of the Customs Act, 2017.

Furthermore, section 47(2) has been amended so as to provide the manner of payment of duty and interest thereon in the case of self-assessed Bill of Entry or as the case may be assessed, reassessed, provisionally assessed Bill of Entry. Now, the importer shall have to make payment of duty on the same day in case of self-assessed Bill of Entry and in case of re-assessment or provisional assessment, within one year after the return of Bill of Entry (vide Circular No. 12/2017 dated 31-3-2017).

Clearance of Goods for Home Consumption [Sec. 47 (1) of the Customs Act, 1962]

w.e.f. 14-5-2016, Sec. 47 (1) Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption:

Provided that the Central Government may, by notification in the Official Gazette, permit certain class of importers



to make deferred payment of said duty [ie. duty payable under sec. 47(1)] or any charges in such manner as may be provided by rules (w.e.f. 14-5-2016).

Interest for Late Payment of Duty @15% [Section 47(2) of the Customs Act, 1962]

The duty should be paid within five working days after the 'Bill of Entry' is returned to the importer for payment of duty. **w.e.f. 10-5-2013 the time reduced to two working days.**

Now, w.e.f. 31-3-2017 Finance Act, 2017 section 47(2) further amended:

Importer shall have to make payment of duty on the same day in case of self-assessed Bill of Entry and in case of re-assessment or provisional assessment, within one day after the return of Bill of Entry.

As per section 47(2) of Customs Act, the importer is liable to pay interest where –

- the importer fails to pay the import duty under this section **on the same day** in case of self-assessed Bill of Entry and in case of re-assessment or provisional assessment, within one day after the return of Bill of Entry from the date on which the bill of entry is returned to him for payment of duty, he shall pay interest @ 15% p.a. on such duty till the date of payment of the said duty.
- w.e.f. 14-5-2016: in the case of deferred payment under the proviso to sub-section (1), from such due date as may be specified by rules made in this behalf, he shall pay interest @15% p.a. on the duty not paid or short-paid till the date of its payment.

Note: if the CBEC satisfied that it is necessary in the public interest so to do, it may, by order for reasons to be recorded, waive the whole or part of any interest payable under this section.

Example 1:

X Pvt. Ltd. imported goods in the month of April, 2018 and submitted 'Bill of Entry' on 9th April 2018 for home clearances. After verification bill of entry has been returned by the department on 10th April 2018 for payment of customs duty of ₹ 1,03,000. However, duty has been paid on 30th April, 2018. There are five holidays from 11th April 2018 to 30th April 2018. Find the interest under Sec. 47(2) of the Customs Act, 1962.

Answer:

Interest is ₹ 677

No. of days from 10th April, 2018 to 30th April, 2018 = 21 days

No. of days delay = 21-5 = 16 days

Interest = 1,03,000 x 15/100 x 16/365 = ₹ 677

Example 2:

A bill of entry was presented on 4th August, 2017. The vessel carrying goods arrived on 11th August, 2017. Entry inwards was granted on 13th August, 2017, and the bill of entry was assessed on that date and was also returned to the importer for payment of duty on that date. The duty amounting to ₹ 5,00,000 was paid by the importer on 22nd August, 2017.

Calculate the amount of interest payable under section 47(2) of the Customs Act, 1962, given that there were four holidays during the period from 14th August to 22nd August, 2017.

Answer:

Interest Rate = 15% p.a.

No. of days delay = from 13th Aug 2017 to 22nd Aug 2017 = 10 days

No. of days delay = 10 days

Less: No. of holidays = -4 days

Net No. of days delay for interest = 6 days

Interest = ₹1,233

₹5,00,000 x 15/100 x 6/365 = ₹ 1,232.88

Import General Manifest

Import General Manifest is a very important document for the in charge of the conveyance, without which the Customs Authorities generally not allowed entry inwards to the vessel. IGM to be submit to the Customs authorities for getting entry inwards to the vessel. It contains details regarding goods description, origin and destination place, name and address of the exporter and importer and so on. This a primary document, which can be compared with Bill of Entry, submitted by the importer. On satisfaction the Customs authorities will grant the entry inwards to the vessel.

The IGM also gives the following particulars

- Name of the Vessel
- Nationality
- Tonnage
- Name of the shipping line
- Last port of call
- Port arrival and date and time of arrival,
- Name of the master,
- Nationality of the master,
- Name and address of the local steamer or shipping agent
- Port called during the present voyage,
- Number of crew
- Number of passengers, etc.

The importer also required to submit the following documents the Customs Authorities, to assess the import duty on the value of imported goods.

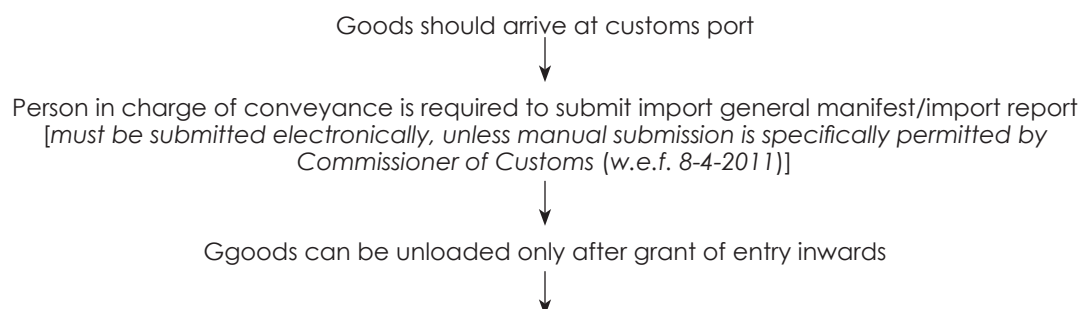
- Invoice copy
- Contract copy
- Product literature
- Packing lists
- Import license
- Any other documents which may be required by the Customs Authorities.

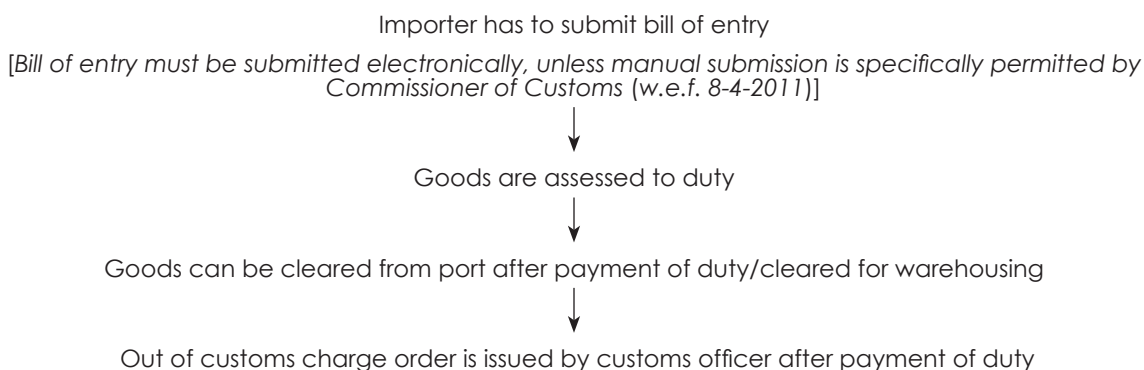
Time Limit for submission of Import General Manifest or Import Report:

As per Section 30(1) of the Customs Act, 1962, the person-in-charge of the conveyance shall deliver import general manifest or import report to the proper officer as stated below:

Mode of Transport	Document	Time Limit	Penalty for non-submission within the prescribed time-limit
Vessel (Sea port)	Import General Manifest	Before arrival of the Vessel	≤ ₹ 50,000
Aircraft (Air port)	Import General Manifest	Before arrival of the Aircraft	≤ ₹ 50,000
Vehicle (Land Customs Station)	Import Report	Within 12 hours after arrival	≤ ₹ 50,000

The entire import procedure has been explained in the following lines





5.3 EXPORT PROCEDURE

The master of a vessel shall not permit the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry-outwards to such vessel [Section 29 of the Customs Act, 1962]. The steamer agent is required to file an application for entry outwards 14 days in advance from the date of original export.

The person-in-charge of a conveyance shall not permit the loading at a customs station of export goods, other than baggage and mail bags, unless a shipping bill or bill of export or a bill of transshipment, as the case may be, duly passed by the proper officer, has been handed over to him by the exporter. The person-in-charge of a conveyance shall not permit the loading at a customs station of baggage and mail bags, unless their export has been duly permitted by the proper officer [Section 40 of the Customs Act, 1962].

Export General Manifest

The person-in-charge of a conveyance carrying export goods shall, before departure of the conveyance from a customs station, deliver to the proper officer in the case of a vessel or aircraft, an export manifest, and in the case of a vehicle, an export report, in the prescribed form [Section 41 of the Customs Act, 1962].

The person-in-charge of a conveyance who has loaded any export goods at a customs station shall not permit the conveyance to depart from that customs station until a written order to that effect has been given by the proper officer.

Let export order shall not be given until:

- The person-in-charge of the conveyance has answered the questions put to him
- The provisions of section 41 have been complied with;
- The shipping bills or bills of export, the bills of transshipment, if any, and such other documents as the proper officer may require have been delivered to him;
- All duties leviable on any stores consumed in such conveyance, and all charges and penalties due in respect of such conveyance or from the person-in-charge thereof have been paid;
- The person-in-charge of the conveyance has satisfied the proper officer that no penalty is leviable on him under section 116 of the Customs Act, 1962.
- In any case where any export goods have been loaded without payment of export duty or in contravention of any provision of this Act or any other law for the time being in force relating to export of goods, such goods have been unloaded, or
- The Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied that it is not practicable to unload such goods, the person-in-charge of the conveyance has given an undertaking, secured by such guarantee or deposit of such amount as the proper officer may direct, for bringing back the goods to India

Either the Guarantee Receipt (GR) or Statutory Declaration Form (SDF) requires filing by the exporter to meet the requirements of the Reserve Bank of India. The purpose of these forms is to ensure that export proceeds are received in India through the authorized banking channels.

The entire concept of export procedure has been explained in the following lines:



Note: Electronic filing of import/export manifest mandatory except in cases allowed by Commissioner of Customs [Section 30(1) & Section 41(1)] w.e.f. 10-5-2013:

Section 30(1) and section 41(1) have been amended vide the Finance Act, 2013 to provide for the mandatory electronic filing of the import manifest and export manifest respectively. However, in cases where it is not feasible to deliver import/export manifest by presenting them electronically, the Commissioner of Customs may, allow the same to be delivered in any other manner.

5.4 DEEMED EXPORTS

The term Deemed Exports an export without actual export, it means goods and services are sold and provide respectively within India and payment also received in the Indian Rupees. As per the Foreign Trade Policy the following few transactions can be considered as deemed exports.

- Sale of goods to units situated in Export Oriented Units, Software Technology Park, and Electronic Hardware Technology Park etc.
- Sale of capital goods to fertilizer plants
- Sale of goods to United Nations Agencies
- Sale of goods to projects financed by bilateral Agencies, etc

**Imports by 100% Export Oriented Units (EOU):**

EOUs/EHTPs/STPs will be allowed to import goods without payment of basic customs duty (BCD) as well additional duties leviable under Section 3 (1) and 3(5) of the Customs Tariff Act.

GST would be leviable on the import of input goods or services or both used in the manufacture by EOUs which can be taken as input tax credit (ITC). This ITC can be utilized for payment of GST taxes payable on the goods cleared in the DTA or refund of unutilized ITC can be claimed under Section 54(3) of CGST Act.

In the GST regime, clearance of goods in DTA will attract GST besides payment of amount equal to BCD exemption availed on inputs used in such finished goods.

Note: DTA clearances of goods, which are not under GST, would attract Central Excise duties as before.

Example 9:

M/s X Ltd. (a unit of 100% EOU located in Chennai) sold goods to M/s A Ltd. (Located in Mumbai) for ₹ 20 lac. If M/s X Ltd. being EOU imported these goods exempted from BCD @10%. IGST 12% is applicable.

Find the total GST is liable to pay by X Ltd.

How much input tax credit M/s A Ltd. can avail?

Answer:

Particulars (w.e.f. 1-7-2017)	Value in ₹	Workings
Assessable value	20,00,000	
ADD: Basic Customs Duty 10%	2,00,000	$20,00,000 \times 10\%$
Add: Cess 3% on BCD	6,000	2% Edu. Cess + 1% Sec. Hr. Edu. Cess
Sub-total	22,06,000	
ADD: IGST @12%	2,64,720	$22,06,000 \times 12\%$
Sub-total	24,70,720	
Total IGST	4,70,720	

ITC allowed to M/s A Ltd. (Buyer):

Particulars	Value ₹
BCD	nil
IGST	2,64,720
Total	2,64,720

5.5 CUSTOMS BROKERS

The term Custom House Agents are known by different names namely Customs Clearing Agent, Freight Forwarding Agent, Customs Broker and Shipping and Forwarding Agent.

A Customs House Agent (CHA) is a person who carries on business as an agent relating to the entry or departure of a conveyance or the import or export of goods at any customs-station unless such person holds a licence granted in this behalf in accordance with the regulations of the Central Board of Excise and Customs [Section 146 of the Customs Act, 1962].

Custom House Agent's (CHA) main job responsibility is to study the laws governing the export and import and interpreting the levies payable and incentives receivable by clients. They also assist their clients in preparation of document according to expectation of customs authorities.



Change of nomenclature of “customs house agents” to “customs brokers” [Section 146 and section 146A(2)(b)] [Effective from 10.05.2013]

Considering the global practice and internationally accepted nomenclature, nomenclature of “customs house agents”, wherever used in the Customs Act, 1962, has been replaced with “customs brokers”. Consequently, reference to “customs house agents”, in section 146 and 146A(2)(b) in the Customs Act, 1962, has been substituted with “customs brokers”.

Activities of CHA

- Processing of documents, shipping bills etc. for export.
- Carting of goods/cargo to Container Freight Station.
- Arranging of physical examination of goods
- Collection of measurement certificate
- Handover goods/cargo to carrier i.e., shipping line
- Personally attending stuffing of cargo in container
- Collection of Bill of Lading from shipping line
- Collection of documents from Customs such as duplicate copy of shipping bill, attested copy of Invoice & Packing List etc.

5.6 INLAND CONTAINER DEPOT (ICD) AND CONTAINER FREIGHT STATION (CFS)

Generally, an exporter or importer placed far away from the gateway port for clearance of import or export of goods. However, irrespective of distance from the servicing gateway port, prefers to move cargo by road to CFS (a transit facility where he stuffs cargo in containers and containers are transported to port for loading on board the ship). Both ICD and CFS is an infrastructure facility, owned and operated by public or private authority, especially designed for offering services of handling, storage and movement of containerized cargo and cargo under Customs supervision.

Distinction between ICD and CFS

Inland Container Station (ICD)	Container Freight Station (CFS)
It is a place where containers are aggregated for onwards movement to or from the ports.	It is a place where containers are stuffed, unstuffed and aggregation/segregation of cargo takes place.
ICD's are located outside the port towns.	No site restrictions apply for CFS.
An ICD may have a CFS attached to it.	CFS is treated as an extension of a port/ICD/air-cargo complex.
Movement of shipment by road and rail.	Movement of shipment by road.

Activities of ICD and CFS:

- Transfer of cargo into truck, Storage of cargo in truck, Road (truck) journey
- Breaking out of cargo from truck
- Transfer of cargo from truck to storage point/shed/yard in CFS
- Unpacking for customs examination
- Repacking for customs examination
- Consolidation of cargo according to destination
- Stuffing of cargo in the container



- Locking and sealing of container
- Loading of container on truck
- Transportation of loaded container to container yard in port
- Unloading of container in container yard in port
- Stacking of container in container yard in port
- Loading of container on truck to move container alongside ship, etc.,
- Truck journey from Container Yard to alongside ship i.e., Quay.
- Loading of container from truck to cellular hold of ship etc.

Services offered By ICD and CFS:

ICD and CFS handle only containerized shipment, thus special kind of facilities are provided like:

- Sheds for temporary storage of cargo and container yard for temporary storage of container,
- Customs clearance facility
- Cargo handling equipment and container handling equipment
- Arranging manpower for stuffing the cargo into container and destuffing the cargo from container
- Road/rail connectivity to and from serving gateway port.
- Bonded warehousing facility
- Maintenance and repair of container unit
- Packaging, palletisation (i.e. a portable platform on which goods can be moved, stocked, and stored) fumigation (i.e. disinfect with chemical fumes).

Person who has committed offence under the Finance Act, 1994 also disqualified to act as authorized representative [Section 146A(4)(b)] [Effective from 10.05.2013]

Erstwhile position

Hitherto, any person who was convicted of an offence connected with any proceeding under the Customs Act, 1962, the Central Excises and Salt Act, 1944, or the Gold (Control) Act, 1968 was disqualified from acting as an authorized representative in customs matters.

New position

Clause (b) to section 146A(4) has been substituted with new clause (b) to provide that any person who was convicted of an offence connected with any proceeding under the Customs Act, 1962, the Central Excise Act, 1944, or the Gold (Control) Act, 1968 or the Finance Act, 1994 is disqualified from acting as an authorized representative in customs matters. Hence, a person convicted under the Finance Act, 1994 has also been disqualified from acting as an authorized representative in customs matters.

5.7 STORES

As per Section 2(38) of the Customs Act, 1962 stores means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting. However, goods as per Section 2(22) of the Customs Act, 1962 includes stores. When the vessel enters into Indian territorial waters, stores get imported as goods. Hence, statutory provisions relating to stores are contained in Section 85 to 90 of the Customs Act, 1962 which are as follows:

Stores may be allowed to be warehoused without payment of import duty (Section 85 of the Customs Act, 1962)



Goods are imported for use as stores can be kept in the warehouse temporarily without following warehousing procedure. Therefore, this is also called as 'warehousing without warehousing'. Importer of these goods (i.e. stores) has no intention of clearing them for home consumption or for export as cargo. Hence, the proper officer takes physical stock of the goods and orders warehousing without warehousing. Thereby, these goods are not assessed to duty under section 17 of the Customs Act, 1962. Subsequently importer can clear these imported goods as stores to foreign going vessels/aircraft without payment of duty. Moreover, consumable stores can be stored in a warehouse for a maximum period of 30 days and non-consumable stores upto one year.

Transit and Transshipment of Stores without payment of import duty (Section 86 of the Customs Act, 1962)

Transit of goods means any goods imported in any conveyance will be allowed to remain on the conveyance and to be transited without payment of duty, to any place out of India or any customs station.

Transshipment of goods means transfer from one conveyance to another with or without payment of duty.

As per section 86(1) of the Customs Act, 1962 any goods (i.e. stores) imported in any vessel/aircraft will be allowed to remain on the vessel/aircraft without payment of duty while foreign going vessel/aircraft is in India.

As per section 86(2) of the Customs Act, 1962 any goods (i.e. stores) imported in a vessel/aircraft can be transferred, with the permission of the proper officer, to any foreign going vessel or aircraft for consumption without payment of duty under section 87 of the Customs Act, 1962 or to an Indian naval vessel for consumption without duty under section 90 of the Customs Act, 1962.

Imported stores may be consumed on board a foreign going vessel/aircraft without payment of import duty (Section 87 of the Customs Act, 1962)

Imported stores on board a foreign going vessel/aircraft may also be consumed on board without payment of import duty, during the period such vessel/aircraft is a foreign going vessel or aircraft. As long as such vessel or aircraft is foreign going vessel or aircraft, stores consumed on board within the Indian Territory are exempted from duty.

Example 21:

A Big Ship carrying merchandize and stores enters the territorial waters of India but it cannot enter the port. In order to unload the merchandize lighter ships are employed. Stores are consumed on board the ship as well as by the small ships. Examine whether such consumption of stores attracts customs duty. Quote relevant section and case law if any. Stores are supplied to the above ships. Will such supplies be treated as exports and be entitled to draw back?

Answer:

'Stores' means goods for use in a vessel and includes diesel and spare parts and other articles and equipments. Bringing of 'stores' is treated as import. However, there is special provision for stores under section 87. Imported stores consumed on board an ocean going vessel (i.e. foreign going vessel) are exempt from import duty under Section 87. Since the ship is ocean going, stores consumed on board will not attract customs duty.

Regarding the smaller ships which are employed to unload the cargo from the mother ship, they are termed as "Transshippers". These are also treated as ocean going vessels as was decided in UOI v V M Salgaoncar AIR 1998 SC1367:99 ELT 3 (SC). Hence stores consumed by small vessels would also be exempt from customs duty. Stores supplied to the vessel will be treated as export as per Section 89 of Customs Act and hence will be eligible for duty drawback.

However, the oil rigs proceeding to or carrying out operations in, continental shelf/exclusive economic zones of India, which are deemed to be a part of Indian territory, would not be foreign going vessels, as the oil rigs proceed from the territory of India to an area which also is deemed to be a part of the territory of India. Therefore, the supply of imported spares or goods or equipments to the rigs by a ship will attract import duty. [Aban Lloyd Chilies Offshore Ltd. v UOI (2008) 227 ELT 24 (SC)]

Thereby, the stores transshipped to the oil rigs and consumed thereon were not entitled to exemption under section 87 of the Customs Act, 1962.



Warehoused goods cleared without payment of import duty (Section 88(a) of the Customs Act, 1962)

Warehoused goods may be cleared for issue as stores on board to foreign going vessels and aircraft without payment of import duty. Section 69 of the Customs Act, 1962 will be applicable if warehoused goods are exported; no duty is leviable on their import. Section 69 is also extended to the stores taken on board foreign going vessel or aircraft.

w.e.f. 10-5-2013, as per section 69(1)(a) of the Customs Act, 1962, permits export of warehoused goods under postal export documents [as referred to in section 82] also.

Note: In the case of goods exported by post, any label or declaration accompanying the goods, which contains the description, quantity and value thereof, is deemed to be an entry for export.

Imported goods issued as stores to foreign going vessel/aircraft considered as export (Section 88(b) of the Customs Act, 1962)

The benefit of drawback under section 74 of the Customs Act, 1962 is extended to imported goods issued as stores to foreign going vessel/aircraft, provided stores had suffered import duty.

Stores to be free of export duty (Section 89 of the Customs Act, 1962)

Goods required as stores on any foreign going vessel or aircraft are permitted to be exported free of export duty, provided the following conditions to be satisfied:

- Goods should have been produced or manufactured in India,
- The quantity shall be determined by the proper officer and
- The basis for such determination will be the size of conveyance, men on board (passengers and crew) and length of voyage.

Concessions in respect of imported stores for the Navy (Section 90 of the Customs Act, 1962)

Imported stores may be consumed on board a ship of the Indian Navy without payment of import duty. The imported stores supplied from customs bonded warehouse to the ships of Indian Navy are not subject to import duty. The imported stores taken on board any ship of Indian Navy are allowed 100% drawback, if import duty levied on these stores.

5.8 COASTAL GOODS

As per section 2(7) of the Customs Act, the term coastal goods means goods, other than imported goods, transported in a vessel from one port in India to another.

Bill of Coastal Goods [Section 92(1) of the Customs Act, 1962]

The consignor of any coastal goods shall make an entry thereof by presenting to the proper officer a bill of coastal goods in the prescribed form.

This bill contains the following details:

- Port of landing,
- Port at which the goods are to be delivered and
- Other relevant details

Every such consignor while presenting a bill of coastal goods shall, at the foot thereof, make and subscribe to a declaration as to the truth of the contents of such bill.

Coastal Goods not to be allowed until bill relating thereto is passed by the proper officer (Section 93 of the Customs Act, 1962)

The master of a vessel shall not permit the loading of any coastal goods on the vessel until a bill relating to such goods presented under section 92 has been passed by the proper officer and has been delivered to the master by the consignor.



Clearance of coastal goods at destination (Section 94 of the Customs Act, 1962)

The master of a vessel carrying any coastal goods shall carry on board the vessel all bills relating to such goods delivered to him under section 93 and shall, immediately on arrival of the vessel at any customs or coastal port, deliver to the proper officer of that port all bills relating to the goods which are to be unloaded at that port.

Where any coastal goods are unloaded at any port, the proper officer shall permit clearance thereof if he is satisfied that they are entered in a bill of coastal goods delivered to him.

Master of a coasting vessel to carry an "advice book" (Section 95 of the Customs Act, 1962)

The master of every vessel carrying coastal goods shall be supplied by the Customs authorities with a book to be called the "advice book" as per section 95(1).

The proper officer at each port of call by such vessel shall make such entries in the advice book as he deems fit, relating to the goods loaded on the vessel at that port as per section 95(2).

The master of every such vessel shall carry the advice book on board the vessel and shall on arrival at each port of call deliver it to the proper officer at that port for his inspection as per section 95(3).

Loading and unloading of coastal goods at customs port or coastal port only (Section 96 of the Customs Act, 1962)

No coastal goods shall be loaded or unloaded at any port other than a customs port or a coastal port appointed under section 7 of the Customs Act, 1962 for the loading or unloading of such goods.

No coasting vessel to leave without written order (Section 97 of the Customs Act, 1962)

The master of a vessel which has brought or loaded any coastal goods at a customs or coastal port shall not cause or permit the vessel to depart from such port until a written order to that effect has been given by the proper officer.

The master of a vessel should fulfil following conditions for getting 'departure permission':

- (a) the master of the vessel has to answer all the questions put to him.
- (b) all charges and penalties due in respect of that vessel has been paid
- (c) no penalty is leviable on master of the vessel under section 116 (i.e. if the goods on a vessel are not landed or short landed, penalty is leviable which is not more than twice the export duty leviable had they been exported).
- (d) the provisions of this Chapter and any rules and regulations relating to coastal goods and vessels carrying coastal goods have been complied with.

5.9 IMPORTS/PROCUREMENT BY SEZs

Authorised operations in connection with SEZs shall be exempted from payment of IGST. Hence, there is no change in operation of the SEZ scheme.

Supplies made to an SEZ unit or a SEZ developer is zero rated. The supplies made to an SEZ unit or a SEZ developer can be made in the same manner as supplies made for export:

Either on payment of IGST under claim of refund;

Or

under bond or LUT without payment of any IGST.

5.10 HIGH SEAS SALES

High Sea Sale Transaction means Sale Transaction done when goods are actually at High Sea i.e. during sea transit between Port of Loading and Port of Discharge. The date of transaction (agreement) should be between Bill of lading date and Vessel arrival date at Port of discharge. High Sea Sale is done mostly by Traders, sole Indenting Agent (of the Foreign Supplier) who buys in large quantity and then look out for buyers at Destination Country.



Benefits of High Sea Sale Transaction are like

- (1) Goods are available at short time to final buyers,
- (2) Also instead of buying entire shipment small quantities also can be bought for final buyers and
- (3) First buyer can buy large quantity of goods at cheap / reasonable price and sale at best price to final buyers.

Drawbacks of High Sea Sale Transaction are like

- (1) Cumbersome documentation / procedures and
- (2) Loading of pricing for Customs assessment.

High Sea sales contract/agreement should be signed after dispatch of goods from origin & prior to their arrival at destination. The agreement should be on stamp paper. On concluding the High Sea Sales agreement the bill of lading (B/L) should be endorsed in favor of the new buyer. In respect of air shipment, High Sea seller should write to the airline/consol agent informing that an High Sea Sales agreement has been established with the High Sea Sales buyer and that the carrier document should be considered as endorsed in favour of High Sea sales buyer and further the import General Manifest (IGM) should be filed by the carrier in name of High Sea buyer.

FORMAT OF A HIGH SEA SALE AGREEMENT

1. Name & address of the Buyer	
2. Other details of Buyer	Import code No. I.T. Regn. No. VAT Regn. No. CST Regn. No.
3. Name and address of the seller	
4. Goods	
5. Quantity / Invoice No	
6. Name of Vessel	
7. Bill of Lading No.	
8. Price	
9. Delivery	All right , title and interest of the seller in the Goods will be transferred by the seller to the buyer by endorsing the Bill Of Lading in favour of the Buyer.
10. Name of the Foreign Supplier	
11. Duty	Custom Duty, Import Duty or any other levy or duty shall be borne and paid by the Buyer.
12. Tax	Sales Tax, Central or State, Customs Duty, Countervailing Duty, Octroi and the like or any other charge if payable or imposed or levied or leviable by any authority whomsoever, either on the goods or on the prices thereof, shall be borne and paid by the Buyer. If for any reason, any of the aforesaid is paid by the seller, the same shall be forthwith reimbursed by the Buyer to the Seller.
13. Clearance	The Buyer shall make its own arrangement for obtaining delivery and clearance of the goods from the Customs and Port Authorities and shall bear and pay Port Charges, Wharfage, Handling charges, Transport charges, demurrage, Octroi and any other charges whatsoever in this regard.



14. Other charges	All other charges including but not limited to Letter of Credit, Letter of Credit amendment charges, Bank interest, commission and other charges for the retirement of documents shall be paid by the If for any reason, any of the aforesaid is paid by the seller, the same shall be forthwith reimbursed by the Buyer to the Seller.
15. Payment	The Buyer shall make payment to the Seller forthwith on receipt of the Bill of Lading duly endorsed in the Buyers' favour. In case of delay in payment by the Buyer, the Buyer shall pay to the Seller interest at the rate of ...% per annum on the outstanding amount.
16. Insurance	The Seller shall nominate and subrogate its rights to the Buyer to enable the Buyer to directly deal with the Insurance company, Steamer Agent and /or Customs Authorities.
17. General Conditions	The Buyer shall on clearing the consignment through the Customs Authorities, make available to the Seller, copies of the exchange control, copy of the Supplier's Invoice, Bill of Lading and the Seller's Clearing Agent's bill. The seller shall not be responsible for non-fulfillment of any of its obligations resulting from a force majeure event which shall mean any and all circumstances which the Seller cannot prevent despite using reasonable care, including, but not limited to Act of God, war or warlike events, explosion, fire, strike, boycott and act or omission to act by authorities. Defects, if any, should be notified and specified in writing within 10 (ten) days of receipt of goods. If defects are notified within the time specified, the Seller warrants that it shall replace the defective goods with goods of the same type conforming to specification, thereby freeing the Seller from any further claim by the Buyer. If the Seller does not provide such replacement, the Buyer has the right to raise rescission or price reduction claims, but no claims for damages. The Seller does not warrant for products which are at an experimental stage.



Study Note - 6

IMPORT AND EXPORT PROCEDURE



This Study Note includes

6.1 Warehousing

6.1 WAREHOUSING

Under the Customs Act, 1962, there are two types of warehousing namely Public warehouse and Private warehouse (Section 2(43) of the Customs Act). Warehouse means a place where goods after landing are permitted to be removed without payment of duty. However, the duty is collected at the time of clearance from the warehouse. A public warehouse is owned and managed by a Government body like Central Warehousing Corporation. A private warehouse is a warehouse licensed to store dutiable imported goods of the licensee or on behalf of licensee, in case of public warehouses is not available.

Warehousing bond

An importer can be cleared for warehousing without payment of import duty. It means the duty liability is postponed to the date of actual clearance from the warehouse to home consumption. Hence, such an importer shall execute a bond binding himself in a sum equal to **twice** the amount of the duty assessed on such goods to cover all duties and interest if any payable. The Assistant Commissioner of Customs or Deputy Commissioner of Customs may insist on a part of the bond amount secured by way of bank guarantee.

w.e.f. 14-5-2016, As per Section 2(43) of the Customs Act, 1962, "warehouse" means a public warehouse licensed under section 57 or a private warehouse licensed under section 58 OR Special Warehouse license u/s 58A.

Licensing of public warehousing:

Section 57: The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a public warehouse wherein dutiable goods may be deposited.

Licensing of private warehouses:

Section 58: The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a private warehouse wherein dutiable goods imported by or on behalf of the licensee may be deposited.

Licensing of Special Warehousing:

Section 58A (1): The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a special warehouse wherein dutiable goods may be deposited and such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods therefrom without the permission of the proper officer.

Section 58A (2): The Board may, by notification in the Official Gazette, specify the class of goods which shall be deposited in the special warehouse licensed under sub-section (1).

Consequently, CBEC, vide Notification No. 66/2016 Cus (NT) dated 14.05.2016 has notified the following class of goods which shall be deposited in a special warehouse:

- (i) gold, silver, other precious metals and semi-precious metals and articles thereof;
- (ii) goods warehoused for the purpose of:
 - supply to DFS (Duty Free Shops) in a customs area;



- supply as stores to vessels/aircrafts under Chapter XI of the Customs Act, 1962;
- supply to foreign privileged persons in terms of the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957.

Note:

- (1) Privileged person means a person entitled to import/purchase locally from bond goods free of duty for his personal use/for the use of any member of his family/for official use in his Mission, Consular Post or Office or in Deputy High Commission/Assistant High Commission.
- (2) A Duty-Free Shop (DFS) in the airport need not be a licensed as warehouse under section 58A.
 - a. DFS located in customs area should not be treated as a warehouse.
 - b. In fact, it is a point of sale for the goods which are to be ex-bonded and removed from a warehouse for being brought to a DFS in the customs area for sale to eligible persons, namely international passengers arriving or departing from India.

Cancellation of Licence [Section 58B, w.e.f. 14-5-2016]:

- (1) Where a licensee contravenes any of the provisions of this Act or the rules or regulations made thereunder or breaches any of the conditions of the licence, the Principal Commissioner of Customs or Commissioner of Customs may cancel the licence granted under section 57 or section 58 or section 58A.

Provided that before any licence is cancelled, the licensee shall be given a reasonable opportunity of being heard.

- (2) The Principal Commissioner of Customs or Commissioner of Customs may, without prejudice to any other action that may be taken against the licensee and the goods under this Act or any other law for the time being in force, suspend operation of the warehouse during the pendency of an enquiry under sub-section (1).

- (3) Where the operation of a warehouse is suspended under sub-section (2), no goods shall be deposited in such warehouse during the period of suspension:

Provided that the provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse.

- (4) Where the licence issued under section 57 or section 58 or section 58A is cancelled, the goods warehoused shall, within seven days from the date on which order of such cancellation is served on the licensee or within such extended period as the proper officer may allow, be removed from such warehouse to another warehouse or be cleared for home consumption or export:

Provided that the provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse till they are removed to another warehouse or cleared for home consumption or for export, during such period."

Features of warehousing:

- Importer can defer payment of import duties
- Importer can store the goods in a safe place
- Importer allowed to do manufacture in bonded warehouse and then re-export from it.
- The importer can be allowed to keep the goods up to one year without payment of duty from the date he deposited the goods into warehouse
- The importer minimises the charges by keeping in a warehouse, otherwise the demurrage charges at port is heavy.
- As per Section 9 of the Customs Act, 1962, the Central Board of Excise and Customs, may, by notification in the Official Gazette, declare places to be warehousing stations at which alone public warehouses may be



appointed and private warehouses may be licensed.

- Assistant Commissioner of Customs or Deputy Commissioner of Customs are competent to appoint a warehouse as public bonded warehouse
- The Commissioner of Customs or Principal Commissioner of Customs may license private warehouse. As per section 58(2)(b) of the Customs Act, 1962, Commissioner or Principal Commissioner of Customs is not required to give a notice to the licensee while cancelling the license of a private warehouse if he has contravened any provision of the said Act. Otherwise, the license to private warehouse can be cancelled by giving ONE month notice.
- Only dutiable goods can be deposited in the warehouse
- Green Bill of Entry has to be submitted by the importer to clear goods from warehouse for home consumption.
- Rate of duty is applicable as on the date of presentation of Bill of Entry (i.e. sub-bill of entry or ex-bond bill of entry) for home consumption.
- Reassessment is not allowed after the imported goods originally assessed and warehoused.
- The exchange rate is the rate at which the Bill of Entry (i.e. 'into bond') is presented for warehousing. That is the date on which the Bill of Entry is submitted for warehousing not the Ex- Bill of Entry which is required to be submitted at the time of clearing the goods from warehouse.
- If the goods which are not removed from warehouse within the permissible period, would be deemed to have been improperly removed on the day it should have been removed. Hence, duty applicable on such date (i.e. last date on which the goods should have been removed) is applicable, and not the actual date on which goods are removed. [**Kesoram Rayon v Commissioner of Customs (1996)**]
- Relevant date when goods are warehoused can be summarized hereunder.

S. No.	Goods warehoused under Bond	Relevant date	Remarks
(i)	Rate of exchange	At the time of submission of 'into bond' bill of entry	When goods are removed for home consumption
(ii)	Rate of duty	As on the date of submission of sub-bill of entry	When goods are removed for home consumption
(iii)	Rate of duty	The rate of duty prevails on the date on which the goods should have been removed is to be considered	When the goods are not removed from warehouse within the permissible period and permission is also not obtained for the extended period – Improper removal.

Warehousing period

As per section 61 of the Customs Act, 1962 period of warehousing has been suggested in the following lines:

Importer	Normal warehousing period	Remarks
Other than EOU	One year	From the date of issuing the order by Customs Officer permitting deposit of goods in a warehouse.
EOU	Three years – for inputs, spares and consumables Five years –for capital goods	In the case of EOU units, the whole factory is treated as a bonded warehouse.

The power to extend the warehousing period beyond 5 years/3 years has been delegated to the Commissioner of Customs for such further period as he may deem fit. The period of 1 year can be extended by the Commissioner of Customs for further 6 months. However, for extending it further, authorization of Chief Commissioner of Customs is required.



In the case of goods warehoused by other than EOU, if they are likely to deteriorate, the normal warehousing period of one year may be reduced by the Commissioner of Customs to such shorter period as he may deem fit.

w.e.f. 14-5-2016:

- (1) Section 59 of the Customs Act, 1962, Bond amount has been increased from twice of the duty amount to thrice of the duty amount and security also will have to be given.
- (2) Now, rent charges claimable will not be pre-requisite for non-compliances of any of the provisions, since it is the issue of custodian i.e. owner of the warehouse.

Period for which goods may remain warehoused w.e.f. 14-5-2016

As per Sec. 61 of the Customs Act, 1962

- (1) Any warehoused goods may remain in the warehouse in which they are deposited or in any warehouse to which they may be removed:
 - (a) in the case of capital goods intended for use in any hundred per cent. export oriented undertaking or electronic hardware technology park unit or software technology park unit or any warehouse wherein manufacture or other operations have been permitted under section 65, till their clearance from the warehouse;
 - (b) in the case of goods other than capital goods intended for use in any hundred per cent. export oriented undertaking or electronic hardware technology park unit or software technology park unit or any warehouse wherein manufacture or other operations have been permitted under section 65, till their consumption or clearance from the warehouse; and
 - (c) in the case of any other goods, till the expiry of one year from the date on which the proper officer has made an order under sub-section (1) of section 60:

Provided that in the case of any goods referred to in this clause, the Principal Commissioner of Customs or Commissioner of Customs may, on sufficient cause being shown, extend the period for which the goods may remain in the warehouse, by not more than one year at a time:

Provided further that where such goods are likely to deteriorate, the period referred to in the first proviso may be reduced by the Principal Commissioner of Customs or Commissioner of Customs to such shorter period as he may deem fit.

- (2) Where any warehoused goods specified in clause (c) of sub-section (1) remain in a warehouse beyond a period of **ninety days** from the date on which the proper officer has made an order under sub-section (1) of section 60, interest shall be payable at such rate as may be fixed by the Central Government under section 47, on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said ninety days till the date of payment of duty on the warehoused goods:

Provided that if the Board considers it necessary so to do, in the public interest, it may,—

- (a) by order, and under the circumstances of an exceptional nature, to be specified in such order, waive the whole or any part of the interest payable under this section in respect of any warehoused goods;
- (b) by notification in the Official Gazette, specify the class of goods in respect of which no interest shall be charged under this section;
- (c) by notification in the Official Gazette, specify the class of goods in respect of which the interest shall be chargeable from the date on which the proper officer has made an order under sub-section (1) of section 60.

w.e.f. 14-5-2016 Control over warehoused goods has been omitted:

Now there will be a record based control on such warehouses except for warehouses setup under section 58A and hence there is no need of payment of MOT charges by EOU except for class of goods which is notified under



section 58A.

Section 63 of the Customs Act, 1962, Payment of rent and warehouse charges.

Prior to 14-5-2016	W.e.f. 14-5-2016	Remarks
The owner of any warehoused goods shall pay to the warehouse-keeper rent and warehouse charges at the rates fixed under any law for the time being in force or where no rates are so fixed, at such rates as may be fixed by the Commissioner of Customs. (2) If any rent or warehouse charges are not paid within ten days from the date when they became due, the warehouse- keeper may, after notice to the owner of the warehoused goods and with the permission of the proper officer cause to be sold (any transfer of the warehoused goods notwithstanding) such sufficient portion of the goods as the warehouse-keeper may select.	Omitted	This was the issue of the custodian i.e. owner of warehouse and not the custom officers.

Section 64 of the Customs Act, 1962, Owner's right to deal with warehoused goods:

w.e.f. 14-5-2016 The owner of any warehoused goods may, after warehousing the same:

- inspect the goods;
- deal with their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;
- sort the goods; or
- show the goods for sale.

Note: Since physical control has been abolished, there is no need of obtaining sanction on payment of MOT charges.

Section 65 of the Customs Act, 1962 Manufacture and other operations in relation to goods in a warehouse.

Prior to 14-5-2016	w.e.f. 14-5-2016	Remarks
With the sanction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs and subject to such conditions and on payment of such fees as may be prescribed, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods.	With the permission of the Principal Commissioner of Customs or Commissioner of Customs and subject to such conditions and subject to such conditions and on payment of such fees as may be prescribed, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods.	It is upward delegation. Now EOU, EHTP Units will have to be obtained license u/s 58/65 from Principal Commissioner/ Commissioner

Custody and removal of warehoused goods (New Section 73A w.e.f. 14-5-2016)

- All warehoused goods shall remain in the custody of the person who has been granted a licence under section 57 or section 58 or section 58A until they are cleared for home consumption or are transferred to another warehouse or are exported or removed as otherwise provided under this Act.
- The responsibilities of the person referred to in sub-section (1) who has custody of the warehoused goods shall be such as may be prescribed.



- (3) Where any warehoused goods are removed in contravention of section 71, the licensee shall be liable to pay duty, interest, fine and penalties without prejudice to any other action that may be taken against him under this Act or any other law for the time being in force.

Note: The provision has been inserted so as to recover the duty either from custodian or importer as may be prescribed to protect the revenue.

Liability of duty interest fine will be on importer and or custodian, as the case may be.

This will cause more responsibility on custodian.

Interest on warehoused goods

If the importer after warehousing the goods does not clear within 90 days from the date of deposit of the goods, the interest @15% p.a. is to be paid on the value of total duty payable. However in case of Anti Dumping Duty interest has to be paid at the time of importation. If the Anti Dumping Duty is not levied at the time of import however, subsequently imposed on warehoused goods then no such duty is required to be paid by the importer at the time of clearance from the warehouse. Therefore no interest on the part of Anti Dumping duty will be imposed.

No interest, if no customs duty is payable on warehoused goods.

While calculating the interest for number of days delay, we should take into account by including the date of payment of duty. [MF(DR) Circular No. 48/2002-Customs]

Example 3:

An importer imported some goods in February, 2017 and the goods were cleared from Mumbai port for warehousing on 8th February, 2017 after assessment. Assessable value was ₹ 4,86,000 (US \$ 10,000 at the rate of exchange ₹ 48.60 per US \$). The rate of duty on that date was 20% (assume that no additional duty is payable). The goods were warehoused at Pune and were cleared from Pune warehouse on 4th March, 2017, when rate of duty was 12% and exchange rate was ₹ 48.75 = 1US \$. What is the duty payable while removing the goods from Pune on 4th March, 2017?

Answer:

The rate of exchange will be ₹ 48.60 per USD

Assessable value (i.e. US \$ 10,000 at ₹48.60 per US \$)	= ₹	4, 86,000
Rate of duty	= @	12%.
Basic customs duty payable	= ₹	58,320
Education Cess 2% on 58,320	= ₹	1,166
SAH @1% on 58,320	= ₹	583
Total Duty payable	= ₹	60,070

Example 4:

Certain goods were imported in February 2017. "Into bond" bill of entry was presented on 14th February, 2017 and goods were cleared from the port for warehousing. Assessable value was \$5,00,000. Customs officer issued the order under section 60 permitting the deposit of the goods in warehouse on 21st February, 2017 for 3 months. Goods were not cleared even after warehousing period was over, i.e., 21st May, 2017 and extension of time was also not obtained. Customs officer issued notice under section 72 demanding duty and other charges. Goods were cleared by importer on 28th June, 2017. What is the amount of duty payable while removing the goods? Compute on the basis of following information (assume that no additional duty or special additional duty payable).

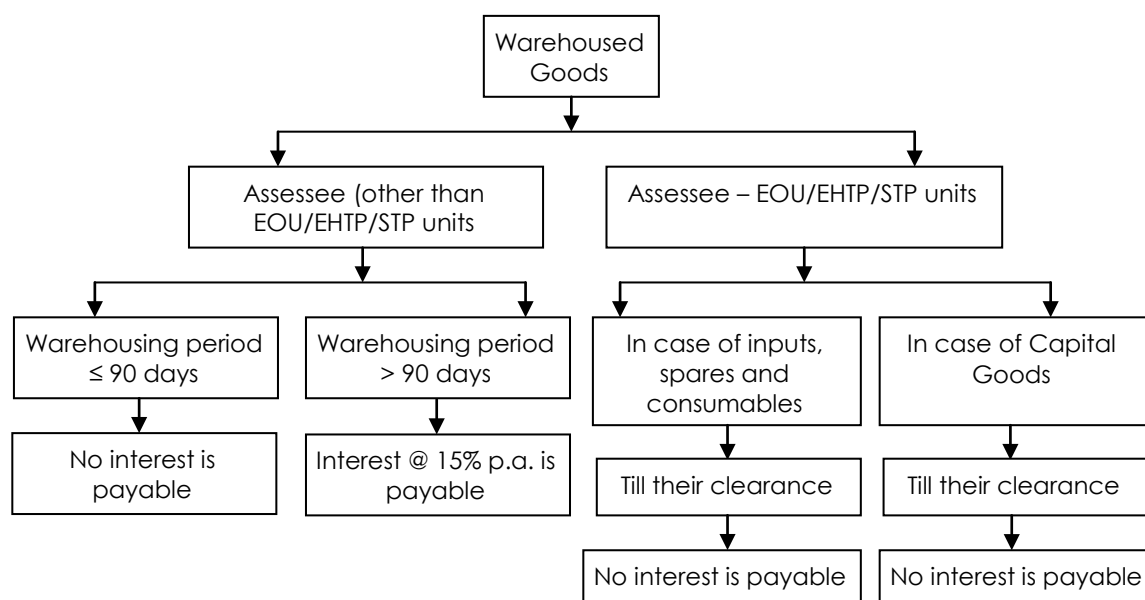
	14.02.2017	21.05.2017	28.06.2017
Rate of Exchange per USD	₹ 48.30	₹ 48.40	₹ 48.50
Basic customs duty	35%	12%	25%

Answer:

Rate of duty applicable	=	@ 12%
Exchange rate	= ₹	48.30
Assessable value 5,00,000USD @ 48.30	= ₹	2,41,50,000
Customs Duty @12% x 2,41,50,000	= ₹	28,98,000
Education cess 2% x 28,98,000	= ₹	57,960
SAH @ 1% x 28,98,000	= ₹	28,980
Total Customs duty payable	= ₹	29,84,940

Note: Goods not removed from the warehouse within the permissible period, is considered as deemed to be removed improperly on the due date, even though, the goods actually removed at a later date. The rate of duty prevailing on the date on which the goods should have been removed is to be considered i.e. 12%. [Kesoram Rayon v Commissioner of Customs (1996)]

Applicability of Interest on Warehoused Goods 14-5-2016:





Waiver of interest

Waiver of interest can be granted by the Chief Commissioner of Central Excise upto ₹ 2 crores, and the C.B.E. & C. can waive part or full interest under exceptional circumstances without any upper limit beyond ₹ 2 crores.

Custodian under section 45 of the Customs Act, 1962

All imported goods unloaded in a customs area shall remain in the custody of such person as may be approved by the Commissioner of Customs until they are cleared for home consumption or are warehoused or are transhipped. This person is called the custodian. The Port Trust Authority and the Notional Airport Authority can be considered as custodian.

Custodian has the following responsibilities under section 45(2):

- Keep proper record of goods received from the carriers
- Sending a copy of the same to the customs authorities
- Removal of goods from the customs area with specific permission of the Customs Authorities

Liability of the custodian under section 45(3):

If any imported goods are pilfered after unloading in any customs area, while in the custody of the custodian, such custodian shall be liable to pay duty on such goods. **International Airport Authority of India v Ashok Dhawan 1999(106) ELT 16 (SC).**

Port Trust authorities are not liable for payment of duty in respect of pilfered goods:

The Bombay High Court differently interpreted the liability of the Custodian. As per section 45 of the Customs Act, the person referred to in sub-section (1) thereof can only be the person approved by the Commissioner of Customs. It excludes a body of persons, who by virtue of a law for the time being in force, is entrusted with the custody of goods by incorporation of law under another enactment, (for example, the Port Trust Act in the given case). The recovery of duty in respect of pilfered goods could only from the approved person and the Port Trust is not liable to pay duty on goods pilfered while in their possession **[Board of Trustees of the Port of Bombay v UOI 2009 (241) ELT 513 (Bom)]**

A 100% EOU has to be treated as a Customs Bonded Warehouse

The entire premises of a 100% EOU has to be treated as a Customs bonded warehouse if the licence granted u/s 58 is in respect of the entire premises. Imported goods warehoused in the premises of a 100% EOU (which is licensed as a Customs bonded warehouse) and used for the purpose of manufacturing/processing by the 100% EOU in bond as authorized u/s 65 cannot be treated to have been removed for home consumption accordingly, filing or non-filing of ex-bond bill of entry before using the goods by the 100% EOU is not relevant. The Tribunal expressed the same view in the case of **Paras Fab International v CCE 2010 (256) ELT 556 (Tri.-LB).**

Example 5:

A 100% EOU in Alwar, filed 'into Bond Bill of Entry' for warehousing the imported goods. The impugned goods were warehoused in their 100% EOU in Alwar and subsequently used in the factory within the premises of the 100% EOU for manufacture of the finished goods. The Department demanded customs duty on the impugned goods.

Answer:

Imported goods warehoused in the premises of a 100% EOU (which is licensed as a Customs bonded warehouse) and used for the purpose of manufacturing/processing by the 100% EOU in bond as authorized u/s 65 cannot be treated to have been removed for home consumption accordingly customs duty not required to pay.

Goods improperly removed from warehouse

In any of the following cases, we can say the goods were improperly removed as per section 72 of the Customs Act, 1962:

- Warehoused goods taken out of a warehouse (except on clearance for home consumption or re-exportation,



or for removal to another warehouse etc.)

- Warehoused goods have not been removed from a warehouse at the expiry of the period during which such goods are permitted
- Warehoused goods taken as samples without payment of duty but not returned
- Warehoused goods for which a bond has been executed and have not been cleared goods for home consumption or export.

Clearance of warehoused goods for exportation

Warehoused goods may be exported without payment of import duty by satisfying the following:

- A shipping bill or a bill of export has been presented in respect of such goods in the prescribed form
- The export duty, penalties, rent, interest and other charges payable in respect of such goods have been paid; and
- An order for clearance of such goods for exportation has been made by the proper officer.

Powers of proper officer to take samples for the purpose of examination or testing (Section 144):

The proper officer may -

- on the entry or clearance of any goods or at any time while such goods are being passed through the customs area,
- take samples of such goods in the presence of the owner thereof,
- for examination or testing, or for ascertaining the value thereof, or for any other purposes of this Act.

Return/Disposal of samples:

- After the purpose for which a sample was taken is carried out, such sample shall, if practicable, be restored to the owner.
- But if the owner fails to take delivery of the sample within three months from the date the sample was taken, it may be disposed of in such manner as the Commissioner of Customs may direct.

No duty on samples destroyed:

Prior to 10th May, 2013	W.e.f. 10th May, 2013
No duty shall be chargeable on any sample of goods taken under this section which is consumed or destroyed during the course of any test or examination thereof, if such duty amounts to five rupees or more.	No duty shall be chargeable on any sample of goods taken under this section which is consumed or destroyed during the course of any test or examination thereof.

Imported goods not cleared within 30 days (Section 48 of the Customs Act, 1962)

As per Section 48 of the Customs Act, 1962 the imported goods brought into India are allowed to stay not more than 30 days on the wharf. Therefore, these imported goods should be cleared for home consumption, or warehoused or transhipped within 30 days from the date of the unloading thereof at the Customs Station or within such further time as the proper officer may allow.

If the goods are not cleared within 30 days from the date of unloading or if the title to any imported goods is relinquished by the importer, such goods can be sold by the Custodian with customs permission and after notice to the importer.

However, in case of animals, perishable goods, hazardous goods, they can be sold any time with the permission of proper officer.

Arms and ammunition fall under Arms Act, 1959 they can be sold at the time/place/manner prescribed by the Central Government of India.



However, Section 46 of the Customs Act, 1962 prescribes no time limit for filing a bill of entry by an importer upon arrival of goods.

Warehousing without warehousing (Section 49 of the Customs Act, 1962)

Imported goods are kept in customs bonded warehouse after being assessed to duty. However, occasionally, it may happen that assessment of duty may take time for want of some clarification/reports etc. In such cases, goods lying in docks may incur heavy demurrage. There is a provision that customs department can issue detention certificate and on the basis of such certificate, port trust authorities may remit demurrage.

If the assessment is delayed, then those goods can be stored in public warehouse without executing the bond.

W.e.f. 10th May, 2013.

Prior to 10th May, 2013	W.e.f 10th May, 2013
There is no time limit to remove the goods from warehouse where the goods has been stored under section 49 of the Customs Act, 1962 i.e. warehousing without warehousing	There is a time limit of 30 days to remove the goods from warehouse where the goods has been stored under section 49 of the Customs Act, 1962 i.e. warehousing without warehousing. However, the Commissioner of Customs may extend the period of storage for a further period not exceeding 30 days at a time.

Extension of warehousing and acceptance of Letter of Undertaking in place of Bank Guarantee for export warehousing [Circular No. 976/10/2013-CX, dated 12.12.2013]:

1. Warehousing of goods shall initially be allowed for a period upto 6 months, which may be further extended by Assistant/Deputy Commissioner, each extension being for a period not exceeding 6 months, subject to verification that the goods have not deteriorated in quality.
2. The maximum period, for which goods may be left in the warehouse in which they are deposited, or in any warehouse to which such goods have been removed, shall be **three years** from the date on which such goods were first warehoused.
3. Excisable goods shall be deemed to be cleared for home consumption on expiry of warehousing period including extensions granted, if any.
4. Duty and interest @ **15% p.a. (w.e.f. 1-4-2106)** shall be charged on such deemed removal. Prior to 1-4-2016 interest @ 24% per annum.
5. W.e.f. 12.12.2013, where exporter is a manufacturer and a Status Holder with a clean track record, requirement to furnish security equal to 25% of bond amount shall be replaced by the requirement of furnishing an **LUT** initially for a period up to 6 months which may be extended by a further period not exceeding 6 months.

Further, extensions in the warehousing period shall be allowed to such exporter only on furnishing security of 25% of the bond amount.

Warehoused Goods (Removal) Regulations, 2016 (NT 67/2016 Cus Dt 14.5.2016):

1. Owner of warehoused goods make a request:

Where the warehoused goods are to be removed from one warehouse to another warehouse or from a warehouse to a customs station for export, the owner is required to make a request in prescribed Form for transfer of goods.

2. Conditions for transport of goods: Where the goods are removed:

- from the customs station of import to a warehouse or



- from one warehouse to another warehouse or
- from the warehouse to a customs station for export

the transport of the goods shall be under one-time lock (OTL), affixed by the proper officer or licensee or bond officer [i.e. an officer of customs in charge of a warehouse], as the case may be. However, the Principal Commissioner/Commissioner of Customs may dispense with the condition of one-time lock and allow transport of the goods without affixing the one-time-lock, having regard to the nature of goods or manner of transport.

3. Acknowledgement of receipt of goods at the destination, to be produced by the owner of goods:

The owner of the goods shall produce to the proper officer at customs station of import or the bond officer, within one month [or extended period allowed], an acknowledgement issued by the licensee or the bond officer of the warehouse to which the goods have been removed or the proper officer at the customs station of export, as the case may be, stating that the goods have arrived at that place. In case the owner fails to provide the acknowledgment, he shall pay the full amount of duty chargeable on account of such goods together with interest, fine and penalties payable under section 72(1).

One Time Lock (OTL):

When the goods are removed from the customs station of import for warehousing, the proper officer affixes a one-time lock (OTL) on the container or means of transport (closed trucks). The serial number of OTL alongwith date and time of its affixation needs to be endorsed upon Bill of Entry for warehousing and transport document.

All customs stations are required to maintain records incorporating the number of the OTL, bill of entry, truck number, container number (if applicable), date & time of affixing the OTL and the name, designation & telephone number of the officer affixing the OTL.

A similar procedure has been provided under Warehoused Goods (Removal) Regulations, 2016 for removal of goods from one warehouse to another and from a warehouse to customs station for export.

However, the Principal Commissioner of Customs /Commissioner of Customs may permit movement of goods without affixation of such OTLs, where the nature of goods or their manner of transport so warrant (e.g. Liquid Bulk Cargo transported through Pipe Line & Over Dimensional Cargo)

Transfer of goods to another warehouse:

Warehouse – Private or Public	Special warehouse
(1) Licensee (namely incharge of warehouse) shall transfer warehoused goods to another warehouse only when the owner of the goods produce the form for transfer of goods bearing the orders of the bond officer permitting such transfer.	(1) Licensee (namely incharge of warehouse) shall transfer warehoused goods to another warehouse only with the permission of the Bond Officer on the form for transfer of goods.
(2) After the goods are removed and loaded on means of transport, licensee would: (a) affix a one-time-lock to the means of transport, (b) endorse the number of one-time lock on prescribed form for transfer of goods and on transportation documents, (c) cause one copy of each of these documents to be delivered to bond officer and (d) record the removal of goods	(2) Once bond officer permits removal of goods from warehouse, licensee shall, in the presence of Bond Officer,: (a) cause the goods to be loaded onto the means of transport, and (b) affix a one-time-lock to the means of transport.



Monthly return: A licensee shall file with the Bond Officer a monthly return in prescribed form, of the receipt, storage, operations and removal of the goods in the warehouse, within 10 days after the close of the month to which such return relates. However, such return shall be furnished on/before the 10th day of the month immediately preceding the month in which the warehousing period would expire.

Online filing of Ex-bond bill of entry and EDI based monitoring of warehouses at customs station of import (w.e.f. 31.05.2015)

The filing of ex-bond bills of entry on ICES will provide the benefits of automation to importers availing the warehousing facility and lend efficiency to the process of clearance of the warehoused goods.

On receipt of copy of the ex-bond bill of entry, jurisdictional bond officer shall verify its details from ICEGATE (Indian Customs Electronic Commerce/Electronic Data interchange (EC/EDI) Gateway) to check that, the order of clearance for home consumption has been made by the proper officer. In case of any discrepancy, he shall not permit the removal of goods from the warehouse and immediately inform his Deputy or Assistant Commissioner for resolution of the same.

Example 6:

Explain the validity of the following statements with reference to Chapter IX of the Customs Act, 1962 containing the provisions relating to the warehousing:

- (a) *The proper officer is not authorized to lock any warehouse with the lock of the Customs Department.*
- (b) *The Commissioner of Customs (Appeals) may appoint public warehouses wherein dutiable goods may be deposited.*
- (c) *The Commissioner of Customs or Principal Commissioner of Customs is not required to give a notice to the licensee while canceling the license of a private warehouse if he has contravened any provision of the said Act.*

Answer:

- (a) *The given statement is invalid: Sec. 58A (1) The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a special warehouse wherein dutiable goods may be deposited and such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods therefrom without the permission of the proper officer.*
- (b) *The given statement is invalid: The Commissioner of Customs or the Principal Commissioner of Customs can appoint public warehouse, wherein dutiable goods can be deposited under Section 57 of the Customs Act, 1962.*
- (c) *The given statement is valid: the Commissioner of Customs or Principal Commissioner of Customs is not required to give a notice to the licensee while canceling the license of a private warehouse if he has contravened any provision of the said Act, as per section 58(2)(b) of the Customs Act, 1962.*



Example 7:

An importer imported some goods on 1st January, 2018 and the goods were cleared from Mumbai port for warehousing on 8th January, 2018 by submitting Bill of Entry, exchange rate was ₹ 50 per US \$. FOB value US \$ 10,000. The rate of duty on 8th January, 2018 was 20%. The goods were warehoused at Pune and were cleared from Pune warehouse on 31st May, 2018, when rate of basic customs duty was 12% and exchange rate was ₹ 68.75 per 1US \$. IGST @12% is applicable.

You are required to find:

(a) The total Customs duty payable?

(b) The interest if any payable?

Answer:

	USD
FOB	10,000
ADD: 20% Freight on FOB	2,000
ADD: 1.125% Insurance on FOB	112.5
CIF / Assessable Value	12,112.50

	₹
Assessable Value	6,05,625 (i.e. 12,112.50 x ₹ 50)
Add: BCD 12%	72,675 (i.e. 6,05,625 x 12%)
Add: 2% Ed. Cess	1,454 (i.e. 72,675 x 2%)
Add: 1% SAH Ed. Cess	727 (i.e. 72,675 x 1%)
Transaction value subject to GST	6,80,481
Add: IGST	81,658 (i.e. 6,80,481 x 12%)
Value of import	7,62,139
Value of Customs duties	1,56,514
Interest: (i.e. 1,58,078 x 15% x 54/365)	3,473

Working Note:

From 8th January 2018 to 31st May 2018 = 144 – 90 = 54 days.

Example 8:

Vipul imported certain goods in December, 2017. An 'Thrice the duty bond' bill of entry was presented on 14th December, 2017 and goods were cleared from the port for warehousing. Assessable value on that date was US \$1,00,000. The order permitting the deposit of goods in warehouse for four months was issued on 21st December, 2017. Vipul deposited the goods in warehouse on the same day but did not clear the imported goods even after the warehousing period got over on 20th April, 2018.

A notice was issued under section 72 of the Customs Act, 1962, demanding duty, interest and other charges. Vipul cleared the goods on 14th May 2018. Compute the amount of duty and interest payable by Vipul while removing the goods on the basis of following information:

Particulars	14-12-2017	20-4-2018	14-5-2018
Rate of exchange per US\$ (as notified by Central Board of Excise & Customs)	₹ 65.20	₹ 65.40	₹ 65.50
Basic Customs Duty	15%	10%	12%

No other customs duty is payable except basic customs duty.

Answer:

Assessable value ₹ 65,20,000/-

Customs duty is ₹ 6,71,560 $(USD\ 1,00,000 \times ₹65.20) \times 10.30\% = ₹6,71,560$

Interest payable is ₹ 15,179/- $(6,71,560 \times 15/100) \times 55\text{ days}/365 = ₹15,179/-$

No. of days delay:

Month	No. of days delay
From 21 st Dec 2017 to 31 st Dec 2017	11
Jan 2017	31
Feb 2017	28
Mar 2017	31
April 2017	30
May 2017	14
Total	145
Less: No. of days for which no interest	-90
No. of delay for interest	55

Study Note - 7

DUTY DRAWBACK



This Study Note includes

- 7.1 Duty Drawback
- 7.2 Special Brand Rate of Duty Drawback
- 7.3 Duty Drawback on Re-export
- 7.4 Negative List of Duty Drawback
- 7.5 Duty Deferment
- 7.6 Export Incentives in Lieu of Duty Drawback

7.1 DUTY DRAWBACK

The term 'duty drawback' means drawing back of the duties paid. As per section 75 of the Customs Act, 1962, drawback is given as an amount to the exporter which represents:

- The duty paid on imported inputs which are used in the manufacture of export goods
- The excise duty paid on the indigenously produced inputs used in the manufacture of export goods.
- The service tax paid on input services

No drawback is allowed on VAT, CST

However, the amount of drawback paid would not exactly relate to the actual import duty and excise duty components. It is determined by the government on the basis of an average amount of duty having regard to all the circumstances and facts of the manufacturing industry. Such a rate is called 'all industry rates' which may vary from time to time depending upon the duty prevalent on the inputs.

Brand rate of duty drawback is applicable in either of the following circumstances.

- When individual rate fixed in respect of goods on which all industry rate is not applicable
- Or
- All industry rate does not cover 80% of the drawback amount due

The Brand Rate of Duty Drawback fixed by the Central Government after necessary verification of the manufacturing processes and the documents provided giving details of input output ratio, duty paid on inputs, etc.

7.2 SPECIAL BRAND RATE OF DUTY DRAWBACK

As per Rule 7 of Drawback Rules the special brand rate of duty drawback can be applied based on the satisfaction of following conditions:

- Exporter has to apply for fixation of special brand rate within 30 days from the date of export.
- All industry rates do not cover 80% of the duties paid by the exporter.
- Rate of Duty Drawback should not be less than 1% of Free on Board.
- Amount of Drawback should not be less than ₹ 500 per shipment, in case rate of Duty Drawback is less than 1% of FOB.
- Exported goods value is more than the value of imported goods.



Example 10:

An exporter exported 2,000 pairs of leather shoes @ ₹ 750 per pair. All industry rate of drawback in fixed on average basis i.e. @ 11% of FOB subject to maximum of ₹ 80 per pair. The exporter found that the actual duty paid on inputs was ₹ 1,95,000. He has approached you, as a consultant, to apply under Rule 7 of the drawback rules for fixation of 'special brand rate'. Advise him suitably.

Answer:

- **Drawback Amount ₹ 1,65,000 (i.e. $2,000 \times 750 \times 11\%$) or ₹ 1,60,000 (i.e. $₹ 80 \times 2,000$) whichever is less.**
- **Therefore duty drawback allowed is ₹ 1,60,000.**
- **All Industry duty drawback rate = @82.05% [$(1,60,000/1,95,000) \times 100\%$]**
- **Exporter is not eligible to apply for Special Brand rate.**
- **Therefore, exporter is eligible for claiming All Industry Duty Drawback.**

Note: special brand rate of duty is applicable only when all industry rates do not cover 80% of the duties paid by the exporter.

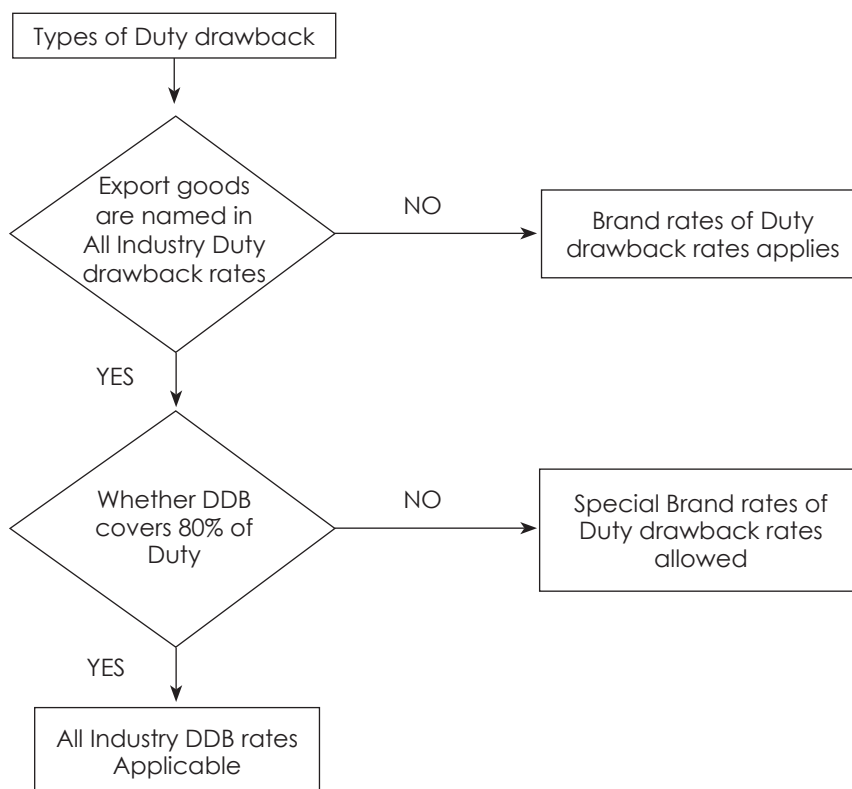
All Industry Rates

Generally these rates are fixed by the Drawback Directorate once in every year on 1st June. The Brand rate is fixed for those products in respect of which All Industry Rate is not announced. In that case, the manufacturer or exporter has to get the brand rate fixed by furnishing the prescribed data within 3 months from the relevant date for determination of rate of duty and tariff valuation to the Commissioner of Central Excise and Customs.

As per Rule 3(2) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, all industry rate of duty drawback will be determined by the Drawback Directorate shall have regard to

- The average quantity or value of each class or description of the materials from which a particular class of goods is ordinarily produced or manufactured in India.
- The average quantity or value of the imported materials or excisable materials used for production or manufacture in India of a particular class of goods;
- The average amount of duties paid on imported materials or excisable materials used in the manufacture of semis, components and intermediate products which are used in the manufacture of goods.
- The average amount of duties paid on materials wasted in the process of manufacture.
- The average amount of duties paid on imported materials or excisable materials used for containing or, packing the export goods;
- The average amount of tax paid on taxable services which are used as input services for the manufacturing or processing or for containing or packing the export goods.
- Any other information, which the Central Government considers relevant or useful.

Types of duty drawback concept and its applicability explained here in a simplified manner:



Where the exporter has already filed a duty drawback claim under All Industry Rates (AIR) Schedule, he cannot request for fixation of Special Brand Rate of drawback. Thus, the exporter should determine prior to export of goods, whether to claim drawback under AIR or Special Brand Rate. [w.e.f. 22.11.2014]

7.3 DUTY DRAWBACK ON RE-EXPORT

Section 74 of the Customs Act, 1962, provides facility of claiming duty drawback on the re-export of duty paid goods.

- Originally the goods should have been imported into India;
- Customs duty on import should have been paid.
- The imported goods should be capable of being easily identifiable as the same goods which were originally imported.
- The goods have been exported after proper examination of the goods and after ensuring that there is no prohibition or restriction on their export by the proper officer.
- The goods should have been identified to the satisfaction of the Assistant or Deputy Commissioner of Customs as the goods, which were imported, and
- The goods should have been entered for export within **two years** from the date of payment of duty on the importation thereof.

Drawback of import duty paid is not allowed if these goods are exported: Wearing apparel, Tea chests, Exposed cinematograph film passed by the Board of Film Censors in India, Unexposed photographic films, paper and plates and X-Ray films.

The Central Board of Excise and Customs has the power to extend the period of two years. Once these conditions are satisfied, then 98% of the import duty paid on such goods at the time of importation shall be repaid as drawback. 98% duty drawback is allowed only when these goods are re-exported without being used in the industry. If the goods are taken into use after importation then the duty drawback is allowed based on the period of usage as per section 74(2) of the Customs Act, 1962.

Example 11:

ABC Ltd., who is an exporter, finds that the amount of drawback refunded to it is less than what it is entitled to, on the basis of the rates of drawback announced by the Central Government. Briefly discuss whether ABC Ltd. can claim the difference of drawback short refunded and procedure to be followed in this regard.

Answer:

Yes, ABC Ltd. is eligible for claiming the difference of the drawback on the basis of the amount of rate of drawback determined by the Central Government of India for claiming the difference by filing a supplementary claim in the prescribed form under rule 15 of the Customs Act and Central Excise Duties Drawback Rules, 1995 within a period of 3 months.

The said 3 months period further extended for a period of nine months for filing a supplementary claim under rule 15, by making an application accompanied with a fees of 1% of the FOB value of exports or ₹ 1000/- whichever is less. Further, the said period may be extended by six months by Commissioner of Customs/ Commissioner of Customs and Central Excise on an application accompanied with a fees of 2% of the FOB value or ₹ 2000/- whichever is less.

Drawback rates on re-export if the goods are taken into use after importation (NT No. 23/2008-Cus., dated 1-3-2008)

The following duty drawback rates has been notified by the Central Government under section 74(2) of the Customs Act, 1962. These rates are applicable if the goods are re-exported only after being used in the business.

Length of period between the date of clearance for home consumption and the date when goods are placed under Customs control for export.	% of import duty to be paid as Drawback
Not more than 3 months	95%
More than 3 months but not more than 6 months	85%
More than 6 months but not more than 9 months	75%
More than 9 months but not more than 12 months	70%
More than 12 months but not more than 15 months	65%
More than 15 months but not more than 18 months	60%
More than 18 months	NIL

Duty drawback rates on personnel goods under section 74(2) of the Customs Act

The following duty drawback rates are allowable on goods imported for personal use (like Motor cars or other goods) after payment of duty and subsequently re-exported: These rates are applicable if the goods are re-exported after being used.

Year	Quarter or part thereof	Rate of drawback to be reduced	Cumulative reduction	Allowable drawback
1	1st Quarter	4%	4%	96%
	2nd Quarter	4%	8%	92%
	3rd Quarter	4%	12%	88%
	4th Quarter	4%	16%	84%
2	1st Quarter	3%	19%	81%
	2nd Quarter	3%	22%	78%
	3rd Quarter	3%	25%	75%
	4th Quarter	3%	28%	72%
3	1st Quarter	2.50%	30.5%	69.5%
	2nd Quarter	2.50%	33%	67%
	3rd Quarter	2.50%	35.5%	64.5%

Year	Quarter or part thereof	Rate of drawback to be reduced	Cumulative reduction	Allowable drawback
	4th Quarter	2.50%	38%	62%
4	1st Quarter	2%	40%	60%
	2nd Quarter	2%	42%	58%
	3rd Quarter	2%	44%	56%
	4th Quarter	2%	46%	54%

Part of the quarter is also considered as full quarter for allowing duty draw back rate.

Motor car or goods used more than 2 years:

where the period of usage is more than 2 years, drawback shall be allowed only if the CBEC, on sufficient cause being shown, has in that particular case extended the period beyond 2 years and also that no drawback shall be allowed if such motor car has been used for more than 4 years.

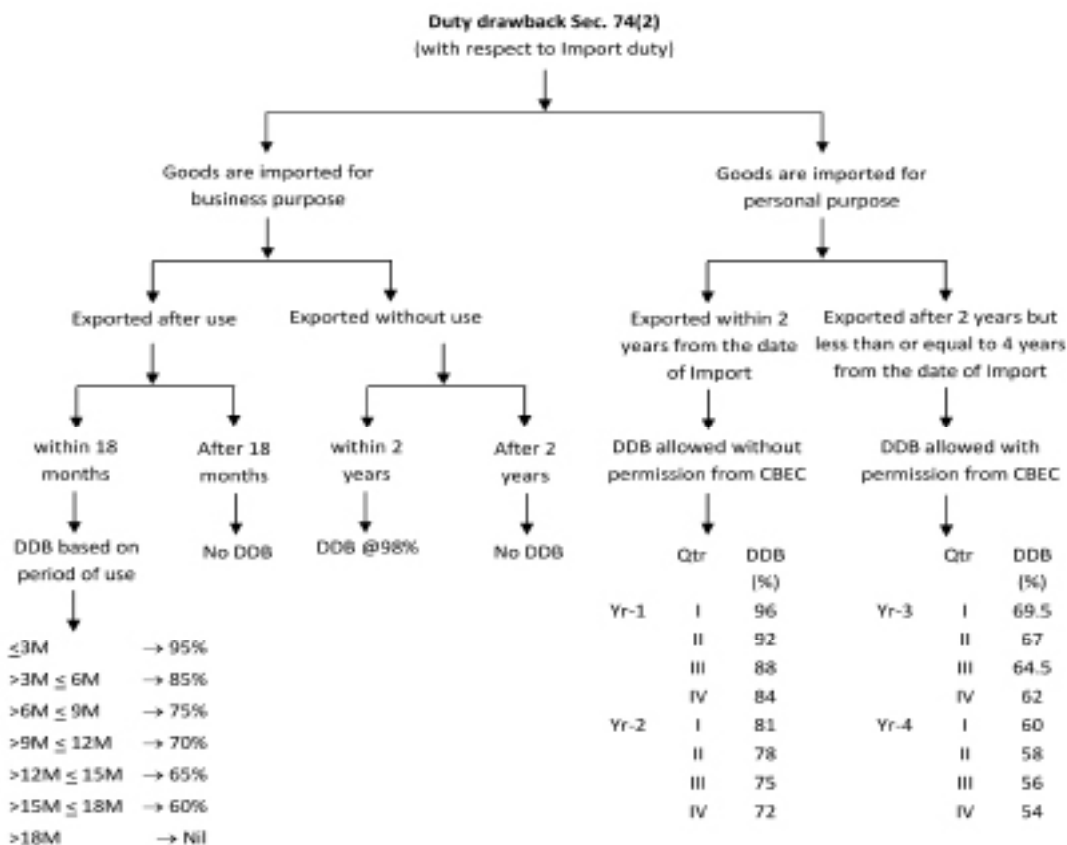
Example 12:

Mr. Ram wants to take back with him (i.e. re-export) a car that he was imported on duty payment, when came to India. Can he get any duty drawback from the government? He has imported motor car for his personal use and paid ₹ 2,50,000 as import duty. Car used in India for 3 months and 2 days.

Answer:

Yes, he can claim the duty drawback @92% on the value of import duty i.e. ₹ 2,30,000.

The entire concept with regard to duty drawback on re-export has been explained hereunder:





Example 13:

Calculate the amount of duty drawback allowable under section 74 of the Customs Act, 1962 in following cases:

- (a) Salman imported a motor car for his personal use and paid ₹ 5,00,000 as import duty. The car is re-exported after 6 months and 20 days.**
- (b) Nisha imported wearing apparel and paid ₹ 50,000 as import duty. As she did not like the apparel, these are re-exported after 20 days.**
- (c) Super Tech Ltd. imported 10 computer systems paying customs duty of ₹ 50 lakh. Due to some technical problems, the computer systems were returned to foreign supplier after 2 months without using them at all.**

Answer:

- (a) The amount of duty drawback is ₹ 4,40,000 (i.e. ₹ 5,00,000 @ 88%), since these goods are used in India.**
- (b) Duty drawback is ₹ nil, assumed that wearing apparels are re-exported after being used.**
- (c) Duty drawback is ₹ 49,00,000 (i.e. 50,00,000 x 98%), since these good are re-exported without being used.**

Example 14:

With reference to drawback on re-export of duty paid imported goods under section 74 of the Customs Act, 1962, answer in brief the following questions:

- (i) What is the time limit for re-exportation of goods as such?**
- (ii) What is the rate of duty drawback if the goods are exported without use?**
- (iii) Is duty drawback allowed on re-export of wearing apparel without use?**

Answer:

- (i) As per section 74 of the Customs Act, 1962, the duty paid imported goods are required to be entered for export within two years from the date of payment of duty on the importation.**
This period can be extended by CBEC if the importer shows sufficient reason for not exporting the goods within two years.
- (ii) If duty paid imported goods are exported without use, then 98% of such duty is re-paid as drawback.**
- (iii) Yes, duty drawback is allowed when wearing apparels are re-exported without being used.**

Statements/Declaration to be made on export other than by post

As per Rule 4 of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, the exporter shall at the time of export of the goods

- State on shipping bill or bill of export, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback under section 74 and make a declaration on the relevant shipping bill or bill of export the following:
 - the export is being made under a claim for drawback under section 74 of the Customs Act;
 - that the duties of customs were paid on the goods imported;
 - that the imported goods were, or were not, taken into use after importation;
- furnish to the proper officer of customs, copy of bill of entry, import invoice, Documentary evidence of payment of duty, export invoice and packing list and permission from Reserve Bank of India to re-export the goods, wherever necessary



Time limit for claiming the duty drawback

As per Rule 5(1) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 a claim for drawback, in case of goods exported other than by post, shall be filed in the specified form at Annexure II within three months from the date on which an order permitting clearance and loading of goods for exportation under section 51 is made by proper officer of customs.

In case of delay in filing the claim, the proper officer namely the Assistant Commissioner of Customs or Deputy Commissioner of Customs may, if he is satisfied that the exporter was prevented by sufficient cause to file his claim within the aforesaid period of three months, allow the exporter to file his claim within a further period of three months.

Extension of time period for filing drawback claim under rule 5 of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995

Proviso to rule 5(1) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 has been substituted with a new proviso. Rule 5(1) provides that a claim for drawback shall be filed within three months from the date on which an order permitting clearance and loading of goods for exportation is made by proper officer of customs.

The new proviso lays down that the said period of three months may be extended by a period of three months by Assistant/Deputy Commissioner on an application accompanied with a fee of 1% of the FOB value of exports or ₹ 1000/- whichever is less and a further period of six months by Commissioner of Customs/ Commissioner of Customs and Central Excise on an application accompanied with a fee of 2% of the FOB value or ₹ 2000/- whichever is less. **[Notification No. 48/2010-Cus. (NT), dated 17.06.2010]**

Change in time periods available under rules 6, 7, 15 and 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995

Following amendments have been made in the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995: [Notification No. 49/2010 Cus.(NT), dated 17.06.2010]

- (i) The time period for the following has been extended from sixty days to three months:
 - (a) making an application to the Commissioner of Central Excise/Commissioner of Customs and Central Excise for determination of the amount or rate of drawback if no All Industry Rate is specified [Rule 6].
 - (b) making an application to the Commissioner of Central Excise/Commissioner of Customs and Central Excise for determination of the amount or rate of drawback where the amount or rate of drawback is low (i.e. All Industry Rate is lower than 80% of the duty or tax paid) [Rule 7].

Further, the aforesaid periods of three months may be extended by a period of three months by Assistant/Deputy Commissioner on an application accompanied with a fee of 1% of the FOB value of exports or ₹ 1000/- whichever is less and a further period of six months by Commissioner of Central Excise/ Commissioner of Customs and Central Excise on an application accompanied with a fee of 2% of the FOB value or ₹ 2000/- whichever is less.

Supplementary Claim [Rule 15]:

Where an exporter finds that the amount of duty drawback paid to him is less than what he is entitled to on the basis of amount or rate of duty drawback as determined by the Commissioner of Central Excise/ Commissioner of Customs and Central Excise, he may prefer supplementary claim in prescribed form:

The claim shall be made within 3 months of the following dates:

- Where rate of duty drawback is determined or revised under Rule 3 or 4, date of publication of such date
- Where the rate is determined under Rule 6 or 7, the date of communication of rate to person

The said 3 months period further extended for a period of nine months for filing a supplementary claim under rule



15, by making an application accompanied with a fees of 1% of the FOB value of exports or ₹ 1000/- whichever is less. Further, the said period may be extended by six months by Commissioner of Customs/ Commissioner of Customs and Central Excise on an application accompanied with a fees of 2% of the FOB value or ₹ 2000/- whichever is less.

Recovery of duty drawback where export proceeds are not realized [Rule 16A]:

Where the duty drawback has been paid to the exporter but the sale proceeds in respect of such goods have not been realized by the exporter within the period permissible by the Foreign Exchange Management Act, 1999 (FEMA), such duty drawback shall be recovered by the Government except under circumstances or conditions specified in rule 16A(5).

Where the sale proceeds are realized by the exporter after the amount of drawback has been recovered from him and the exporter produces evidence about such realization within a period of 3 months from the date of realization of sale proceeds provided the sale proceeds have been realized within the period permitted by the Reserve Bank of India. The amount of drawback so recovered shall be repaid the Assistant Commissioner or Deputy Commissioner of Customs to the exporter.

Further, the aforesaid period of three months may be extended by a period of nine months by Commissioner of Customs/Commissioner of Customs and Central Excise on an application accompanied with a fees of 1% of the FOB value of exports or ₹ 1000/- whichever is less.

5.7.4.2.3 Drawback shall not be recovered (Notification No. 30/2011-Cus., dated 11-4-2011):

As per Rule 16A (5) the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 where sale proceeds are not realized by an exporter within the period allowed under the FEMA, the amount of drawback paid to the exporter or the claimant shall not be recovered if

- such non-realisation of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. (ECGC), under an insurance cover and
- the Reserve Bank of India writes off the requirement of realization of sale proceeds on merits and
- the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer.

Documents to be filed for claiming of duty drawback on re-export:

As per Rule 5(2) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995, the claim shall be filed along with the following documents, namely

- Triplicate copy of the Shipping Bill bearing examination report recorded by the proper officer of the customs at the time of export.
- Copy of Bill of Entry or any other prescribed document against which goods were cleared on importation;
- Import invoice;
- Evidence of payment of duty paid at the time of importation of the goods;
- Permission from Reserve Bank of India for re-export of goods, wherever necessary;
- Export invoice and packing list;
- Copy of Bill of lading or Airway bill;
- Any other documents as may be specified in the deficiency memo.

As per Rule 5(3) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 the date of filing of the claim for the purpose of section 75A shall be the date of affixing the Dated Receipt Stamp on the claims, which are complete in all respects, and for which acknowledgement shall be issued in the form prescribed



by the Commissioner of Customs.

As per Rule 5(4)(a) of the Any claim which is incomplete in any material particulars or is without the documents specified above shall not be accepted for the purpose of section 75A and such claim shall be returned to the claimant with the deficiency memo in the form prescribed by the Commissioner of Customs within fifteen days of submission and shall be deemed not to have been filed.

Incomplete claim if any shall not be accepted for the purpose of section 75A and the same shall be returned to the claimant with the deficiency memo in the form prescribed by the Commissioner of Customs within fifteen days of submission and shall be deemed not to have been filed.

Where the exporter complies with requirements specified in deficiency memo within thirty days from the date of receipt of deficiency memo, the same will be treated as a claim filed under Rule 5(1).

Payment of erroneous or excess payment of duty drawback and interest

Where an amount of drawback and interest, if any, has been paid erroneously or amount so paid in excess of what the claimant is entitled to, the claimant shall, on demand by an officer of customs repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in Section 142(1) of the Customs Act, 1962 namely recovery of sums due to Government.

As per section 75A(2) of the Customs Act, 1962, the claimant (assessee) is liable to pay the excess amount of drawback, he is liable to pay interest as well. No notice need be issued separately as the payment of interest becomes automatic, once it is held that excess drawback has to be repaid. [**CPS Textiles P Ltd. v Joint Secretary 2010 (255) ELT 228 (Mad)**]

Computation of duty drawback:

Example 15:

'A' exported a consignment under drawback claim consisting of the following items—

Particulars	Chapter Heading	FOB value ₹	Drawback rate
200 pieces of pressure stores mainly made of beans @ ₹ 80/piece	74.04	16,000	4% of FOB
200 Kgs. Brass utensils @ ₹ 200 per Kg.	74.13	40,000	₹ 24/Kg.
200 Kg. Artware of brass @ ₹ 300 per Kg.	74.22	60,000	17.50% of FOB subject to a maximum of ₹ 38 per Kg.

On examination in docks, weight of brass Artware was found to be 190 Kgs. and was recorded on shipping bill. Compute the drawback on each item and total drawback admissible to the party.

Answer:

The drawback on each item and total drawback admissible to the party shall be-

Particulars	FOB value (₹)	Drawback rate	Drawback Amount (₹)
200 pcs, pressure stoves made of brass	16,000	4% of FOB	640
200 Kgs. Brass utensils	40,000	₹ 24 per Kg.	4,800
200 kgs. Artware of brass, whose actual weight was 190 Kgs. only. (60,000 x 190/200) x 17.5%=9975 190 kgs x ₹ 38 = ₹ 7,220		17.50% of FOB subject to maximum of ₹ 38 per Kg. (₹ 9,975 or ₹ 7,220 whichever is less)	7,220
Total Drawback admissible (in ₹)			12,660

**Exampe 16:**

X Ltd. has exported following goods to USA. Discuss whether any duty drawback is admissible under section 75 of the Customs Act, 1962.

Product	FOB Value of Exported goods	Market Price of goods	Duty drawback rate
A	2,50,000	1,80,000	30% of FOB
B	1,00,000	50,000	0.75% of FOB
C	8,00,000	8,50,000	3.50% of FOB
D	2,000	2,100	1.50% of FOB

Note: Imported value of product C is ₹ 9,50,000.

Answer:

Duty draw back amount for all the products are as follows

Product A:

Drawback amount = 2,50,000 x 30% = ₹ 75,000 or ₹ 1,80,000 x 1/3 = ₹ 60,000

Allowable duty draw back does not exceed 1/3 of the market value.

Hence, the amount of duty drawback allowed is ₹ 60,000

Product B:

Drawback amount allowed is ₹ 750 (i.e. ₹ 1,00,000 x 0.75%). Since, the amount is more than ₹ 500 even though the rate is less than 1%.

Product C:

No duty drawback is allowed, since the value of export is less than the value of import (i.e. negative sale)

Product D

No duty drawback is allowed, since the duty drawback amount is ₹ 30 (which is less than ₹ 50).

Though rate of duty drawback is more than 1%, no duty drawback is allowed.

Example 17:

Calculate the amount of duty drawback allowable under the Customs Act, 1962 in the following cases:

- Jaggi Mehta imported a car from U.K. for his personal use and paid ₹ 4,50,000 as import duty. However, the car is re-exported immediately without bringing it into use.**
- Meenakshi imported a music player from Dubai and paid ₹12,000 as import duty. She used it for four months but re-exports the same after four months.**
- XYZ Ltd. exported 1000 kgs of a metal of FOB value of ₹ 1,00,000. Rate of duty drawback on such export is ₹ 60 per kg. Market price of goods is ₹ 40,000 (in wholesale market).**

Answer:

(a) Jaggi Mehta can claim duty drawback of ₹ 4,41,000 (98% of ₹ 4,50,000).

(b) Meenakshi can claim duty drawback of ₹ 10,200 (i.e. 85% of ₹ 12,000)

(c) XYZ Ltd. is not entitled to claim duty drawback in this case. Since, market value of exported goods is less than the value of Duty Drawback.

Re-export of Imported Goods by POST

Procedure to claim the duty drawback when import duty paid on imported goods which are taken for re-export:

- The parcel carrying the address of the consignee shall also carry in bold letters the words "DRAWBACK EXPORT";
- The exporter shall deliver to the competent Postal Authority, along with the parcel of package, a claim, in



quadruplicate, duty filled in specified form.

- The relevant date for filing of drawback claim in such a case shall be the date of receipt of the aforesaid 'claim form' by the proper officer of customs from the postal authorities. This date is important for the purpose of calculation of interest on drawback under Section 75A of the Act.
- An intimation of the same shall be given by the proper officer of customs to the exporter in the form prescribed by the Commissioner of Customs.
- Deficiencies, if any, in the claim form shall be intimated to the exporter within 15 days of its receipt by postal authorities through a deficiency memo. In such circumstances such claim shall be deemed not to have been received.
- Where the exporter complies with the requirements specified in deficiency memo, within 30 days of receipt of the deficiency memo, he shall be issued an acknowledgement by the proper officer. The date of such acknowledgement shall be deemed to be the date of filing the claim for purposes of section 75A.

7.4 NEGATIVE LIST OF DUTY DRAWBACK

Section 76 of the Customs Act, 1962 contains the provisions in respect of prohibition and regulation of drawback and no drawback shall be allowed in the following circumstances:

- In respect of any goods, the market price of which is less than the amount of drawback due thereon,
- If the Central Government is of the opinion that goods of any specified description in respect of which drawback is claimed under this Chapter are likely to be smuggled back into India.
- CENVAT credit claim is on inputs and input services then no duty drawback is allowed. However, if the goods have already suffered the customs duty then duty drawback is allowed to the extent of customs duties.
- Duty drawback is not allowed if the exporter has already availed the Duty Entitlement Pass Book (DEPB) or other export incentives.
- If the sale proceeds not received within the time period allowed by Reserve Bank of India.
- Export to Nepal and Bhutan and the export proceeds are not received in hard currency (it means USD, GBP or Pounds).
- drawback in respect of iron and steel, cement and rice is not allowed. [w.e.f. 29-5-2008]
- duty drawback is more than 1/3rd of market value of exported goods, then amount of duty drawback is restricted to 1/3rd of market value.
- No amount or rate of drawback is to be determined except where the amount of drawback exceeds or equal to ₹ 500/- or it is 1% or more of the FOB value of export

Where the amount of drawback in respect of any goods is less than ₹50.

Example 18:

Particulars	Situation 1	Situation 2	Situation 3	Situation 4
Free On Board (FOB) in ₹	1,000	10,000	1,00,000	1,00,000
Duty Draw Back (DDB) in ₹	40	200	450	750
DDB (%)	4%	2%	0.45%	0.75%
DDB	Not allowed	Allowed	Not allowed	Allowed
Remarks	Since, DDB is < ₹ 50	Since, DDB ≥ 1% and amount also ≥ ₹ 50	Since, DDB < 1% and DDB amount also < ₹ 500	Since, DDB amount is ≥ ₹ 500 even though DDB < 1%

The above list is only illustrative but not exhaustive.



Example 19:

XYZ Company Limited exported a consignment of manufactured goods. The company has paid import duty and central excise duty on the components used in the manufacture. A duty drawback rate has been fixed for these goods. The ship carrying the consignment runs into trouble and sinks in the Indian territorial waters. The customs department refused to grant drawback for the reason that the goods did not reach their destination. As a consultant for M/s XYZ Limited you are required to prepare a brief note with the reason whether the stand taken by the customs department is correct in law.

Answer:

The term "export" means "taking out of India to a place outside India". The term "taking out of a place outside India" would also mean a place in high seas, if that place is beyond territorial waters of India. If the goods cross the territorial waters of India then it is an export and duty drawback cannot be denied.

In the given case, the vessel sunk within territorial waters of India and therefore there is no export. Accordingly, no duty drawback shall be available in this case [Union of India v Rajindra Dyeing & Printing Mills Ltd. 2005 (180) ELT 433 (SC)].

Example 20:

Sun industries sent certain goods by a ship from Kolkatta to Colombo in Sri Lanka under claim for drawback on the said goods under section 75 of the Customs Act, 1962 against shipping bill. The ship had passed beyond the territorial waters of India and the engine developed trouble while the ship was on high seas falling within the ambit of the expression 'taking out a place outside India'. The ship returned back and ran aground in Indian territorial waters at the port of Paradeep. The fittings, stores and cargo were salvaged. Discuss the admissibility of claim for drawback by the company.

Answer:

In the given case it is apparent that the goods are exported. The fact that the ship was brought back to India because of the damages in the ship does not affect the position. The assessee was entitled to the benefit of section 75 of the Customs Act, 1962. Once the ship carrying goods crosses the territorial waters, export is complete and duty drawback is allowable and its running aground in India due to engine trouble makes no difference.

Upper limit of drawback money or rate

As per the Rule 8A of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 the drawback amount or rate determined under rule 3(i.e. the all industry rate) shall not exceed 1/3rd of the market price of export product.

Interest on draw back amount

Any drawback payable to a claimant u/s 74 or 75 is not paid within specified time period (i.e. one month from the date of filing of draw back claim), the @6% per annum interest is payable to the claimant after the expiry of said one month till the date of payment of such drawback.

Drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act or rules made there under, within two months from the date of demand has to pay back. Otherwise, @13% per annum interest will be levied from the date of payment of such drawback to the claimant till the date of recovery of such drawback.

7.5 DUTY DEFERMENT

Duty deferment [provisions of this section have been omitted w.e.f. 10.05.2013]

The Assistant Commissioner of Customs or Deputy Commissioner of Customs may permit clearance of material under an import licence without payment of duty leviable thereon. This is permissible subject to satisfaction of the



following conditions [Section 143A of the Customs Act, 1962].

- While permitting clearance, the Assistant Commissioner of Customs or Deputy Commissioner of Customs may require the importer to execute a bond with such surety or security as he thinks fit.
- The duty payable on the material imported shall be adjusted against the drawback of duty payable under this Act
- If the imported goods are not exported within the period specified in Advance Authorisation or within such extended period not exceeding six months by the Assistant Commissioner of Customs or Deputy Commissioner of Customs, be liable to pay the amount of duty not so adjusted together with simple interest thereon at the rate of twelve per cent per annum from the date the said permission for clearance is given to the date of payment.

Drawback on export of Milk, Rice & Wheat:

W.e.f. 13-2-2015 Duty drawback on rice allowed

w.e.f. 23-11-2015 Duty drawback allowed on Wheat.

Prior to 21-9-2013	W.e.f. 21-9-2013
No drawback was allowed on milk products.	Rule 3 of the Central Excise Duties and Service Tax Drawback Rules, 1995, drawback will be allowed in respect of milk products.
Duty Drawback Allowed on Wheat.	Duty Drawback not Allowed on Wheat.
Duty Drawback not Allowed on Rice, casein, caseinates and other casein derivatives; casein glues.	Duty Drawback not Allowed on Rice, casein, caseinates and other casein derivatives; casein glues.

Drawback is allowed in respect of milk products.

Prior to 21-9-2013	W.e.f. 21-9-2013
No drawback was allowed on milk products.	Rule 3 of the Central Excise Duties and Service Tax Drawback Rules, 1995, drawback will be allowed in respect of milk products.

7.6 EXPORT INCENTIVES IN LIEU OF DUTY DRAWBACK

The following are the export promotion schemes available to the exporters

- Duty Exemption Entitlement Certificate (DEEC) (Advance Licence),
- The Duty Free Replenishment Certificate (DFRC) Scheme,
- The Export Promotion Capital Goods Scheme (EPCG),
- Duty Exemption Pass Book Scheme (DEPB scheme).
- MEIS & SEIS, EPCG (please refer FTP)

Duty Exemption Entitlement Certificate (DEEC) (Advance Licence)

Under the DEEC (Advance Licence) scheme, exporters are permitted to import raw materials, required for export goods, without payment of duty on import (i.e. duty free imports). Such duty free imports can be effected in advance and exports made subsequently. The advance licences are issued by Director General of Foreign Trade (DGFT) with actual user condition and are not transferable.

All the exporters intending to file Shipping Bills under the DEEC scheme should first get their DEEC licence registered with the EDI system in the licensing section. The original DEEC licence has to be produced at the time of registration of licence. The export obligation shall be discharged by exporting the resultant products within the period specified in the Annual Advance Licence.



Advance Licence can be issued for the following:

- Physical exports;
- Intermediate supplies
- Deemed exports.

Duty Free Replenishment Certificate (DFRC) Scheme

This scheme permits duty free import of raw materials/inputs against exports. The exporter while filing shipping bill has to declare that the export is under DFRC scheme. Based on proof of export, the DGFT issues DFRC licence for raw materials as per standard input output norms.

Duty Free Replenishment Certificate (DFRC) is issued to a merchant-exporter or manufacturer-exporter for the import of inputs, used in the manufacture of goods, without the payment of basic customs duty and special additional duty. However, such inputs shall be subject to the payment of additional customs duty, equal to the excise duty at the time of import.

The Duty Free Replenishment Certificate shall be issued only in respect of export products that are covered under the SIONs (Standard Input Output Norms) as notified by (Directorate General of Foreign Trade) DGFT.

Difference between DEEC and DFRC

- Under advance licence scheme (DEEC), the duty free imports can be made before exports whereas DFRC is issued only after exports and imports can be made only after exports.
- The advance licence (DEEC) is not transferable whereas the DFRC is transferable.
- DFRC is permitted only for goods listed under SION while it is not so in case of DEEC

Export Promotion Capital Goods Scheme (EPCG)

The Export Promotion Capital Goods Scheme enables for exporters to procure capital goods at concessional rate of duty. The exporters have to fulfill the export obligation within the prescribed period.

The manufacturers, Exporters and Merchant Exporters are eligible to avail of this Scheme.

Both new and second hand capital good may be imported. Second hand capital goods at permitted subject to the condition that such goods have a minimum of residual life of 5 years and the importer furnishing to the customs at the time of clearance of goods a self declaration to the effect that the second hand capital goods being imported have a minimum residual life of five years in the prescribed form.

Licences are issued, under this scheme by the DGFT or his regional officers depending upon the value of the licence subject to execution of legal undertaking and bank guarantee by them undertaking among other things to fulfill their export obligation within the specified period.

Duty Exemption Pass Book Scheme (DEPB scheme)

Under the DEPB scheme, the exporters are allowed a duty exemption pass book credit against exports. It is a post-export scheme. The exporter while filing the shipping bill has to declare that exports are under DEPB scheme. Based on the proof of export, the exporters are issued DEPB licence which can be used for payment of Customs duties on any imports.

A format of the Duty Exemption Entitlement Certificate (DEEC) is appended below -



The Schedule
DUTY EXEMPTION ENTITLEMENT CERTIFICATE
Part -1 (IMPORT)
(This consists of pages)
Sl. No.(IMP)

Date of issue

Port of registration

Issued to

(name and full address of the licensee)

Materials imported against licence no..... dated issued by to the above licensee and covered by the list of materials specified in list (a) of Part "C" of this certificate would be eligible for exemption from customs duties subject to the conditions specified in the notification of the Government of India Ministry of Finance, Department of Revenue No. Customs, dated the April, 2000.

The importer shall discharge the export obligation in terms of the said notification within months from the date of issue of licence

A bond with security/surety in terms of the said notification shall be executed before clearance of the goods from the Customs

Signature

Seal of licensing authority

Date

Self - Examination Questions

Say Yes or No, give reasons

- (1) Under section 46(1) of the Customs Act, 1962, an importer of any goods, other than goods intended for transshipment, is required to file a bill of entry.

Answer:

Yes. The importer files Bill of Entry for all imported goods under section 46(1) of the Customs Act, 1962. No Bill of Entry for Transit Goods and Transshipment Goods.

Theory Questions

Q1. Explain the term Deemed Export?

Answer: please refer point no. 19.4

Q2. Explain the importance of Customs House Agent in case of import and exports

Answer: please refer point no. 19.11

Q3. Under what circumstances disallowances of duty drawback take place?

Answer: please refer point no. 19.8

Q4. How to calculate Interest on warehoused goods?

Answer: Please refer point no. 19.2



Q5. Write a note on Special Brand Rate of duty drawback?

Answer: Please refer point no. 19.6

Q6. AB Exim Ltd. exported a full container load of ready made shirts. The goods were inspected, samples were drawn and the container was sealed by Central Excise Officers and container was allowed to be loaded by customs after ensuring that seal on container was intact. However, while filling shipping bill, by mistake declaration that drawback is being claimed was not made. AB Exim Ltd. has approached for advice. What will be your advice.

Answer: If the requisite documents are not furnished or there is any deficiency, the claim may be returned after shipment for complying with the requirements and furnishing requisite information/documents.

Therefore, it is advised that AB Exim Ltd. can file declaration for drawback claim after shipment.

Q7. On the package, received as a post parcel from abroad, contents are indicated as calculators valued at ₹ 1,000. However, when the parcel was opened, it was found to contain ten mobile phones valued at ₹ 2,50,000. A show cause notice has been issued to the importer proposing to confiscate the goods and impose penalty on the importer. Examine the legality of action proposed in terms of statutory provisions under Customs Act, 1962.

Answer: In the case of postal parcel the label affixed to the parcel constitutes 'entry'. Accordingly, section 111(m) of the Customs Act, 1962 "any goods which do not correspond in respect of value or in any other particulars with the entry made, then the parcel brought to India is liable for confiscation". For such cases penalty is imposable under section 112.

Q8. State the conditions to be fulfilled for obtaining a written order from proper officer that will enable the person-in-charge of the conveyance which has loaded any exported goods to depart from a customs station.

Answer: Please refer point no. 19.3

Q9. Write short notes on Goods improperly removed from a warehouse under section 72 of the Customs Act, 1962?

Answer: please refer point no. 19.2

Q10. Whether the assessable value of the warehoused goods which are sold before being cleared for home consumption should be taken as the price at which the original importer has sold the goods, before a Bill of Entry for home consumption is filed?

Answer: Transaction value is defined to mean the price actually paid or payable for the goods when goods are sold for export to India for delivery at the time and place of importation.

In the given case the goods are sold after being warehoused, therefore, it cannot be said that export of goods is not complete. Therefore, the sale of warehoused goods cannot be considered as sale for export to India (*vide* CBEC Circular No. 11/2010, dated 3.6.2010). Hence, the price at which the imported goods are sold after warehousing them in India does not qualify to be the transaction value as per section 14 of the Customs Act, 1962.

Practical problems with answers

Practical Theory

Illustration 1:

- Explain briefly, the significance of Indian customs waters under the Customs Act, 1962.
- Section 14 of the Customs Act, 1962, with effect from 10.10.2007, and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 are now fully compatible. Explain with a brief note.
- Can warehoused goods be transferred from one warehouse to another under the Customs Act, 1962?
- What is the minimum and maximum rate or amount of duty drawback prescribed under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 made under section 75 of the Customs Act, 1962? Explain with a brief note.



- (e) Briefly discuss, the procedure for confiscation of goods or imposition of penalty under section 124 of the Customs Act, 1962.

Solution:

- (a) • Any person within the Indian Customs Waters committing an offence is punishable
- Customs Officer has the right to stop any vehicle or vessel entered into the Indian Customs Water without the permission.
- (b) To avoid the difference between rules and sections the transaction value concept brought under Section 14 of the Customs Act.
- (c) warehoused goods can be transferred from one warehouse to another with the permission of the proper officer under section 76 of the Customs Act, 1962.
- (d) Minimum rate or amount of duty drawback is 1% of the FOB value or the amount of drawback per shipment exceeds ₹ 500 respectively.

Maximum rate of duty draw back is 33% of the market price of the exported goods.

- (e) As per section 124 of the Customs Act, 1962 a show cause notice is supposed to issue before confiscation or imposing any penalty. Such show cause notice can be issued with the prior approval of the appropriate authority of customs.

Duty Drawback

Illustration 2.

X Ltd. has imported 10 mainframe computer systems from USA in December 2006 paying customs duty of ₹ 60 lakhs. Due to some technical snags that developed in the system in March 2007 the supplier sent his technicians to India to resolve the same. No solution was found. In July 2007 X Ltd. decided to re-ship/return the goods to the foreign supplier.

You are the Finance Manager of X Ltd. and have been approached for advice whether import duty already paid can be got back from the Central Government, when the goods are reshipped/returned.

Briefly examine with reference to the provisions of Customs Act, 1962.

Solution:

The amount of duty drawback depends upon whether the imported goods are used before re-export or not:

- (A) If computer systems are exported without use, then the amount of duty drawback will be @98% of duty paid on imported goods provided these goods are re-exported within 2 years from the date of payment of duty.
- (B) If computer systems are re-exported after being used, then amount of duty drawback is allowed based on the period of usage under section 74(2) of the Customs Act, 1962, provided the company must re-export the same within 36 months from the date of payment of duty on imported goods.

Illustration 3.

X Ltd has exported following goods:

Product P, FOB value worth ₹ 1,00,000 and the rate of duty drawback on such export of goods is 0.75%.

Product Q, FOB value worth ₹ 10,000 and the rate of duty drawback on such export of goods is 1%.

Will X Ltd be entitled to any duty drawback?

Solution:

Duty drawback on product P allowed is ₹ 750 (i.e. 1,00,000 x 0.75%), since amount is more than ₹ 500.

Duty drawback on product Q is allowed, because the amount of duty drawback is ₹ 100 (which is more than ₹ 50).



4. Case studies with answers

Distribution of sale proceeds of warehoused goods

Q1. M/s Gargi Polymers, India imports goods and warehouses them with PVC Containers Ltd. after the execution of necessary bond but does not clear them within the warehousing period nor seeks any extension. Meanwhile, PVC Containers Ltd. auctions the goods under section 63(2) of the Act and seeks the permission from the department for their clearance to the highest bidder and for the recovery of its warehousing charges. However, the custom authorities insist that under section 150 of the Customs Act, 1962, the entire auction proceeds have to be first adjusted towards the custom duty. You are required to examine the veracity of the custom authorities' claim with the help of a decided case law, if any.

Answer : As per Section 150 of the Customs Act, 1962, the proceeds of any such sale shall be applied

- firstly to the payment of the expenses of the sale,
- next to the payment of the freight and other charges, if any, payable in respect of the goods sold, to the carrier, if notice of such charges has been given to the person having custody of the goods,
- next to the payment of the duty, if any, on the goods sold,
- next to the payment of the charges in respect of the goods sold due to the person having custody of the goods **(omitted w.e.f. 14-5-2016)**,
- next to the payment of any amount due from the owner of the goods to the Central Government under the provisions of this Act or any other law relating to customs, and the balance, if any, shall be paid to the owner of the goods.

Therefore, claim of the Customs authorities is not correct.

Associated Container Terminals Ltd. v Union of India 2008 (226) ELT 169 (Del.).

Seizure

Q2. The goods imported by Fidelity Industries were detained on 22-5-2011. However, Fidelity Industries did not produce the required documentary evidence. Consequently, the impugned goods were seized on 2-8-2011. The Department issued a show cause notice to Fidelity Industries on 15-1-2013. Fidelity Industries put forth the question of limitation alleging that the impugned show cause notice had been issued after a period of six months from the date of the seizure as one envisaged under section 110(2) of the Customs Act, 1962 and hence, it was time-barred. The goods were taken on 22-5-2011; but, the show cause notice was issued on 15-1-2013 which was after a lapse of six months. So, Fidelity Industries sought for quashing of the said show cause notice and also for the return of the goods. Do you think that the contention of the Fidelity Industries is tenable in law?

Answer: Where any goods are seized under section 110(1) and no show cause notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized. ***Pro Musicals v Joint Commissioner Customs (Prev.), Mumbai 2008 (227) ELT 182 (Mad)***

Hence, the Court ruled out the assessee's contention that detention and seizure were one and the same. It means detention is not the seizure but seizure includes the detention. The Court further held that the show cause notice issued by the Department was valid.

Therefore, the contention of the Fidelity Industries is not tenable in law.

Warehousing

Q3. BL Ltd. imported Super Kerosene Oil (SKO) and stored it in a warehouse. An ex-bond bill of entry for home consumption was filed and duty was paid as per rate prevalent on the date of presentation of such bill of entry; and the order for clearance for home consumption was passed. On account of highly combustible nature of SKO,



the importer made an application to permit the storage of such kerosene oil in the same warehouse until actual clearance for sale/use. The application was allowed. When the goods were actually removed from the warehouse, the rate of duty got increased. The department demanded the differential duty. The company challenged the demand. Whether it will succeed? Discuss briefly taking support of decided case law(s), if any.

Answer: Since the importer paid the duty on the warehoused goods an out of charge order for home consumption was passed. Therefore, the BL Ltd. is not liable to pay any differential duty. [**CCus v Biecco Lawrie Ltd. 2008 (223) ELT 3 (SC)**]

Q4. The assessee imported capital goods and deposited them in warehouse. The said goods were not removed from the warehouse within the period permitted under section 61(1)(a) i.e. five years. Subsequently, the assessee filed an application for relinquishment of title of such warehoused goods.

The Department contended that since the assessee did not file an application for extension of warehousing period before the expiration of five years under section 61(1)(a), after expiration of the said period, the goods could no longer be termed as 'warehoused goods'. Therefore the assessee lost its title to the same and consequently it lost its right to relinquish its title thereto. It was further claimed that the relinquishment of title to the said goods ought to have been made by the assessee before the expiration of the warehousing period and not thereafter and therefore the said goods were 'deemed to have been improperly removed from warehouse'. Consequently, the assessee became liable to pay duty, penalty and interest with respect to the said goods as provided under section 72(1)(b) of the Customs Act.

Answer: Hints: The High Court observed that the owner of the goods (importer) though loses control over the goods when he deposits them in the warehouse, but he does not lose his title or ownership to such goods so long as they remain in the warehouse either during the continuance of the warehousing period or even after its expiration.

The High Court pointed out that the provisions of section 23(2) and proviso to section 68 make it clear that upon relinquishment of his title to any imported goods, including the warehoused goods, the owner of such goods shall not be liable to pay duty thereon and when the owner is not liable to pay duty, the question of paying any interest on the duty and penalty would not arise. The Court however made it clear that interest and rent payable under section 68 would be recoverable from the date of deposit of the goods in the warehouse to the date of relinquishment of title to goods. Thus, the High Court dismissed the Department's appeal. [**CCus. v i2 Technologies Software (P) Ltd. 2007 (217) ELT 176 (Kar)**]

Q5. The assessee had imported certain goods and kept them in warehouse. However, the goods were not removed from the warehouse at the expiration of the statutory time period during which such goods were permitted under section 61 to remain in a warehouse.

The assessee sought to relinquish the title to such goods under the proviso to section 68.

However, the department contended that since the goods were deemed to be improperly removed from the warehouse (considering the over stay of such goods in the warehouse) under the section 72(1)(b), the case would not fall under section 68 and thus proviso to section 68 could not be invoked. It was submitted that before invoking the proviso to section 68, the conditions of section 68 must be fulfilled which was not done in the instant case.

Answer: Self study

[**J.K. Cement Works v CCEx. & Cus. 2008 (223) ELT 138 (Raj)**]

Advance License

Q6. The Assessee had imported capital goods under a license with the condition to fulfill the export obligation within the prescribed time limit. However, the assessee failed to discharge the export obligation. Consequently, the Department invoked the bank guarantee and realized the amount. However, subsequently, the assessee fulfilled the export obligation and as a result of which the Department cancelled the bank guarantee. Accordingly,



the assessee filed a refund claim for the amount realized by invocation of the bank guarantee. However, the Department rejected the refund claim on the ground that it was time barred in terms of section 27(1)(b) of the Customs Act, 1962.

Answer: Department's view is not correct. The refund of duty is not time barred, because there is no duty required to be paid first of all. **[CCus. (Exports) v Jraj Exports (P) Ltd. 2007 (217) ELT 504 (Mad)]**

Duty Drawback

Q7. The petitioner imported raw materials for manufacturing two machines. Material for both the machines were common. When he exported the first machine, the entire papers of import of raw material were submitted before the Authorities for claiming drawback. Subsequently, when the petitioner exported the second machine and again claimed drawback, those papers became necessary. However, those papers were lying with the Department and the same were returned to the petitioner only on 13-10-2004. Immediately, thereafter, on 26-11-2004, the petitioner submitted an application for the drawback.

However, the petitioner's claim for the drawback was denied on the ground that the application was submitted after the expiry of statutory period (90 days) allowed for filing the drawback claim under rule 6 of the Drawback Rules.

Answer: Self study.

DEPB

Q8. The assessee warehoused the Acid Grade Flourspar falling in Customs Bonded. Subsequently, the warehoused goods are being cleared after 90 days on payment of duty by utilizing Export incentive (DEPB credit) allowed under export incentive scheme. The importers were called upon by department to show cause why interest shall not be demanded from them, since they had effected clearance beyond the interest free warehousing period of 90 days as per Section 61 of the Act. The assessee contended that payment by debit in DEPB is not cash payment but exemption and hence interest is not payable on non-existing duty.

Discuss briefly taking support of decided case law, if any.

Answer: The Hon'ble Supreme Court of India had held that goods cleared under DEPB (Duty Exemption Pass Book) Scheme cannot be treated as exempted but are duty paid goods and hence interest is payable on them if the same are cleared from warehouse beyond the period of 90 days, as per section 61 of the Customs Act, 1962. **[Tanfac Industries Ltd. 2009 (SC)]**

Delay from any department

Q9. Hitech Energy Ltd. is engaged in oil exploration and has imported software containing seismic data. The importer is entitled to exemption from customs duty subject to the production of an 'Essentiality Certificate' issued by the Director General of Hydrocarbons at the time of importation of the goods.

The Essential Certificate was not made available to the importer within a reasonable time by the concerned government authority. The Customs Department therefore rejected the claim for exemption. Examine whether the Customs Department's action is justified.

Answer: The importer is not responsible for the delay in granting certificate within a reasonable time. The Directorate General of Hydrocarbons is under the Ministry of Petroleum and Natural Gas and such a public functioning is supposed to grant the essentiality certificate within a reasonable time so as to enable the importer to avail of the benefits under the notification.

The Apex Court has held in **CC v Tullow India Operations Ltd. (2005) (SC)**, that if a condition is not within the power and control of the importer such importer is not supposed to be penalized.

Therefore, the department's action is not justifiable in the eyes of law.



Pilferages of goods were in the custody of port trust:

Q10. M/s. Pipili Imports Ltd. imported certain goods, which were unloaded in the customs area on 01.10.2013. When order for clearance was passed by proper officer on 5.10.2013, it was found that there was some pilferage of such goods. As the imported goods were in the custody of port trust, the Department demanded duty from the custodian under Section 45(3) of the Customs Act, 1962 on such pilferage. The port trust denied such demand contending that it was not an approved custodian falling under Section 45 but possession of goods by it was by virtue of powers conferred under the Major Port Trust Act, 1963. Hence, it is not liable for customs duty on pilfered goods.

The importer has also asked the custodian to make good the loss of goods. Examine, whether demands made by the Department and importer are justified in law, referring to decided case law.

Answer:

The Bombay High Court differently interpreted the liability of the Custodian. As per section 45 of the Customs Act, the person referred to in sub-section (1) thereof can only be the person approved by the Commissioner of Customs. It excludes a body of persons, who by virtue of a law for the time being in force, is entrusted with the custody of goods by incorporation of law under another enactment, (for example, the Port Trust Act in the given case). The recovery of duty in respect of pilfered goods could only be from the approved person and the Port Trust is not liable to pay duty on goods pilfered while in their possession (**Board of Trustees of the Port of Bombay v UOI 2009 (241) ELT 513 (Bom).**)

Therefore, demands made by the Department and importer are not justifiable in law.

Q11. Mr. Suhaan imported a consignment of goods which was unloaded on 31.10.2013. He filed the bill of entry on 15.12.2013. The Deputy Commissioner of Customs imposed a penalty of ₹ 15,000 on Mr. Suhaan as there was a delay of 15 days in filing the bill of entry. The Deputy Commissioner contended that section 46 and 48 of the Customs Act, 1962 read together provide that bill of entry ought to be filed within 30 days from the date of unloading of the goods.

Examine the issue in the light of relevant statutory provisions and decided case laws, if any.

Answer: It has been held by the High Court in the case of **CCus. v Shreeji Overseas (India) Pvt. Ltd. 2013 (289) ELT 401 (Guj)** the time-limit prescribed under section 48 for clearance of the goods within 30 days cannot be read into section 46 and it cannot be inferred that section 46 prescribes any time-limit prescribed for filing of bill of entry.

Therefore, penalty cannot be imposed on Mr. Suhaan as he has not committed any offence by filing bill of entry after 45 days of unloading the goods.

Author view: However, the custodian after giving notice to Mr. Suhaan and with the approval of the proper officer can sell the goods imported by Mr. Suhaan.

W.e.f. 31-3-2017 Finance Act, 2017 Section 46 amended:

Submission of Bill of entry:

The importer shall presented the bill of entry under section 46(1) of the Customs Act, 1962 before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or for warehousing.

Provided that a bill of entry may be presented within 30 days of the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India.

Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for the late presentation of the bill of entry as may be prescribed.

Therefore, from the above amended provision **CCus. v. Shreeji Overseas (India) Pvt. Ltd. 2013 (289) E.L.T. 401 (Guj.)**



case law became overruled.

Q12. Can penalty for short-landing of goods be imposed on the steamer agent of a vessel if he files the Import General Manifest, deals with the goods at different stages of shipment and conducts all affairs in compliance with the provisions of the Customs Act, 1962?

Answer: *Caravel Logistics Pvt. Ltd. v Joint Secretary (RA) 2013 (293) ELT 342 (Mad)*

Decision: The High Court held that conjoint reading of sections 2(31), 116 and 148 of Customs Act, 1962 makes it clear that in case of short-landing of goods, if penalty is to be imposed on person-in-charge of conveyance/vessel, it can also be imposed on the agent appointed by him.

Q13. Whether any interest is payable on delayed refund of sale proceeds of auction of seized goods after adjustment of expenses and charges in terms of section 150 of the Customs Act, 1962?

Answer: *Vishnu M Harlalka v Union of India 2013 (294) ELT 5 (Bom)*

Decision: The High Court held that Department cannot plead that the Customs Act, 1962 provides for the payment of interest only in respect of refund of duty and interest and hence, the assessee would not be entitled to interest on the balance of the sale proceeds which were directed to be paid by the Settlement Commission.

The High Court clarified that acceptance of such a submission would mean that despite an order of the competent authority directing the Department to grant a refund, the Department can wait for an inordinately long period to grant the refund. The High Court directed the Department to pay interest from the date of approval of proposal for sanctioning the refund.

Q14. (i) Will the description of the goods as per the documents submitted along with the Shipping Bill be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test?

(ii) Whether a separate notice is required to be issued for payment of interest which is mandatory and automatically applies for recovery of excess drawback?

Answer:

M/s CPS Textiles P Ltd. v Joint Secretary 2010 (255) ELT 228 (Mad)

Decision: The High Court held that the description of the goods as per the documents submitted along with the Shipping Bill would be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test. The petitioner could not plead that the exported goods should be classified under different headings contrary to the description given in the invoice and the Shipping Bill which had been assessed and cleared for export.

Further, the Court, while interpreting section 75A(2) of the Customs Act, 1962, noted that when the claimant is liable to pay the excess amount of drawback, he is liable to pay interest as well. The section provides for payment of interest automatically along with excess drawback. No notice for the payment of interest need be issued separately as the payment of interest becomes automatic, once it is held that excess drawback has to be repaid.

Q15. Point of dispute: Following questions arose before the Larger Bench of the Tribunal for consideration:

- (a) Whether the entire premises of 100% EOU should be treated as a warehouse?
- (b) Whether the imported goods warehoused in the premises of 100% EOU are to be held to have been removed from the warehouse if the same is issued for manufacture/production/processing by the 100% EOU?
- (c) Whether issue for use by 100% EOU would amount to clearance for home consumption?



Facts of the case: The appellants were 100% EOU in Alwar. They imported the impugned goods namely HSD oil through Kandla Port and filed 'into Bond Bill of Entry' for warehousing the imported goods. The impugned goods were warehoused in their 100% EOU in Alwar and subsequently used in the factory within the premises of the 100% EOU for manufacture of the finished goods. The Department demanded customs duty on the impugned goods.

The contention of the appellants was that since (i) the entire premises of the 100% EOU had been licensed as a warehouse under the Customs Act; (ii) the impugned goods had been warehoused therein and subsequently utilized for manufacture of finished goods in bond; and (iii) the impugned goods had not been removed from the warehouse, there could not be any question of demanding duty on the same.

Department contended that the entire premises of the 100% EOU could not be treated as a warehouse. The Appellants had executed a common bond B-17 for fulfilling the requirements under the Customs Act, 1962 and the Central Excise Act, 1944. Under the Central Excise Law, the removal of goods for captive consumption would be treated as removal of goods and the assessee were required to pay duty on such removal.

Decision: *Paras Fab International v CCE 2010 (256) ELT 556 (Tri.-LB)*

Observations of the Court: The Tribunal observed that as per Customs manual, the premises of EOU are approved as a Customs bonded warehouse under the Warehousing provisions of the Customs Act. It is also stated therein that the manufacturing and other operations are to be carried out under customs bond. The goods are required to be imported into the EOU premises directly and prior to undertaking import, the unit is required to get the premises customs bonded. The importer is required to maintain a proper record and proper account of the import, consumption and utilization of all imported materials and exports made and file periodical returns. The EOUs are licensed to manufacture goods within the bonded premises for the purpose of export. Tribunal held that neither the scheme of the Act nor the provisions contained in the Manual require filing of ex-bond bills of entry or payment of duty before taking the imported goods for manufacturing in bond nor there is any provision to treat such goods as deemed to have been removed for the purpose of the Customs Act, 1962.

The Tribunal answered the issues raised as follows:—

- (a) The entire premises of a 100% EOU has to be treated as a warehouse if the licence granted under to the unit is in respect of the entire premises.
- (b) and (c) Imported goods warehoused in the premises of a 100% EOU (which is licensed as a Customs bonded warehouse) and used for the purpose of manufacturing in bond as authorized under section 65 of the Customs Act, 1962, cannot be treated to have been removed for home consumption.

Q16. Case law:

Facts of the case: An order for provisional release of the seized goods had been made under section 110A of the Act pursuant to an application filed by the petitioner in this regard. However, the petitioner claimed unconditional release of its seized goods in terms of sections 110(2) and 124 of the Act as no show cause notice had been issued within the extended period of six months (initial period of six months was extended by another six months by the Commissioner of Customs in this case).

Answer: *Akanksha Syntex (P) Ltd. v Union of India 2014 (300) ELT 49 (P&H)*

Decision: Where no action is initiated by way of issuance of show cause notice under section 124(a) of the Act within six months or extended period stipulated under section 110(2) of the Act, the person from whose possession the goods were seized becomes entitled to their return.

The remedy of provisional release is independent of remedy of claiming unconditional release in the absence of issuance of any valid show cause notice during the period of limitation or extended limitation prescribed under section 110(2) of the Customs Act, 1962.



Q17. Case law:

Purushottam Jajodia v Director of Revenue Intelligence 2014 (307) ELT 837 (Del)

Facts of the Case: As per section 110(2) of the Customs Act, 1962, a notice under section 124(a) is required to be “given” to the person from whose possession they were seized informing him the grounds on which goods are proposed to be confiscated, within 6 months (extendable upto one year) of seizure of the goods. Otherwise, goods need be returned to such person.

However, in the present case, the notice under section 124(a) was dispatched by registered post on the date of expiry of stipulated period under section 110(2) and received by the petitioner after the expiry of such period.

Decision: The High Court held that since the petitioners did not receive the notice under section 124(a) within the time stipulated in section 110(2) of the Act, such notice will not be considered to be “given” by the Department within the stipulated time, i.e. before the terminal date. Consequently, the Department was directed to release the goods seized.

Study Note - 8

BAGGAGE AND POSTAL ARTICLES



This Study Note includes

- 8.1 Introduction
- 8.2 Baggage
- 8.3 Postal Article
- 8.4 Import of Samples

8.1 INTRODUCTION

The term Baggage means luggage of the passenger if they travel by Air or Sea from one country to another country. Sometimes this baggage amounts to import thereby import duty may be levied. It is essential for us to know the provisions relating to levy, exemption and non-levy of duty on baggage.

Provisions relating to levy and non-levy of duty on baggage are contained in Chapter XI [Special Provisions Regarding Baggage, Goods Imported or Exported by Post and Stores] of Customs Act, and Baggage Rules, 1988.

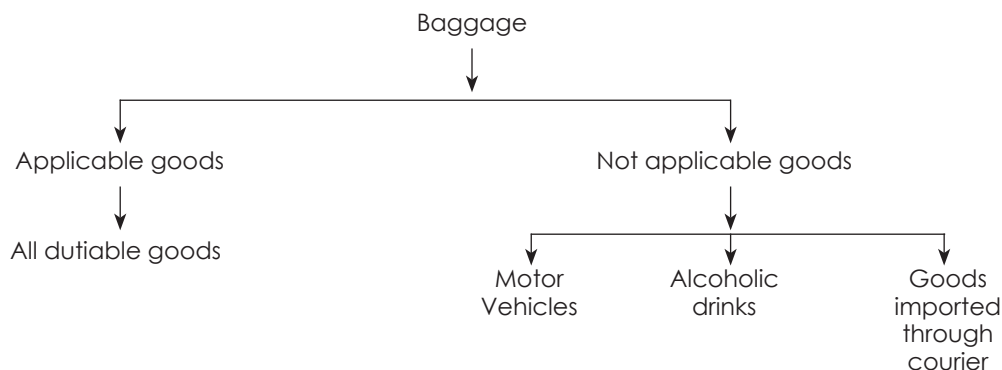
8.2 BAGGAGE

General Meaning: Baggage means all dutiable goods imported by a passenger or a member of a crew in his baggage.

Statutory Meaning u/s 2(3) of Customs Act: Baggage includes:

- (a) unaccompanied baggage (i.e., baggage not carried by passenger at the time of his arrival, but sent before or after arrival of passenger).
- (b) but does not include motor vehicles.

Baggage can be classified as follows:



Green Channel means if a person does not have any dutiable goods, he can go through green channel without undergoing any check along with baggage.

Red Channel means if carrying dutiable goods he should pass through red channel and should submit the declaration and his baggage can be inspected by the customs authorities.

Section 77: Declaration by owner of baggage: The owner of any baggage shall make a declaration of its contents to the proper officer for the purpose of clearing it.



Section 78: Determination by rate of duty and tariff valuation in respect of baggage: The rate of duty and tariff valuation, if any, applicable to baggage shall be the rate and valuation in force on the date on which a declaration is made in respect of such baggage under section 77.

Rate of Duty on Baggage is @ 35% plus 2% education cess plus 1% secondary and higher education cess. [Notification No. 136/90-Cus., dated 20.03.1990]

Additional Customs Duty u/s 3(1) or 3(5) (Special CVD) – Nil [Notification No. 183/86-Cus and Notification No. 21/2012-Cus]

Exemption to 1 Laptop: The Central Government has exempted one laptop computer (note book computer) when imported into India by a passenger of the age of 18 years or above (other than member of crew) from whole of the BCD [Notification No. 11/2004-Cus]

Section 80: Temporary Detention of Baggage:

- The proper officer may detain the baggage of a passenger which contains any article which is dutiable or the import of which is prohibited and in respect which a true declaration has been made under section 77.
- The proper officer may do so, at the request of the passenger for the purpose of being returned to the passenger either:
 - o At the time of his leaving India or
 - o Through any other passenger authorized by him and leaving India or
 - o As a cargo consigned in his name.

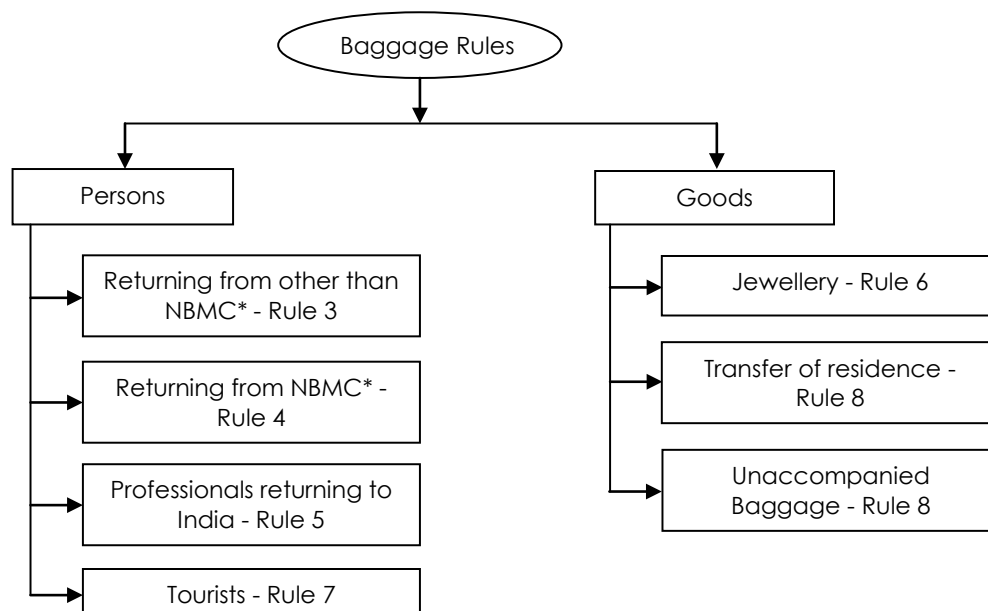
Section 79: Bona fide baggage exempted from duty:

- The proper office may, subject to rules made under this section, pass free of duty—
 - (a) Any article in the baggage of a passenger or a member of the crew in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in the rules
 - (b) Any article in the baggage of a passenger in respect of which the said officer is satisfied that it is for the use of the passenger or his family or is a bona fide gift or souvenir; provided that the value of each such article and the total value of all such articles does not exceed such limits as may be specified in the rules.

[By exercising the power vested on the Central Government under this section, the Central Government framed **The Baggage Rules, 1998**].

The Baggage Rules, 1998

The provisions relating to baggage rules can be classified into two categories as to provisions relating to persons who are coming into India and Goods that are brought into India. These categories can be further sub-classified as follows:



*NBMC – Nepal, Bhutan, Myanmar and China

**(1) General Free Allowances for Passengers — Rule 3 & Rule 4**

Particulars	Age - less than 10 years		Age - 10 or more years of age	
	Period of Stay in abroad			
	<= 3 days	> 3 days	<= 3 days	> 3 days
Passenger returning from any country other than NBMC except by land route as mentioned in Annexure IV - Rule 3	Upto ₹3,000	Upto ₹15,000 w.e.f 11-7-2014 ₹ 17,500	Upto ₹15,000 w.e.f 11-7-2014 ₹ 17,500	Upto ₹35,000 w.e.f 11-7-2014 ₹ 45,000
Passenger returning from any country other than NBMC by land route as mentioned in Annexure IV - Rule 3	Nil	Upto ₹1,500	Nil	Upto ₹6,000
Passenger returning from NBMC other than by land route as mentioned in Annexure IV- Rule 4				

Note:

- The above exemption limit is not applicable to articles which are mentioned in Annexure 1 to the Baggage Rules. The articles which are mentioned in Annexure 1 are:
 - Fire Arms, Cartridges of fire arms exceeding 50
 - Cigarettes exceeding 200 or cigars exceeding 50 or tobacco exceeding 250 gms
 - Alcoholic liquor or wines in excess of two litres
 - Gold or Silver, in any form, other than ornaments.
 - w.e.f 26-08-2013 Import of LCD/LED/Plasma TV.
- The free allowance under these rules shall not be allowed to be pooled with the free allowance of any other passenger.
- The used personal effects, excluding jewellery required for satisfying daily necessities of life are not taxable
- Land routes as mentioned in Annexure IV:
 - Amristar** – Amristar Railway Station, Attari Road, Attari Railway Station, Kharla
 - Baroda** – Assara Naka, Khavda Naka, Lakhpat, Santha Naka, suigam Naka
 - Delhi** – Delhi railway Station
 - Ferozpur District:** Hussainiwala
 - Jodhpur** – Barmer Railway Station, Munabao Railway Station
 - Baramullah District** – Adoosa

General Free Allowance (GFA) w.e.f. 1-4-2016:

Passengers	GFA
Passengers (i.e. Indian resident or a foreigner residing in India or a tourist of Indian origin (but not infant) arriving from countries other than Nepal, Bhutan or Myanmar.	GFA will be allowed without payment of duty for bona fide baggage (i.e. used personal effects) upto ₹50,000/- per persons.
Indian resident coming from Nepal, Bhutan or Myanmar, if the passenger come by air craft. Note: if the passenger come by road, there is no free allowance.	GFA will be allowed without payment of duty for bona fide baggage (i.e. used personal effects) upto ₹15,000/- per persons.
A tourist of foreign origin (but not infant), arriving from any country other than Nepal, Bhutan or Myanmar	-do-
Passengers (i.e. Indian resident or a foreigner residing in India or a tourist of Indian origin (but not infant) arriving from Nepal, Bhutan and Myanmar. Note: if the passenger come by road, there is no free allowance	-do-

**Important note:**

- (1) for infant, only used personal effects shall be allowed duty free.
- (2) the free allowance cannot be allowed to be pooled with the free allowance of any other passenger.
- (3) Bona fide baggage means used personal effects, travel souvenirs and articles other than those mentioned in Annexure I.
- (4) Annexure I includes:
 - (i) Fire arms.
 - (ii) Cartridges of firearms exceeding 50.
 - (iii) Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms.
 - (iv) Alcoholic liquor or wines in excess of two litres.
 - (v) Gold or silver in any form other than ornaments.
 - (vi) Flat Panel (Liquid Crystal Display/Light-Emitting Diode/ Plasma) television.

Duty Free Allowance (w.e.f. 1-4-2016):

Eligible Passenger	Origin Country	Duty Free Allowance
Passengers of Indian origin and foreigners residing in India, excluding infants	Other than Nepal, Bhutan, Myanmar	₹ 50,000
Tourists of foreign origin, excluding infants	Other than Nepal, Bhutan, Myanmar	₹ 15,000
Passengers of Indian origin and foreigners residing in India, excluding infants AND Tourists of foreign origin, excluding infants	Nepal, Bhutan and Myanmar	₹ 15,000 (by Air) NIL (By Land)
Indian passenger who has been residing abroad for over one year	Anywhere	Gold Jewellery Gentleman- 20 gms. with a value cap of ₹50,000 Lady - 40 gms with a value cap of ₹1,00,000
All passengers	Anywhere	Alcohol liquor or wine: 2 litres
All passengers	Anywhere	Cigaretters: 100 numbers or Cigars upto 25 or Tobacco 125 grams
Passenger of 18 years and above	Anywhere	One laptop computer (notebook computer)

No restriction on age and minimum period of stay (w.e.f. 1-4-2016):

Restrictions on age and minimum period of stay abroad have been withdrawn.

Free baggage allowances are same for all passengers irrespective of their age and period of stay.

(2) Professionals returning to India – Rule 5

- An Indian passenger who was engaged in his profession abroad is allowed clearance free of duty upto the following limits:



Particulars	Used Household articles	Professional Equipment
Indian Passenger returning after atleast 3 months	₹12,000	₹20,000
Indian Passenger returning after atleast 6 months		₹40,000
Indian Passenger returning after a stay of minimum 365 days during the preceding 2 years on termination of his work and Who has not availed this concession in the preceding 3 years	Used Household articles and personal effects, which have been in the possession and use abroad of the passenger or his family for atleast 6 months and which are not mentioned in Annexure I, II or III upto an aggregate value of ₹75,000	

- The above allowance is in addition to the allowances given under Rule 3 or Rule 4 as the case may be.
- For the purpose of these rules, "Family" includes all persons who are residing in the same house and form part of the same domestic establishment – Rule 2(iv)
- "Professional Equipment" means:
 - o such portable equipments, instruments, apparatus and appliances as are required in his profession
 - o by a carpenter, a plumber, a welder, a mason and the like and
 - o shall not include items of common use such cameras, cassette recorders, Dictaphones, personal computers, typewriters, and other similar articles
- List of Articles mentioned in Annexure I – Same as discussed in Rule 3 & Rule 4
- List of Articles mentioned in Annexure II:
 - o Color Television or Monochrome Television, Digital Video Disc Player, Video Home Theater System, Music System
 - o Dish washer, Airconditioner, Domestic refrigerators of capacity above 300 litres with one or more of the following goods, namely Television Receiver, Sound Recording or reproducing apparatus and Video reproducing apparatus
 - o Word Processing Machine, Fax machine, portable photocopying machine
 - o Vessel, Aircraft
 - o Cinematographic films of 35mm and above
 - o Gold or Silver, in any form, other than ornaments
- List of Articles mentioned in Annexure III:
 - o Video Cassette Recorder or Video Cassette Player or Video Television Receiver or Video Cassette Disk Player
 - o Washing Machine
 - o Electrical or Liquefied Petroleum Gas Cooking Range
 - o Personal Computer (Desktop Computer), Laptop Computer (Note book Computer)
 - o Domestic Refrigerators of capacity upto 300 litres or its equivalent.

Note: No restriction on age and minimum period of stay (w.e.f. 1-4-2016).

(3) Tourist – Duty Free Allowance – Rule 7

A tourist arriving in India shall be allowed clearance free of duty articles in his bona fide baggage to the extent of following:

Case	Duty Free Allowance
(a) Tourists of Indian origin coming to India other than tourists of Indian origin coming by land routes as specified in Annexure IV;	(i) Used personal effects and travel souvenirs, if- (a) These goods are for personal use of the tourist, and (b) These goods, other than those consumed during the stay in India, are re-exported when the tourist leaves India for a foreign destination. (ii) Articles as allowed to be cleared under rule 3 or rule 4.
(b) Tourists of foreign origin, other than those of Pakistani origin coming from Pakistan, coming to India by air.	(i) Used personal effects (ii) Articles other than those mentioned in Annexure I upto a value of ₹8,000 for personal use of the tourist or as gifts and travel souvenirs if these are carried on the person or in the accompanied baggage of the passenger.
(c) Tourists – (i) of Pakistani coming from Pakistan other than by land routes; (ii) of Pakistani origin or foreign tourists coming by land routes as specified in Annexure IV; (iii) of Indian origin coming by land routes as specified in Annexure IV.	(i) Used personal effects (ii) Articles other than those mentioned in Annexure I upto value of ₹6,000 for personal use of the tourist or as gifts and travel souvenirs if these are carried on the person or in the accompanied baggage of the passenger.

Meaning of tourist [Rule 2(iii)]: "Tourist" means

- Not normally resident in India
- Who enters India for a stay of not more than 6 months in the course of any 12 months period
- For legitimate non-immigrant purposes, such as touring, recreation, sports, health, family reasons, study, religious pilgrimage or business

Customs Declaration Form:

International passengers, when coming to India, need not fill Customs Declaration Form if they are not carrying dutiable goods as part of their baggage w.e.f 1-4-2016.

(4) Jewellery - Duty Free Allowance - Rule 6

A passenger returning to India having resided abroad for more than a year shall be allowed clearance free of duty jewellery in his *bona fide* baggage to the extent of the following:

Person	Prior to 01.03.2013	w.e.f. 01.03.2013
Gentleman passenger	₹ 10,000	₹ 50,000
Lady Passenger	₹ 20,000	₹ 1,00,000

Example 1:

Mr. Gopal, an Indian entrepreneur, went to London to explore new business opportunities on 01.04.2013. His wife also joined him in London on 01.12.2013. The following details are submitted by them with the Customs authorities on their return to India on 30.04.2014.-

(a) used personal effects worth ₹ 95,000

(b) a music system worth ₹ 34,000

(c) the jewellery brought by Mr. Gopal for ₹44,000 and the jewellery brought by his wife worth ₹25,000

Determine their eligibility with regard to duty free allowance.

**Answer:**

As per the Baggage Rules, 1998, in case of passengers other than tourists there is no customs duty on used personal effects and general free allowance is ₹35,000 per passenger. Thus, their duty liability is nil for the personal effects and a music system.

However, the additional duty free allowance, that is jewellery allowance is applicable to non-tourist passenger of Indian origin who had stayed abroad for period exceeding one year. The additional jewellery allowance is as follows:-

Gentleman Passenger - ₹50,000/-

Lady Passenger - ₹1,00,000/-

Thus, there is no duty liability on the jewellery brought by Mr. Gopal as he had stayed abroad for period exceeding one year. However, his wife is not eligible for this additional jewellery allowance as she had stayed abroad for a period less than a year. Thus, she has to pay customs duty on the amount of jewellery brought by her.

Duty Free Jewellery (w.e.f. 1-4-2016):

Coming to India by an Indian Passenger after stay abroad more than one year

- (i) Jewellery upto a weight, of 20 grams with a value cap of ₹50,000 if brought by a gentleman passenger
- (ii) Jewellery upto a weight, of 40 grams with a value cap of ₹1,00,000 if brought by a lady passenger.

(5) Transferring residence to India (Rule 8)

- a person who is transferring his residence to India shall be allowed clearance free of duty, in addition to what he is allowed under rule 3 or 4 as the case may be, articles in his *bona fide* baggage to the extent of the following:

Articles allowed free of duty	
• Used personal and household articles, other than those listed in Annexure I and Annexure II, but including the article listed in Annexure III and • Jewellery to the extent mentioned in Rule 6	
Conditions	Relaxation that may be considered
Minimum stay of 2 years abroad, immediately preceding the date of his arrival on Transfer of Residence	Shortfall of upto 2 months in stay abroad can be condoned by Assistant Commissioner or Deputy Commissioner of customs, if the early return is on account of: • Terminal leave or vacation being availed of by the passenger, or • Any other special circumstances
Total stay in India on short visit during the 2 preceding years should not exceed 6 months	Commissioner of Customs may condone short visits in excess of 6 months in deserving cases
Passenger has not availed this concession in the preceding three years	No relaxation

- To the extent of satisfaction of the Assistant commissioner of customs, Jewellery brought back which was taken out earlier by the passenger or by a member of his family from India shall be allowed clearance free of duty.

Transfer of residence w.e.f. 1-4-2016:

A person, who is engaged in a profession abroad, or is transferring his residence to India can bring, used household items as below:



Passengers who have stayed abroad	GFA for personal household items upto ₹
3-6 months	₹60,000
6-12 months	₹1,00,000
1-2 years	₹2,00,000
Above 2 years	₹5,00,000

(6) Unaccompanied Baggage — Rule 9

- These rules apply to unaccompanied baggage as well:** Provisions of these rules are also extended to unaccompanied baggage except where they have been specifically excluded
- time Limit – Baggage received after arrival of passenger: The unaccompanied baggage:**
 - had been in the possession abroad of the passenger and
 - is dispatched within one month of his arrival in India or within such further period as Assistant or Deputy Commissioner of Customs may allow.
- Time Limit – Baggage received before arrival of passenger:** The unaccompanied baggage may land in India
 - Upto 2 months before the arrival of the passenger or
 - Within such period, not exceeding one year, as the Assistant or Deputy Commissioner of customs may allow, for reasons to be recorded, if he is satisfied that:
 - The passenger was prevented from arriving in India within the period of two months
 - Due to circumstances beyond his control such as sudden illness of the passenger or a member of his family, or natural calamities or disturbed conditions or disruption of the transport or travel arrangement in the country or countries concerned or any other reasons, which necessitate a change in the travel schedule of the passenger.

(7) Application of these rules to members of the crew [Rule 10]

- Crew member of a foreign going vessel:** The provisions of these rules shall apply in respect of members of the crew engaged in a foreign going vessel for importation of their baggage at the time of final pay off on termination of their engagement
 However, except as specified above, a crew member of a vessel shall be allowed to bring:
 - Items like chocolates, cheese, cosmetics and other petty gift items for their personal or family use
 - Which shall not exceed the value of ₹1,500 (before 01.03.2013, it was ₹600)
- Crew Member of an aircraft:** Notwithstanding anything contained in these rules a crew member of an aircraft shall be allowed to bring gift items like chocolates, cheese, cosmetics and other petty gift items at the time of the returning of the aircraft from foreign journey for their personal or family use which shall not exceed value of ₹1,500 (before 01.03.2013 – ₹600).

8.3 POSTAL ARTICLES

As per sections 82 to 84 of the Customs Act, 1962, goods can be cleared by post. Any label or declaration accompanying the goods showing the description, quantity and value thereof, shall be treated as “an entry for import” under the Customs Act.



The rate of duty and tariff value applicable to goods imported by post shall be the rate and valuation in force on the date on which the postal authorities present to the proper officer a list containing the particulars of such goods for the purpose of assessment of duty.

The procedure for clearance:

- (i) Post parcels are allowed to pass from port/airport to Foreign Parcel Department of Government Post Offices without payment of customs duty.
- (ii) The Postmaster hands over to Principal Appraiser of Customs the memo showing
 - Total number of parcels from each country of origin,
 - Parcel bills or senders' declaration,
 - Customs declaration and dispatch notes, and
 - Other information that may be required.
- (iii) The mail bags are opened and scrutinized by Postmaster under supervision of Principal Postal Appraiser of Customs.
- (iv) Packets suspected of containing dutiable goods are separated and presented to Customs Appraiser with letter mail bill and assessment memos.
- (v) The Customs Appraiser marks the parcels which are required to be detained if—
 - necessary particulars are not available, or
 - mis-declaration or undervaluation is suspected, or
 - goods are prohibited for import.

Appraiser has the power to examine any parcel. After inspection, the parcels are sealed with a distinctive seal. Any mis-declaration or undervaluation is noted or goods are prohibited goods for imports these be detained and the same intimated to Commissioner of Customs.

If everything is in order after verification, goods will be handed over to Post Master, who will hand over the same to the addressee on receipt of customs duty.

8.4 IMPORT OF SAMPLES

In the International trade it is considered often necessary that samples of the goods manufactured in one country be sent to another country for being shown or demonstrated for Customer appreciation. There are duty free imports of genuine commercial samples into the country for smooth flow of trade.

The commercial samples are basically specimens of goods that may be imported by the traders or representatives of manufacturers. However, goods which are prohibited under Foreign Trade (Development and Regulation) Act, 1992 are not allowed to be imported as samples (i.e. wild animals, wild birds and parts of wild animals, arms and ammunitions and so on).

Samples can be imported by the traders, industry, individuals, research institutes and so on. These samples can also be brought by the persons as part of their personal baggage or through port or in courier.

The current limit of ₹ 1 lakh per annum for duty free import of samples in terms of NT 154/94 Customs, dated 13.7.1994 is enhanced to ₹ 3 lakh per annum (w.e.f. 27.2.2010).



Baggage Rules, 2016

[Notification No. 30/2016-Customs (N.T.) dated 1.3.2016 as amended by Notification No. 43/2016-Customs (N.T) dated 31.3.2016 read with corrigendum dated. 1.4.2016]

In exercise of the powers conferred by section 79 of the Customs Act, 1962 (52 of 1962), and in supersession of the Baggage Rules, 1998, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:-

1. Short title and commencement. –

- (1) These rules may be called the Baggage Rules, 2016.
- (2) They shall come into force on the 1st day of April, 2016.

2. Definitions. – (1) In these rules, unless the context otherwise requires, -

- (i) "Annexure" means Annexure appended to these rules;
- (ii) "family" includes all persons who are residing in the same house and form part of the same domestic establishment;
- (iii) "infant" means a child not more than two years of age;
- (iv) "resident" means a person holding a valid passport issued under the Passports Act, 1967 (15 of 1967) and normally residing in India;
- (v) "tourist" means a person not normally resident in India, who enters India for a stay of not more than six months in the course of any twelve months period for legitimate non-immigrant purposes;
- (vi) "personal effects" means things required for satisfying daily necessities but does not include jewellery.

- (2) Words and expression used and not defined in these rules but defined in the Customs Act, 1962 (52 of 1962) shall have the same meaning respectively assigned to them in the said Act.

3. Passenger arriving from countries other than Nepal, Bhutan or Myanmar.- An Indian resident or a foreigner residing in India or a tourist of Indian origin, not being an infant arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say,-

- (a) used personal effects and travel souvenirs; and
- (b) articles other than those mentioned in Annexure-I, upto the value of fifty thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:

Provided that a tourist of foreign origin, not being an infant, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say,

- (a) used personal effects and travel souvenirs; and
- (b) articles other than those mentioned in Annexure- I, upto the value of fifteen thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:

Provided further that where the passenger is an infant, only used personal effects shall be allowed duty free.

Explanation - The free allowance of a passenger under this rule shall not be allowed to pool with the free allowance of any other passenger.

4. Passenger arriving from Nepal, Bhutan or Myanmar.- An Indian resident or a foreigner residing in India or a tourist, not being an infant arriving from Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty



articles in his bona fide baggage, that is to say,

- (a) used personal effects and travel souvenirs; and
- (b) articles other than those mentioned in Annexure -I up to the value of fifteen thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:

Provided that where the passenger is an infant, only used personal effects shall be allowed duty free:

Provided further that where the passenger is arriving by land, only used personal effects shall be allowed duty free.

Explanation- The free allowance of a passenger under this rule shall not be allowed to pool with the free allowance of any other passenger.

5. **Jewellery** - A passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in his bona fide baggage of jewellery upto a weight, of twenty grams with a value cap of fifty thousand rupees if brought by a gentleman passenger, or forty grams with a value cap of one lakh rupees if brought by a lady passenger.

6. Transfer of residence –

- (1) A person, who is engaged in a profession abroad, or is transferring his residence to India, shall, on return, be allowed clearance free of duty in addition to what he is allowed under rule 3 or, as the case may be, under rule 4, articles in his bonafide baggage to the extent mentioned in column (2) of the Appendix below, subject to the conditions, if any, mentioned in the corresponding entry in column (3) of the said Appendix.
- (2) The conditions mentioned in column (3) of the said Appendix may be relaxed to the extent mentioned in column (4) of the said Appendix.

Appendix

Duration of stay abroad	Articles allowed free of duty	Conditions	Relaxation
(1)	(2)	(3)	(4)
From three months upto six months	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of sixty thousand rupees.	Indian passenger	—
From six months upto one year	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III, upto an aggregate value of one lakh rupees.	Indian passenger	—
Minimum stay of one year during the preceding two years	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of two lakh rupees.	The Indian passenger should not have availed this concession in the preceding three years.	—



Minimum stay of two years or more.	Personal and house household articles, other than those listed at Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of five lakh rupees.	(i) Minimum stay of two years abroad, immediately preceding the date of his arrival on transfer of residence; (ii) Total stay in India on short visit during the two preceding years should not exceed six months; and (iii) Passenger has not availed this concession in the preceding three years.	(a) For condition (i), shortfall of upto two months in stay abroad can be condoned by Deputy Commissioner of Customs or Assistant Commissioner of Customs if the early return is on account of:- (i) terminal leave or vacation being availed of by the passenger; or (ii) any other special circumstances for reasons to be recorded in writing. (b) For condition (ii), the Principal Commissioner of Customs or Commissioner of Customs may condone short visits in excess of six months in special circumstances for reasons to be recorded in writing. No relaxation.

7. Currency - The import and export of currency under these rules shall be governed in accordance with the provisions of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, and the notifications issued thereunder.

8. Provisions regarding unaccompanied baggage - (1) These rules shall apply to unaccompanied baggage except where they have been specifically excluded:

Provided that the said unaccompanied baggage had been in the possession, abroad, of the passenger and is dispatched within one month of his arrival in India or within such further period as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow:

Provided further that the said unaccompanied baggage may land in India upto two months before the arrival of the passenger or within such period, not exceeding one year, as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow, for reasons to be recorded, if he is satisfied that the passenger was prevented from arriving in India within the period of two months due to circumstances beyond his control, such as sudden illness of the passenger or a member of his family, or natural calamities or disturbed conditions or disruption of the transport or travel arrangements in the country or countries concerned or any other reasons, which necessitated a change in the travel schedule of the passenger.

9. Application of these rules to members of the crew - (1) These rules shall also apply to the members of the crew engaged in a foreign going conveyance for importation of their baggage at the time of final pay off on termination of their engagement.

(2) Notwithstanding anything contained in sub-rule (1), a member of crew of a vessel or an aircraft other than those referred to in sub-rule(1), shall be allowed to bring articles like chocolates, cheese, cosmetics and other petty gift items for their personal or family use which shall not exceed the value of one thousand and five hundred rupees.



Annexure – I
(See rule 3, 4 and 6)

1. Fire arms.
2. Cartridges of fire arms exceeding 50.
3. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms.
4. Alcoholic liquor or wines in excess of two litres.
5. Gold or silver in any form other than ornaments.
6. Flat Panel (Liquid Crystal Display/Light-Emitting Diode/ Plasma) television.

Annexure - II
(See rule 6)

1. Colour Television.
2. Video Home Theatre System.
3. Dish Washer.
4. Domestic Refrigerators of capacity above 300 litres or its equivalent.
5. Deep Freezer.
6. Video camera or the combination of any such Video camera with one or more of the following goods, namely:-
 - (a) television receiver;
 - (b) sound recording or reproducing apparatus;
 - (c) video reproducing apparatus.
7. Cinematographic films of 35mm and above. 8. Gold or Silver, in any form, other than ornaments.

Annexure - III
(See rule 6)

1. Video Cassette Recorder or Video Cassette Player or Video Television Receiver or Video Cassette Disk Player.
2. Digital Video Disc player.
3. Music System.
4. Air-Conditioner.
5. Microwave Oven.
6. Word Processing Machine.
7. Fax Machine.
8. Portable Photocopying Machine.
9. Washing Machine.
10. Electrical or Liquefied Petroleum Gas Cooking Range
11. Personal Computer (Desktop Computer)
12. Laptop Computer (Note book Computer)
13. Domestic Refrigerators of capacity up to 300 litres or its equivalent.



Self - Examination Questions

Theory Questions

Q1. Explain the term baggage? What do we mean by Green Channel and Red Channel?

Answer: Please refer point no. 20.2

Q2. Write short note on

- (i) *Bona fide* baggage
- (ii) General Free Allowance

Answer:

- (i) please refer point no. 20.2
- (ii) please refer point no. 20.2

Q3. What are the products not coming under baggage rules?

Answer: please refer point no. 20.2

Q4. Write a detailed note regarding clearance of postal articles?

Answer: please refer point no. 20.3

Q5. Explain the provision under the Customs Act, 1962 relating to baggage duty and concessions to Indian residents returning from abroad after a short visit.

Answer: please refer point no. 20.2

Practical Problems

Illustration 1: After visiting USA, Mrs. & Mr. X brought to India a laptop computer valued at ₹ 80,000 personal effects cloths valued at ₹ 90,000 and a personal computer for ₹ 52,000. What is the customs Duty payable?

Solution:

Duty payable on baggage is ₹ 721/-

[₹ (52,000 – 50,000) x 36.05%]

Illustration 2: Amarnath, an IT professional and a person of Indian origin, is residing in Denmark for the last 14 months. He wishes to bring a used microwave oven (costing approximately ₹ 1,24,200 and weighing 15 kg) with him during his visit to India. He purchased the oven in Denmark 6 months back and he has been using that oven for his personal use in his kitchen. He is not aware of Indian customs rules. Could you please provide him some advice in this regard?

Solution: Transfer of residence w.e.f 1-4-2016:

A person, who is engaged in a profession abroad, or is transferring his residence to India can bring, used household items as below:

Passengers who have stayed abroad	GFA for personal household items upto ₹
3-6 months	₹ 60,000
6-12 months	₹ 1,00,000
1-2 years	₹ 2,00,000
Above 2 years	₹ 5,00,000

In the given example Amarnath brings the used household articles worth ₹ 1,24,200 which is free of duty. As per the rule 5 of the Baggage Rules, 1998 he is not liable to pay any duty.



Illustration 3: Mr. Ajay, an Indian entrepreneur, went to London to explore new business opportunities on 01.04.2017. His wife also joined him in London on 01.12.2017. The following details are submitted by them with the Customs authorities on their return to India on 30.04.2018.-

- (a) used personal effects worth ₹ 80,000
- (b) a music system worth ₹ 35,000
- (c) Gold bars (i.e. other than ornaments) brought by Mr. Ajay for ₹ 48,000 and the jewellery brought by his wife worth ₹ 20,000

Determine their eligibility with regard to duty free allowance.

Solution: Statement showing customs duty in the hands of Mr. Ajay:

Particulars	Amount ₹	Workings
Personal effects	Nil	Fully exempted from duty
Music system	35,000	Dutiable within the limit of GFA
Less: GFA	-35,000	GFA allowed upto ₹45,000 (w.e.f. 1-4-2016 GFA increased to ₹ 50,000)
Dutiable goods	Nil	
Jewellery	48,000	
Less: exemption	48,000	Upto ₹50,000 is free from duty, since, he stayed outside abroad for a period more than one year.
Dutiable goods	Nil	

Statement showing customs duty in the hands of Mrs. Ajay:

Particulars	Amount ₹	Workings
Gold bars (other than jewellery)	20,000	Fully taxable
Less: exemption	Nil	General free allowance not allowed.
Dutiable goods	20,000	
Customs duty	7,210	(₹ 20,000 x 36.05%)

Illustration 4: Mr. Devendra an Indian Entrepreneur, went to China to explore new business opportunities on 05-04-2016. The following details, regarding imports are submitted by him with the Customs authorities on return to India on 20-02-2017.

- (a) 2 Music systems each worth ₹. 23,000.
- (b) Jewellery brought by Mr. Devendra worth ₹.49,000 (18 Grams).

Write a brief note on his eligibility with regard to duty free baggage allowances as per the Baggage Rules, 2016.

Solution:

- Music system 23000 x 2 = ₹ 46,000
- Add: Jewellery = ₹ 49,000
- Sub-total = ₹ 95,000
- Less: GFA = ₹ (50,000)
- Dutiable goods = ₹ 45,000

Total duty payable is ₹ 16,222.50 (i.e. 45,000 x 36.05%)

Note: Since, Mr. Devendra stay abroad does not exceeds one year, he will not be eligible for additional jewellery allowance under rule 5 of the Baggage Rules, 2016.

Case Law**Q 1. Hemal K. Shah 2012 (275) ELT 266 (GOI)**

Facts of the Case: Shri Hemal K. Shah, a passenger, who arrived at SVPI Airport, Ahmedabad, had declared the total value of goods as ₹13,500 in the disembarkation slip. On detailed examination of his baggage, it was found to contain Saffron, Umicore Rhodium Black, Titan Wrist watches, Mobile Phones, assorted perfumes, Imitation stones and bags.



Since, the said goods were in commercial quantity and did not appear to be a bona fide baggage; the same were placed under seizure. The passenger in his statement admitted the offence and showed his readiness to pay duty on seized goods or re-shipment of the said goods.

The adjudicating authority determined total value of seized goods; ordered confiscation of seized goods under section 111(d) and 111(m) of the Customs Act, 1962; imposed penalty on Hemal K. Shah; confirmed and ordered for recovery of customs duty on the goods with interest and gave an option to redeem the goods on payment of a fine which should be exercised within a period of three months from date of receipt of the order.

On appeal by Hemal K. Shah, the appellate authority allowed re-export of the confiscated goods. Against this order, the Department filed a revision application before the Revisionary Authority under section 129DD of the Customs Act, 1962.

Point of Dispute: The Department questioned the re-export of confiscated goods. They contended that the goods which had been confiscated were being smuggled in by the passenger without declaring the same to the Customs and were in commercial quantity. In view of these facts, the appellate authority had erred in allowing the re-export of the goods on payment of redemption fine.

Revisionary Authority's Decision: The Government noted that the passenger had grossly mis-declared the goods with intention to evade duty and to smuggle the goods into India. As per the provisions of section 80 of the Customs Act, 1962 when the baggage of the passenger contains article which is dutiable or prohibited and in respect of which the declaration is made under section 77, the proper officer on request of passenger can detain such article for the purpose of being returned to him on his leaving India. Since passenger neither made true declaration nor requested for detention of goods for re-export, before customs authorities at the time of his arrival at airport, the re-export of said goods could not be allowed under section 80 of the Customs Act.

Study Note - 9

ADMINISTRATIVE AND OTHER ASPECTS



This Study Note includes

- 9.1 Introduction
- 9.2 Classes of Officers
- 9.3 Appointment of Officers of Customs
- 9.4 Powers of Officers of Customs
- 9.5 Importance of Central Excise Department
- 9.6 Appointment of Customs Ports, Airports, etc.
- 9.7 Customs Port
- 9.8 Customs Airport
- 9.9 Customs Area
- 9.10 Customs Station
- 9.11 Land Customs Station
- 9.12 Container Freight Stations
- 9.13 Entry
- 9.14 First Appraisement System
- 9.15 Second Appraisement System
- 9.16 Refund of Customs Duty
- 9.17 Claim for Refund of Duty
- 9.18 Amendments to Documents
- 9.19 Import General Manifest
- 9.20 Provisional Assessment of Duty
- 9.21 Interest on Delayed Refunds
- 9.22 Self-assessment of Customs Duty
- 9.23 Duty under Protest
- 9.24 Importer Exporter Code (IEC Number)
- 9.25 Risk Management System
- 9.26 Detention Certificate
- 9.27 Boat Note
- 9.28 Prohibition Relating to Import or Export of Goods
- 9.29 Penalties under Customs
- 9.30 Whether Custom Authorities are Authorized to Auction the Confiscated Goods during the Period of Pendency of Appeal
- 9.31 Offences and Prosecutions under Customs
- 9.32 Compounding of Offences
- 9.33 First Charge on Property of Assessee
- 9.34 Integrated Declaration under Indian Customs Single Window Project

9.1 INTRODUCTION

It is essential to know the departmental set up of the Customs Department. The administration of the Customs Act, 1962 is carried out by the departmental adjudicating authority. Moreover, the Act specifies the class of officers who are responsible for the functioning of the law. As we know the Central Board of Excise and Customs is empowered to regulate the Customs Act as well as Central Excise Act.



9.2 CLASSES OF OFFICERS

There shall be the following classes of officers of customs under section 3 of the Customs Act, 1962, namely:—

- Chief Commissioners of Customs;
- Commissioners of Customs;
- Commissioners of Customs (Appeals);
- Joint Commissioners of Customs;
- Deputy Commissioners of Customs;
- Assistant Commissioners of Customs or Deputy Commissioner of Customs;
- Such other class of officers of customs as may be appointed for the purposes of this Act.

9.3 APPOINTMENT OF OFFICERS OF CUSTOMS

As per section 4 of the Customs Act, the Central Board of Excise and Customs may appoint such persons as it thinks fit to be officers of customs.

The Central Board of Excise and Customs may authorize a Chief Commissioner of Customs or a Commissioner of Customs or a Joint Commissioner of Customs or Assistant Commissioner of Customs or Deputy Commissioner of Customs to appoint officers of customs below the rank of Assistant Commissioner of Customs.

9.4 POWERS OF OFFICERS OF CUSTOMS

As per section 5 of the Customs Act, subject to such conditions and limitations as the Central Board of Excise and Customs (Board) may impose, an officer of customs may exercise the powers and discharge the duties conferred or imposed on him under this Act.

An officer of customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of customs who is subordinate to him.

Notwithstanding anything contained in this section, a Commissioner (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on an officer of customs other than those specified in Chapter XV and section 108.

9.5 IMPORTANCE OF CENTRAL EXCISE DEPARTMENT

The other class of officers of the Central Excise is:

- The Superintendent of Central Excise
- The Inspector of Central Excise

These officers are not the officers of the Customs; it becomes necessary to empower them to be officers of Customs for the purpose of doing Customs work under section 4(1) of the Customs Act.

In addition to the Excise and Customs officers to operate the Customs Law and regulations in all border areas, following Government officials are appointed:

- Border Security Police
- Indo Tibetan Border Police
- Coast Guard

Officers of other department

As per section 151 of the Customs Act, 1962, the following officers of other department are empowered to assist officers of the Customs.



- Officers of the Central Excise Department
- Officers of the Navy
- Officers of Police

Officers of the Central or State Governments employed at any port or airport; such other officers of the Central or State Governments or a local authority as are specified by the Central Government in this behalf by notification in the Official Gazette.

Circulars of the Central Board of Excise and Customs (CBE&C) cannot prevail over law laid down by the Court

In the case of **Commissioner of Central Excise, Bolpur v Ratan Melting and Wire Industries, Calcutta (2005)**, the Apex Court held that Circulars and instructions issued by the Central Board of Excise and Customs (CBEC) are no doubt binding in law on the authorities under the respective statutes (which grants power to CBEC), but when the Supreme Court or High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of the Supreme Court or the High Court. **It means to say that court decisions are superior to that of circulars issued by the CBE & C.**

9.6 APPOINTMENT OF CUSTOMS PORTS, AIRPORTS, etc.

As per section 7 of the Customs Act, 1962, the Central Board of Excise and Customs may by notification in the Official Gazette, appoint—

- The ports and airports which alone shall be customs ports or customs airports for the unloading of imported goods and the loading of export goods or any class of such goods;
- The places which alone shall be land customs stations for the clearance of goods imported or to be exported by land or inland water or any class of such goods;
- The routes by which alone goods or any class of goods specified in the notification may pass by land or inland water into or out of India, or to or from any land customs station from or to any land frontier;
- The ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India.

The Commissioner of Customs may approve proper places in any customs port or customs airport or coastal port for the unloading and loading of goods or for any class of goods and specify the limits of any customs area as per section 8 of the Customs Act, 1962.

The Central Board of Excise and Customs may by notification in the Official Gazette, declare places to be warehousing stations at which alone public warehouses may be appointed and private warehouses may be licensed.

9.7 CUSTOMS PORT

The term “customs port” means any port appointed under clause (a) of section 7 to be a customs port [and includes a place appointed under clause (aa) of that section to be an inland container depot]; the vessel entering in India from a place outside India into India must land only at Customs Port.

9.8 CUSTOMS AIRPORT

The term “customs airport” means any airport appointed under clause (a) of section 7 to be a customs airport; aircraft entering in India from a place outside India must land only at Customs Airport.

9.9 CUSTOMS AREA

The term “customs area” means the area of a customs station and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities.



9.10 CUSTOMS STATION

The term “customs station” means any customs port, customs airport or land customs station.

9.11 LAND CUSTOMS STATION

The term “land customs station” means any place appointed under clause (b) of section 7 to be a land customs station; it means goods imported by land should follow the prescribed route only to come to Land Customs Station. Such route will be specified by CBE & C.

9.12 CONTAINER FREIGHT STATIONS

In short, we call as CFS or ICD (Inland Container Depot). After the imported goods are unloaded at the port, these containers are carried to Inland Container Depots for storage purpose. From these depots goods can be cleared for Domestic Tariff Area or cleared for export. Inland Container Depots are used for unloading of imported goods and loading of exported goods.

9.13 ENTRY

The term Entry means an entry made in a bill of entry, shipping bill or bill of export and includes in the case of goods imported or to be exported by post [As per section 2(16) of the Customs Act, 1962].

9.14 FIRST APPRAISEMENT SYSTEM

Section 17 of the Customs Act, 1962 stipulates that after submission of bill entry, goods will be examined and assessed. However, assessment can be made before examination of goods based on the submission of Bill of Entry and other documents produced before the Customs Authorities. The Importer on request has to submit the following:

- Contract Agreement
- Brokers note
- Insurance policy
- Other documents which help to ascertain the duty liability.

The goods are examined first and then assessed. This is called First Appraisalment System

The goods are assessed first and then examined. This is called Second Appraisalment System

The goods are examined first and then assessed. This is called as First Appraisalment System. The appraiser normally resorts to this method if he is not able to make an assessment on the basis of declaration made in the bill of entry or shipping bill and the documents submitted along with them and deems that inspection is necessary. The importer himself may also request ‘first check procedure’, if he cannot give all required details regarding description/value of goods. He has to make request for first check examination at the time of filing of bill of entry.

9.15 SECOND APPRAISEMENT SYSTEM

The information and documents furnished by the importer are adequate to determine the correct tariff nomenclature, tariff classification and valuation of the goods for purposes of assessment.

Physical examination of the goods or their weighing or testing is only a confirmatory check. Under this system, such an examination is carried out after assessment and collection of duty. Such a system is also called as Second check procedure.



Fast Track Clearance' Scheme

A pre-shipment inspection (PSI) is a set of import verification services, in the country of supply, developed to assist Customs in their mission or Destination Inspection (DI) is a set of verification and capacity building services, in the country of importation, developed to assist Customs their mission. Fast-track clearance is the process by which goods are cleared through Customs based on documentation inspection only.

Importers can benefit from fast-track clearance when all documentation is verified and cleared by Customs; the past history of the importer is usually verified.

9.16 REFUND OF CUSTOMS DUTY

Importer or Exporter who has actually paid the duty on import or export, which is not required to be paid alone, is eligible to claim refund.

(A) Refund of export duty

As per Section 26 of the Customs Act, 1962, duty paid on exported goods can be claim for refund in the case of combined reading of the following if:

- The goods are returned to such person otherwise than by way of re-sale;
- The goods are re-imported within **One year** from the date of exportation and
- An application for refund of such duty is made before the expiry of **six months** from the date on which the Customs officer makes an order for importation.

Suppose, X Ltd. exported product 'P' to Y Ltd of USA on 1.1.2014. The duty paid on export of product 'P' for ₹ 1,00,000. Y Ltd. returned product 'P' to X Ltd., on 1.8.2014. The return is otherwise than by way of sale (i.e. it may be sale return or rejected goods, goods sent on consignment returned by the overseas agent or goods sent for exhibition coming back etc.). It means to say that Y Ltd. should not be sold 'P' to X Ltd. Moreover, exported goods are returned within **One year** from the date of exportation. Hence, X Ltd. can claim for refund of ₹ 1,00,000 within **Six months** from Customs clearances order for imported goods (i.e. 1.8.2014).

(B) Refund of import duty

As per Section 26A of the Customs Act, 1962, duty paid on imported goods can be claimed for refund on account of satisfying the following conditions:

(a) Goods are found defective

The goods are found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods:

Provided that the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;

(b) Goods are easily identifiable as imported goods

The goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported;

(c) No drawback claim is made

The importer does not claim drawback under any other provisions of this Act; and

(d) Activities carried out after importation

- (i) The goods are exported; or
- (ii) The importer relinquishes his title to the goods and abandons them to customs; or
- (iii) Such goods are destroyed or rendered commercially valueless in the presence of the proper officer, in such manner as may be prescribed and within a period not exceeding 30 days from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section 47.

Note:

- (1) However, the period of 30 days may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding three months.



- (2) No refund under section 26 is allowed in respect of perishable goods and goods which have exceeded their shelf life.

Relevant date:

Relevant date in case of filing refund claim may be any one of the following:

- Let export order issued or
- Date of abandonment or
- Date of destruction of goods as the case may be.

9.17 CLAIM FOR REFUND OF DUTY**Claim for refund of duty (section 27 of the Customs Act, 1962)**

Section 27 of the Customs Act, 1962 deals with refund of duty paid on imported or exported goods in excess of what was actually payable. Sometimes, such excess payment of duty may be due to shortage/short landing, pilferage of goods or even incorrect assessment of duty by Customs. In such cases, any excess interest has been paid by the importer or exporter can also be claimed for refund.

No refund and recovery if the amount of customs duty involved is less than ₹100:

Third proviso to section 27(1) of Customs Act, provides that where the amount of refund claimed is less than ₹ 100, the same shall not be refunded. In other words, there would be no refund if the amount of customs duty involved is less than ₹ 100. **(w.e.f.10.05.2013)**

A refund claim can be made u/s 27 if the payment of higher duty and interest in ignorance of a notification which allowed payment of duty at a concessional rate even if there was no assessment order and the payment u/s 27(i) has not been made pursuant to an assessment order. Section 27(ii) covers those classes of cases where the duty is paid by a person without an order of assessment. It means a refund claim can be filed under section 27 of the Customs Act, 1962 even if the payment of duty has not been made pursuant to an assessment order [**Aman Medical Products Ltd. v CCus., Delhi 2010 (250) ELT 30 (Del.)**].

Attested Xerox copy of the GAR-7 Challan sufficient for claiming refund:

Refund claim **CAN NOT BE DENIED** purely on a technical contention that the assessee had produced the attested copy of GAR-7 (earlier TR-6) challan and not the original of the GAR-7 challan. Also as per clarification issued vide F.No. 275/37/2K-CX. 8A dated 2-1-2002, **a simple letter from the person who** made the deposit, requesting for return of the amount, along with the appellate order and attested Xerox copy of the Challan in Form GAR-7 would suffice for processing the refund application. [**Narayan Nambiar Meloths v CCus. 2010 (251) ELT 57 (Ker)**]

Time Limit for claiming refund:

Person claiming refund	Time limit for claiming refund	Remarks
Individual – imported goods for his personnel use, Government or Any educational institutions or Any research institutions or Charitable institutions or hospitals	Application for refund can be made before the expiry of ONE year from the date of payment of duty and interest	The application for refund in duplicate has to be filed before the Assistant Commissioner or Dy. Commissioner of Customs.
Individual – for business use Companies or Firm etc.	Application for refund can be made before the expiry of ONE year (w.e.f. 8-4-2011) from the date of payment of duty and interest	The application for refund in duplicate has to file before the Assistant Commissioner or Dy. Commissioner of Customs.

Interest on delayed refunds: As per section 27A of the Customs Act, 1962, if the refund ordered is not paid within 3 months from the date of receipt of refund application by the Assistant Commissioner or Deputy Commissioner of Customs, then the department is liable to pay interest at the rate of 6% p.a. (i.e. interest is liable to be paid after expiry of three months from the date of receipt of the application for refund).

Few differences between section 26 and section 27 of the Customs Act, 1962:

Section 26 deals with refund of export duty whereas Section 27 deals with refund of any export duty, import duty interest paid thereon.

Refund of duty under section 26 is allowed on account of satisfying certain conditions whereas refund under section 27 is allowed only when duty paid in excess of normal duty.

Refund is payable to the exporter who paid the duty under section 26 whereas refund is payable to the importer who paid the duty or to the buyer by whom the duty was borne.

Chartered Accountant Certificate not sufficient to claim refund under section 27

As per section 27 of the Customs Act, 1962 the importer to produce such documents or other evidence, while seeking refund, to establish that the amount of duty in relation to which such refund is claimed, has not been passed on by him to any other person.

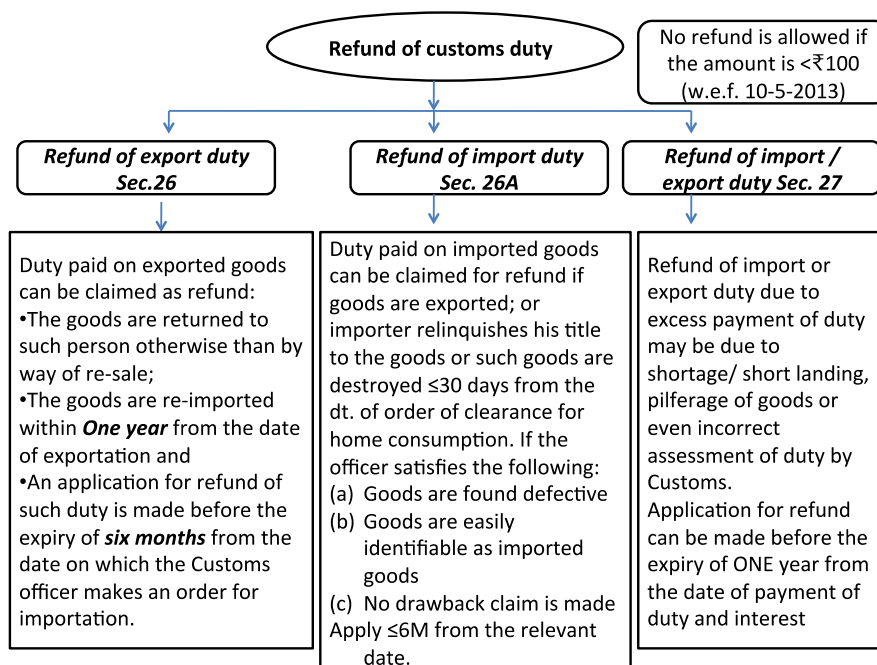
However, if importer had not produced any document other than the certificate issued by the Chartered Accountant to substantiate its refund claim.

In the given case Madras High Court held that, the certificate issued by the Chartered Accountant was merely a piece of evidence acknowledging certain facts. It would not automatically entitle a person to refund in the absence of any other evidence. Hence, the importer could not be granted refund merely on the basis of the said certificate [**CCus., Chennai v BPL Ltd. 2010 (259) ELT 526 (Mad)**]

The period of limitation of one year for the purpose of refund of duty under section 27(1B) shall be computed in the following manner, namely:

- In the case of goods which are exempt from payment of duty by a special order issued under section 25(2) of the Custom Act, the limitation of one year shall be computed from the date of issue of such order;
- Where the duty becomes refundable as a consequence of any judgment, the limitation of one year shall be computed from the date of such judgment.
- Where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof or incase of re-assessment, from the date of such re-assessment.

Refund of customs duties can be recollected in the following table:





9.18 AMENDMENTS TO DOCUMENTS

Generally the importer, exporter or 'person in-charge' of the conveyance (namely Master of the Vessel, Pilot of the Aircraft, Guard of the Train and Driver of the Vehicle) have to submit various documents to customs authorities like bill of entry, import general manifest (IGM), export general manifest (EGM), etc. These documents need to be amended due to various genuine reasons.

Example 1:

- Due to changes in classification,
- Due to clerical mistakes in document, and
- Due to change in unloading/loading plan of vessels etc.,

Under section 149 of the Customs Act, 1962, Customs Authorities can give permission to amend these documents. However, such permission cannot be given if there are fraudulent intentions.

9.19 IMPORT GENERAL MANIFEST

It is basically a document necessarily carried by the Person in charge along with conveyance. It is a very important document without which customs authorities not allowed to grant inward entry to the vessel.

Features of Import General Manifest:

- Person-in-charge of Vessel, Aircraft or Vehicle has to submit Import General Manifest.
- The IGM in case of a vessel or aircraft is required to be submitted prior to arrival of a vessel or aircraft.
- In case import is through a vehicle, the IGM (so called Import Report) has to be submitted within 12 hours of arrival at the Customs Station.
- Penalty up to ₹ 50,000 can be imposed on the person-in-charge who is responsible for delay in submission of Report or Manifest.
- If the customs station equipped electronically then IGM can be submitted electronically through floppy.
- Amendment can be done to Import General Manifest if the changes do not amount to illegal import.

9.20 PROVISIONAL ASSESSMENT OF DUTY

An importer or exporter is unable to produce any document or furnish any information necessary for the assessment of duty on the imported goods or export goods as the case may be and he can request to the Customs authorities to assess the duty liability on provisional basis. Provisional Assessment will be allowed by the Customs Officer, if he, satisfied with the request of the importer or exporter [Section 18 of the Customs Act, 1962].

Provisional assessment can be granted in the following three situations:

- An importer or exporter is unable to produce any document or furnish any information necessary for the assessment of duty.
- Any imported goods or export goods need to conduct any chemical or other test for the purpose of assessment of duty thereon.
- Where the importer or the exporter has produced all the necessary documents and furnished full information for the assessment of duty but the proper officer deems it necessary to make further enquiry for assessing the duty.



Adjustment of duty at the time of final assessment order is permissible.

Provisional Assessment	Remarks
Short paid	Pay the deficiency along with the interest from the first day of the month in which duty is provisionally assessed till date of payment. Interest in case of Provisional Assessment Section 18(3) of the Customs Act, 1962: If differential amount is found to be payable after final assessment or re-assessment, it will be paid with interest @15% p.a. w.e.f. 1-4-2016 (prior to 1-4-2016 interest rate was @18% p.a.) from the first day of the month in which duty is provisionally assessed till date of payment.
Excess paid	Refund will be granted. Interest will be payable if refund is not granted within three months from the date of assessment of duty finally ordered. Interest @6%p.a. is payable by the Government.

Refund of duty is subject to unjust enrichment (i.e. should not be undue benefit).

Customs (Provisional Assessment) Regulations, 2011: [vide circular no. 38/2016 Customs Dt. 22.08.2016]

Prior to 22.08.2016	w.e.f. 22.08.2016
Deposit 20% of the duty provisionally assessed	Deposit 20% of the duty provisionally assessed is not required.
Execute a bond	Execute a bond
Provide surety or security or both, as deemed fit by the Proper Officer.	Provide security for the payment of the duty deficiency. The security to be obtained shall be in the form of a bank guarantee or a cash deposit as convenient to the importer. No sureties' shall be obtained.

Interest in case of Provisional Assessment (w.e.f. 8-4-2011):

Sec. 18(3) of the Customs Act, 1962 provides that if differential amount is found to be payable after final assessment or re-assessment, it will be paid with interest @15% p.a. w.e.f. 1-4-2016 (prior to 1-4-2016 interest rate was @18% p.a.) from the first day of the month in which duty is provisionally assessed till date of payment.

Example 2:

X Ltd. imported goods on 29th Mar, 2017, and approached to the department for grant of provisional assessment u/s 18 of the Customs Act, 1962. Provisional Assessment granted on 10th April 2017 by demanding duty of ₹1,00,000.

On 1st July 2017 provisional assessment has been finalized with ₹1,50,000 of customs duty. Differential duty has been paid on 2nd July 2017. Find the interest payable u/s 18(3) of the Customs Act, 1962.

Answer:

Interest = ₹1,911/-

(₹50,000 × 15/100 × 93/365 = ₹2,293.15)

9.21 INTEREST ON DELAYED REFUNDS

As per section 27A of the Customs Act, 1962, interest at such, not below five per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such order till the date of refund of such duty.



9.22 SELF-ASSESSMENT OF CUSTOMS DUTY

Self-assessment of customs duty (section 17 of the Customs Act, 1962, w.e.f. 8-4-2011)

The importer or exporter shall self-assess the duty leviable on imported or exported goods respectively (except where goods are to be cleared as 'stores' for supply to vessels or aircrafts without payment of duty and without assessment under section 85 of Customs Act, 1962) as per section 17(1) of the Customs Act, 1962. The procedure of self assessment is same for imports and exports. Importer importing goods is required to submit Bill of Entry under section 46 of Customs Act, 1962. Exporter is required to submit shipping bill at the time of export under section 50 of Customs Act, 1962. Bill of Entry and Shipping Bill must be submitted electronically, unless manual submission is specifically permitted by Commissioner of Customs.

Verification by proper officer

The self assessment may be verified by 'proper officer' by examining or testing the goods [section 17(2) of Customs Act 1962, w.e.f. 8-4-2011]. For verification of self assessment, 'Proper Officer' may ask importer, exporter or any other person (i.e. Customs House Agent or person who has purchased goods on high seas sale basis) to produce any contract, broker's note, insurance policy, catalogue or other documents whereby duty payable can be ascertained and to furnish further information for ascertainment.

Re-assessment

The proper officer can ask for only those documents which are within the powers of importer or exporter or other person to furnish [section 17(3) of Customs Act 1962, w.e.f. 8-4-2011]. On Such verification, 'proper officer' may re-assess the Bill of entry. Such re-assessment would be without prejudice to any other action which may be taken under Customs Act [section 17(4) of Customs Act, 1962, w.e.f. 8-4-2011].

If the importer or exporter accepts in writing the reassessment made by proper officer about classification or valuation or exemption or concession, then no question of issuing any formal order arises.

Speaking order

Where the importer or exporter does not accept the re-assessment in writing, the proper officer shall pass a speaking order within 15 days from the date of re-assessment of 'Bill of Entry' [section 17(5) of Customs Act, 1962].

Audit

If the goods are not taken for verification of self assessment, the goods will be allowed to be cleared from customs. However, later, proper officer may audit the assessment of duty. Such audit can be done either in the office of proper officer or at the premises of importer, as may be expedient [section 17(6) of Customs Act, 1962]. Subsequent to such audit, demand for differential duty and interest can be made under section 28 of Custom Act, 1962. This section also makes provisions in respect of penalty for such short payment.

General provisions

Assessment includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is Nil [section 2(2) of Customs Act, 1962].

As per section 2(34) of Customs Act, 'proper officer' in relation to any function under Customs Act, means the officer of customs who is assigned those functions by Board (CBE & C) or Commissioner of Customs.

9.23 DUTY UNDER PROTEST

The term duty under protest means the Customs Officer completed the assessment and very clearly levied the duty; however, importer is aggrieved with the assessment. In such a situation importer has to pay the duty under protest at the time of clearing the goods from the customs station.

**Interest if duty paid late [Sec. 28AA of Customs Act 1962]:****w.e.f. 1-4-2016; Rate of interest is 15%p.a.**

Period for which interest payable: from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

Example 3:

Mr. Lal, paid the customs duty in the month of June 2016 ₹ 10,300. It was found by the department officer, the actual amount of duty is ₹ 15,450 for the June 2016. Customs duty of ₹5,150 as demanded by the department has been paid on 31st July 2016. Find the interest under section 28AA of the Customs Act, 1962?

Answer: Interest = ₹ 66

(i.e. ₹ 5,150 × 15/100 × 31/365)

Case Law 1:**M/s CPS Textiles P Ltd. v. Joint Secretary 2010 (255) ELT 228 (Mad.)**

Decision: The High Court held that the description of the goods as per the documents submitted along with the Shipping Bill would be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test. The petitioner could not plead that the exported goods should be classified under different headings contrary to the description given in the invoice and the Shipping Bill, which had been assessed and cleared for export.

Further, the Court, while interpreting section 75A(2) of the Customs Act, 1962, noted that when the claimant is liable to pay the excess amount of drawback, he is liable to pay interest as well. The section provides for payment of interest automatically along with excess drawback. No notice for the payment of interest need be issued separately as the payment of interest becomes automatic, once it is held that excess drawback has to be repaid.

9.24 IMPORTER EXPORTER CODE (IEC Number)

Facility to file application (i.e. ANF 2A) for Importer Exporter Code (IEC Number) is available through online. It is a unique 10 digits code. PAN is pre-requisite for grant of an IEC.

9.25 RISK MANAGEMENT SYSTEM

The Central Board of Excise and Customs has decided to introduce the 'Risk Management System' (RMS) in major Customs locations where the Indian Customs EDI System (ICES) is operational. The implementation of the RMS is one of the most significant steps in the ongoing Business Process Re-engineering initiatives of the Customs and Central Excise Department [Circular No. 43/2005-Customs].

Features of the Risk Management System:

- The Risk Management System replaces the existing system of concurrent audit and replaced by a Post-Clearance Compliance Verification (Audit) function.
- This system provides the special Customs clearance for Accredited Clients. (Accredited Client means importer whose value of imports during the previous financial year ₹ 10 crores or paid duty more than ₹ 1 crore).
- This system applies only to those importers whose track record is good for the last 3 financial years.
- The RMS is intended to improve the management of the resources of the department to enhance the efficiency and effectiveness in meeting stakeholder expectations and to bring the Customs processes at par with the best international practices.



E-payment of Customs Duty (NT 83/2012-Cus, dated 17-9-2012): the following assesses are eligible for e-payment of Customs duty.

- (i) Importer registered under Accredited Clients Programme
- (ii) Importers paying customs duty of ₹1 lakh or more per bill of entry

Accredited Clients Programme (ACP):

The importers desirous of availing the facility as "Accredited Clients" are required to apply for registration under the scheme using the Application form attached at Annex-1. Importers meeting the following criteria shall be the eligible under the Accredited Clients Program:

- (i) Accredited Clients means they should have imported goods at ₹10 crores in the previous financial year; or Paid customs duty more than ₹1 crore in the previous financial year; or Importers, who are also Central Excise assessee, paid Central Excise Duties over Rs. One Crore from the Personal Ledger Account in the previous financial year.
- (ii) They should have filed at least 25 Bills of Entry in the previous financial year in one or more Indian Customs stations.
- (iii) They should have no cases of Customs, Central Excise or Service Tax booked against them in the previous three financial years. Cases booked would imply that there should be at least a show cause notice, invoking penal provisions, issued to an importer.
- (iv) They should also not have any cases booked under any of the Allied Acts being implemented by Customs.
- (v) The quality of the submissions made by the applicants to Customs should be good as measured by the number of amendments made in the bills of entry submitted by them in relation to classification of goods, valuation and claim for exemption benefits. The number of such amendments should not have exceeded 20% of the bills of entry during the previous financial year.
- (vi) They should have no duty demands pending on account of non-fulfillment of Export obligation.
- (vii) They should have reliable systems of record keeping and internal controls and their accounting systems should conform to recognized standards of accounting. They are required to provide the necessary certificate from their Chartered Accountants in this regard as per format given in the Application form.

This program (ACP) gives the following benefits:

- (a) The clients will get assured facilitation;
- (b) In a small number of occasions their consignments will be randomly selected for checks by customs officers;
- (c) The Indian Customs EDI system will accept the declared classification and valuation and assess duty on the basis of importers' self-declaration;
- (d) They will also not be subjected to examination;
- (e) It will be ensured that their cargo is delivered quickly;
- (f) These benefits are applicable at all ICES locations

9.26 DETENTION CERTIFICATE

Once goods are imported from a country outside India into India, such goods need to be cleared from the port within 3 working days from the date of import. For delay beyond 3 working days the port authorities will charge demurrage. If the delay is from the Customs authorities, then such authorities will issue a certificate called as Detention Certification for *bona fide* import.

If the imported goods are not cleared from the Customs Authority within 30 days from the date of import then such goods can be stored in a warehouse pending clearance. Beyond the time limit these goods can be sold after giving show cause notice to such an importer.



9.27 BOAT NOTE

In India we have certain ports where the ships cannot come to the shore for unloading or loading goods due to depth of the Sea or vessel may not find the time in having berth in the port. In such cases goods are sent to shore in a small cargo (i.e. it may be loaded in a small boat and sent to shore). As per the Boat Note Regulations such a small boat must be accompanied by a Boat Note issued by the Customs Officer. The boat note must be in duplicate and machine numbered. Separate forms are prescribed for export cargo, import cargo and trans-shipment cargo.

9.28 PROHIBITION RELATING TO IMPORT OR EXPORT OF GOODS

Section 11 of the Customs Act, 1962 enables the Central Government to notify in the Official Gazette the prohibition relating to the import or export goods. Twenty two such purposes are specified therein, out of which some are given below:

- The maintenance of the security of India.
- The maintenance of public order, standards of decency or morality.
- Prevention of smuggling
- Prevention of shortage of goods of any description
- The establishment of any industry.
- Conservation of exhaustible natural resources
- Prevention of deceptive practices.
- Prevention of serious injury to domestic production of goods.
- Prevention of human/animal life or health.

9.29 PENALTIES UNDER CUSTOMS

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined [Section 114A of the Customs Act, 1962]

9.30 WHETHER CUSTOM AUTHORITIES ARE AUTHORIZED TO AUCTION THE CONFISCATED GOODS DURING THE PERIOD OF PENDENCY OF APPEAL

The customs authorities are not authorized to auction the confiscated goods during the period of pendency of appeal. It means to say that the petitioner informed the customs authorities that he was filing an appeal against order of confiscation, then customs authorities are not authorized to auction the confiscated goods. **[Shabir Ahmed Abdul Rehman v UOI 2009 (235) ELT 402 (Bom)]**.

9.31 OFFENCES AND PROSECUTIONS UNDER CUSTOMS

Persons involved in smuggling and other modus operandi (i.e. Manner of operation) of imports and exports, in violation of prohibitions or restrictions with intent to evade duties or fraudulently claim export incentives are liable to serious penal action under the Customs Act, 1962.

The offending goods can be confiscated and heavy fines and penalties imposed. There are provisions for arrests and prosecutions.



Detention of goods

It means the goods are temporarily detained by officer to check whether there is any violation of law. In the case of **Pro Musicals v Joint Commissioner Customs (Prev.), Mumbai 2008 (227) ELT 182 (Mad)** the Court clarified that the detention of goods is actually taking the custody of the goods and keeping it under restraint from being taken by the parties; but, the party is entitled to produce sufficient documentary evidence, and if he shows proof, he can take it. At that juncture, no question of seizure would arise. If such person not shows proof, then said goods are seized.

Seizure of goods (Section 110 of the Customs Act, 1962)

The term seizure meant to take possession of the property contrary to the wishes of the owner of the goods in pursuance of a demand under legal right. Seizure involved not merely the custody of goods but also a deprivation (i.e. losing something) of possession of goods. It means to say that under seizure goods are taken in custody by the department. A stage before confiscation is called seizure. Generally goods liable to be confiscated may be seized.

Detention is without seizure and possession of goods whereas seizure of goods necessarily means detention plus taking possession of goods by officer.

Goods should be returned within six months if no Show Cause Notice has been issued

Show Cause Notice (SCN) shall be issued within six months from the date of seizure. This period can be further extended by SIX months on sufficient cause, by the Commissioner of Central Excise or Customs. If no show cause notice issued within SIX months, the goods shall be return to person from whose possession they were seized.

Release of seized goods and documents (w.e.f. 8-4-2011):

Seized goods and documents can be released by adjudicating authority on submission of bond and security under section 110A of the Customs Act, 1962. Therefore, permission of Commissioner of Customs is not required w.e.f. 8-4-2011.

Case Law : 2

Manish Lalith Kumar Bavishi (2011).

Point of dispute: If any documents seized during the course of any action by an officer and relatable to the provisions of Customs Act, that officer was bound to make the documents available copies of those documents?

Answer: Yes. The Bombay High Court held the same view in the case of **Manish Lalith Kumar Bavishi (2011)**.

Confiscation of goods

The term confiscation of goods means the goods become property of Government and Government can deal with these goods as it desires. Once confiscated goods are became property of Central Government, no duty liability arises on assessee whose goods are confiscated.

However, in some cases, the person from whom goods were seized can be get them back on payment of fine (i.e. Redemption fine in lieu of confiscation) under section 125(1) of the Customs Act, 1962.

Search, seizure and confiscation not applicable to service tax.

Provisions governing Confiscation under Customs Act, 1962

Goods are liable for confiscation in the following circumstances:

- Confiscation of improperly imported goods – Section 111
- Export goods liable for confiscation – Section 113
- Confiscation of Conveyances (i.e. Vehicles, Vessels, Air crafts, animals used as a means of transport in the smuggling) if used improperly for import or export of goods – Section 115
- Confiscation of packages and their contents – Section 118
- Confiscation of goods used for concealing smuggled goods – Section 119
- Confiscation of smuggled goods notwithstanding any change in form, etc. – Section 120



For example gold biscuits converted into jewellery. Hence, the entire value of jewellery is liable for confiscation.

- Confiscation of sale proceeds of smuggled goods – Section 121

As per section 124 of the Customs Act, 1962, before confiscating goods, Show Cause Notice must be issued to owner of goods giving grounds for confiscation. Time limit of SIX months as given in Section 110 of the Customs Act, 1962 is not applicable. It means there is no time limit is specified in case of issue of SCN for confiscation of goods. As per section 28 of the Customs Act, 1962, goods can be confiscated even after the goods are cleared from customs station.

Goods already exported cannot be confiscated under Section 113 of the Customs Act, 1962

Wrong confiscation of goods:

Once the action of the Customs department with regard to confiscation of goods, set aside by Tribunal or Court (i.e. set aside means make inoperative or stop) the person is eligible to get back the goods. If in the meanwhile, goods have been sold by the Customs authorities, market value of goods as on date of setting aside confiscation of the order of confiscation by the judgment is payable (**Northern Plastics Ltd. v CCE (2000) (SC)**).

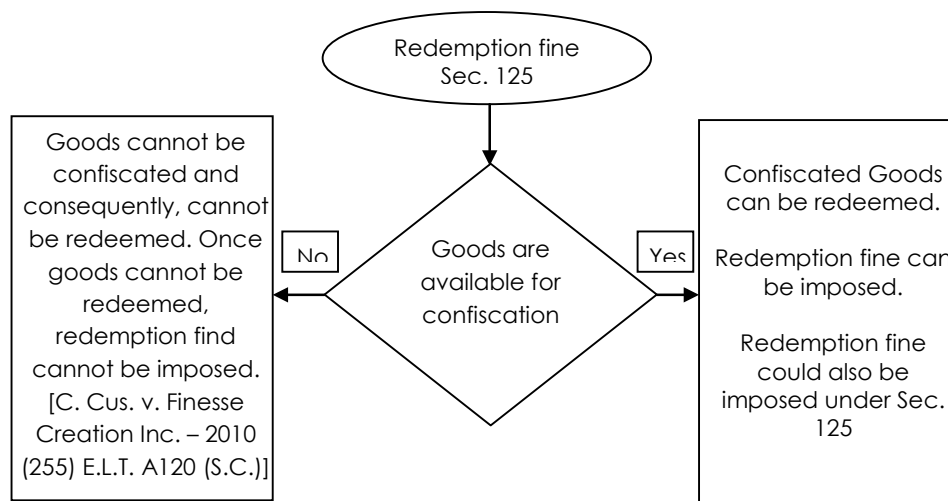
Confiscation of improperly imported goods – Section 111:

The following goods brought from a place outside India shall be liable to confiscation:

- (a) Any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport.
- (b) Any goods imported by land or inland water through any route other than a route specified by the Govt.
- (c) Any dutiable or prohibited good brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port.
- (d) Any goods which are imported or attempted to be imported or are brought within the Indian customs waters contrary to the provisions which are in force.
- (e) Any dutiable or prohibited goods found concealed (i.e. hidid) in any manner in any conveyance
- (f) Goods not mentioned in the Import manifest or import report
- (g) Goods unloaded in contravention of the provisions of customs law
- (h) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof
- (i) any dutiable or prohibited goods removed or attempted to be removed from a customs area or warehouse without the permission of the proper officer.
- (j) Any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper
- (k) Any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77.
- (l) Any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77.
- (m) Any dutiable or prohibited goods transited with or without transshipment in contravention of the provisions of customs.

Confiscated goods can be redeemed:

Under Customs Act, 1962 can redemption fine be imposed and penalty under section 112 be levied after release of imported goods on execution of a bond, if it is found subsequently that there has been an irregularity in the import? Discuss with the help of decided case law(s), if any.



It is important to note that for levying the penalty under section 112 (i.e., improper import) it is immaterial as to whether goods are available for confiscation or not because the said penalty is imposed when the goods are liable for confiscation.

Penalties for improper import under section 112 of the Customs Act, 1962

Penalty can be imposed for improper import as well as attempt to improperly export goods. 'Improper' means without the knowledge of the Customs officers.

No question of penalizing the partners separately for the same contravention under section 112:

Once penalty was levied on the firm for contravention of any provision of the Act or the Rules framed there under, it amounted to levy of penalty on the partners. Hence, there was no question of penalizing the partners separately for the same contravention, unless the intention of the legislature to treat the firm and partners as distinct entities was borne out from the statute itself, i.e., expressly provided in the statute.

For Example: Explanation to section 140 of the Customs Act equated partnership firm with company (which stands as separate entity distinct from its shareholders) in respect of commission of offences.

However, there was no such corresponding provision in relation to imposition of penalty under section 112. The High Court held that separate penalty could not be imposed on the partners in addition to the penalty on the partnership firm [*CCE & C, Surat-II v Mohammed Farookh Mohammed Ghani* 2010 (259) ELT 179 (Guj)].

Penalties for improper import [section 112 of the Customs Act, 1962]:

Imported Goods (A)	Value in (₹) (B)	Minimum Penalty in (₹) (C)	Penalty in (₹) (B) or (C)
Prohibited Goods	Not exceeding the value of prohibited goods	₹ 5,000	Whichever is Higher
Dutiable Goods (Other than Prohibited goods)	w.e.f 14-5-2015: Not exceeding 10% of the Duty sought to be evaded.	₹ 5,000	Whichever is Higher
	w.e.f 14-5-2015: Penalty = 25% of the penalty imposed, if the duty, interest and reduced penalty is paid within 30 days from the date of receipt of adjudication order [Section 112(b)(ii) of the Customs Act, 1962].		
Misdeclaration of value	If actual value is higher than the value declared in Bill of Entry or declaration of contents of baggage: Actual value = xxx Less: Declared value = (xx) -----Difference = xxx =====	₹ 5,000	Whichever is Higher



Prohibited Goods plus Misdeclaration value	(i) Not exceeding the value of prohibited goods OR (ii) Actual value = xxx Less: Declared value = (xx) -----Difference = xxx ===== Whichever is higher	₹ 5,000	Whichever is Higher
Dutiable Goods plus Misdeclaration of Value	(i) Duty sought to be evaded OR (ii) Actual value = xxx Less: Declared value = (xx) -----Difference = xxx ===== Whichever is higher	₹ 5,000	Whichever is Higher

Export goods liable for confiscation — Section 113

These are goods attempted to be improperly exported under clauses of section 113:—

- Goods attempted to be exported by sea or air from place other than customs port or customs airport
- Goods attempted to be exported by land or inland water through unspecified route
- Goods brought near land frontier or coast of India or near any bay, gulf, creek or tidal river for exporting from place other than customs port or customs station
- Goods attempted to be exported contrary to prohibition under Customs Act or any other law
- Goods concealed in any conveyance brought within limits of customs area for exportation
- Goods loaded or attempted to be loaded for eventual export out of India, without permission of proper officer, in contravention of section 33 and 34 of the Customs Act, 1962
- Goods stored at un-approved place or loaded without supervision of Customs Officer
- Goods not mentioned or found excess of those mentioned in Shipping Bill or declaration in respect of baggage
 - Any goods entered for exportation not corresponding in respect of value or any other particular in Shipping Bill or declaration of contents of baggage.
 - Goods entered for export under claim for duty drawback which do not correspond in any material particulars with any information provided for fixation of duty drawback.
- Goods imported without duty but being re-exported under claim for duty drawback
- Goods cleared for exportation which are not loaded on account of willful act, negligence or default, or goods unloaded after loading for exportation, without permission.
- Provision in respect of 'Specified Goods' are contravened.

Penalties for improper export under section 114 of the Customs Act, 1962

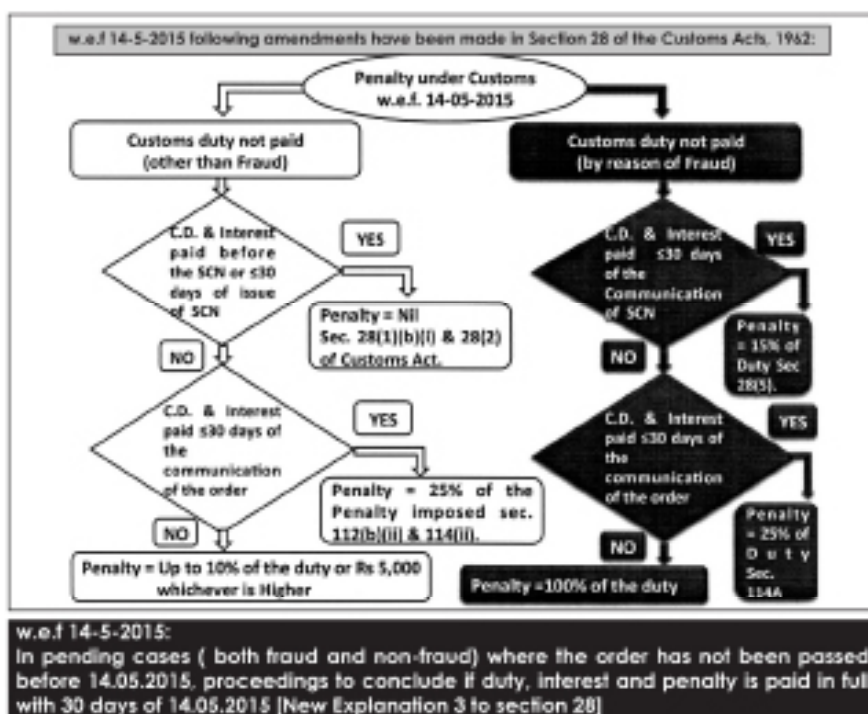
Following monetary penalties prescribed under the Customs Act, with regard to improper export:

Attempt to improperly export (A)	Value in (₹) (B)	Minimum Penalty in (₹) (C)	Penalty in (₹) (B) or (C)
Prohibited Goods	Three times the value of the goods as declared by the exporter	The value as determined under the Customs Act.	Whichever is Higher
Dutiable Goods (other than Prohibited goods)	Duty sought to be evaded	₹ 5,000	Whichever is Higher
Other goods	Value declared in short	The value as determined under the Customs Act.	Whichever is Higher

Penalties for improper export U/S 114 of the Customs Act, 1962 (w.e.f.14-5-2015)

Attempt to improperly export (A)	Value in (₹) (B)	Minimum Penalty in (₹) (C)	Penalty in (₹) (B) or (C)
Prohibited Goods	The value as determined under the Customs Act.	₹ 5,000	Whichever is Higher
Dutiable Goods (other than Prohibited goods)	w.e.f 14-5-2015: Not exceeding 10% of duty sought to be evaded.	₹ 5,000	Whichever is Higher
	w.e.f 14-5-2015: Penalty = 25% of penalty imposed, if duty, interest and reduced penalty is paid within 30 days from date of receipt of adjudication order - Section 114(ii) of Customs Act, 1962.		
Other goods	Not exceeding the value of goods as declared by exporter	The value as determined under the Customs Act.	Whichever is Higher

w.e.f. 14-5-2015 following amendments have been made in Section 28 of the Customs Act, 1962:



w.e.f 14-5-2015:

In pending cases (both fraud and non-fraud) where the order has not been passed before 14.05.2015, proceedings to conclude if duty, interest and penalty is paid in full within 30 days of 14.05.2015 [New Explanation 3 to section 28]

Explanation 3 has been inserted in section 28 to provide that where a notice under section 28(1) [non-fraud cases] or section 28(4) [fraud cases], as the case may be, has been served but an order determining duty under section 28(8) has not been passed before 14.05.2015 then, without prejudice to the provisions of sections 135, 135A and 140, as may be applicable, the proceedings in respect of such person or other persons to whom the notice is served will be deemed to be concluded if the payment of duty, interest and penalty under the proviso to section 28(2) or under section 28(5), as the case may be, is made in full within 30 days from 14.05.2015.

**Confiscation of Conveyances [Section 115 of the Customs Act, 1962]:**

Vehicles, Vessels, Aircrafts, animals used as a means of transport in the smuggling or improperly for import or export of goods shall be liable to confiscation.

Any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding the market price of the goods which are sought to be smuggled or the smuggled goods as the case may be.

Penalty for not accounting for goods [section 116 of the Customs Act, 1962]:

The person-in-charge of the conveyance shall be liable to pay penalty if any goods loaded in a conveyance for importation into India, or any goods transshipped under the provisions of this Act or coastal goods carried in a conveyance:

- If not unloaded at their place of destination in India, or
- If the quantity unloaded is short of the quantity to be unloaded at that destination, or
- If the failure to unload or the deficiency is not accounted

Quantum of penalty under section 116:

Imported goods:	Exported goods
Penalty not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or deficient goods, as the case may be, had such goods been imported.	Penalty not exceeding twice the amount of export duty that would have been chargeable on the goods not unloaded or deficient goods, as the case may be, had such goods been exported.

Residual Penalty [Section 117]:

As per section 117 of the Customs Act, 1962, if no penalty has been prescribed for contravenes, then the penalty would be ₹ 1,00,000 can be levied (w.e.f. 10.5.2008).

Confiscation of packages and their contents – Section 118

Where any goods imported in a package or brought within the limits of a customs area for the purpose of exportation in a package shall also be liable to confiscation if the importer or exporter violates the provisions of the customs provisions.

Confiscation of goods used for concealing smuggled goods – Section 119

Any goods used for concealing smuggled goods shall also be liable to confiscation. However, goods does not include a conveyance used as a means of transport.

Confiscation of smuggled goods notwithstanding any change in form, etc. – Section 120:

Smuggled goods may be confiscated notwithstanding (i.e. in spite of) any change in their form. Where smuggled goods are mixed with other goods in such manner that the smuggled goods cannot be separated from such other goods, the whole of the goods shall be liable to confiscation.

Owner of goods proves that he had no knowledge or reason to believe that smuggled goods included in the whole of the goods, then such part of smuggled goods shall be liable to confiscation.

Confiscation of sale proceeds of smuggled goods – Section 121

Where any smuggled goods are sold by a person having knowledge or reason to believe that the goods are smuggled goods, the sale-proceeds thereof shall be liable to confiscation.

Case Law 3:**Smuggled goods cannot be treated par with imported goods for the purpose of granting the benefit of the exemption notification:**

The Honorable Supreme Court of India held that if the smuggled goods and imported goods were to be treated as the same, then there would have been no need for two different definitions under the Customs Act, 1962.

The Court observed that one of the principal functions of the Customs Act, 1962 was to curb the ills of smuggling on the economy. Hence, it held that it would be contrary to the purpose of exemption notifications to give the benefit meant for imported goods to smuggled goods. Therefore, the court held that the smuggled goods could not be considered as 'imported goods' for the purpose of benefit of the exemption notification [CCus. (Prev.), *Mumbai v M. Ambalal & Co.* 2010 (260) E.L.T. 487 (SC)].

**Redemption Fine (Section 125)**

The term redemption fine means Option to pay fine in lieu of confiscation. A person makes an unauthorized import of goods liable to confiscation. After adjudication, Assistant Commissioner of Customs provides an option to the importer to pay fine in lieu of confiscation [Section 125(1) of the Customs Act.]:

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

Such an importer is liable to pay in addition to the customs duty and charges payable in respect of such imports, the penalty.

Example 4:

A person makes an unauthorized import of goods liable to confiscation. After adjudication, Assistant Commissioner provides an option to the importer to pay fine in lieu of confiscation. It is proposed to impose a fine (in lieu of confiscation) equal to 50% of margin of profit. From the following particulars calculate the amount of fine that can be imposed: Assessable value – ₹ 50,000, Total duty payable – ₹ 20,000, Market value – 1,00,000. Also calculate the amount of fine and the total payment to be made by the importer to clear the consignment.

Answer:

In the given case Assistant Commissioner intends to impose redemption fine equal to 50% of margin of profit.

Total cost to importer = ₹ 50,000 + ₹ 20,000 = ₹ 70,000.

Margin of profit:

Market value – Total cost to importer = ₹ 1,00,000 – ₹ 70,000 = ₹ 30,000.

Hence, redemption fine will be ₹ 15,000 (@ 50% of ₹ 30,000). In addition, duty of ₹ 20,000 is payable. Thus, importer will have to pay totally ₹ 35,000 to clear the goods from customs.

Option to pay fine in lieu of confiscation also given to exporter of prohibited goods

An exporter who had been held guilty of exporting 'prohibited goods', has an option to pay fine in lieu of confiscation under section 125 of the Customs Act. **CCus. (Preventive), West Bengal v India Sales International 2009 (241) ELT 182 (Cal).**

Selling the confiscated goods during the period of pendency of appeal was not justified

The Customs Officer confiscated the gold carried by the petitioner from Muscat. The Customs Department received the letter from the petitioner about his willing to file an appeal against the order of confiscation. Revenue informed the petitioner that the confiscated goods had been handed over to the warehouse of the Custom House for disposal and consequently, auctioned the confiscated goods. The action of the custom authorities in selling the gold during the pendency of the appeal was not justified. **[Shabir Ahmed Abdul Rehman v UOI 2009 (235) ELT 402 (Bom)]**

Option to redeem the goods with Adjudicating Authority under section 125

Adjudicating Authority is vested with the **discretion to give an option either to confiscate or redeem** the prohibited goods imported/exported even though the goods are liable to absolute confiscation but in case of other goods **[CCus v Alfred Menezes 2009 (242) ELT 334 (Bom)]**

Goods are not redeemed by paying fine

Where the imported goods are confiscated, u/s 125 and goods are not redeemed by paying fine, **the importer is bound to pay the customs duty [Poona Health Services v CCus. 2009 (242) ELT 335 (Bom)]**

No redemption of fine, if goods not available for confiscation

The concept of **redemption fine arises in the event when the goods are available and are to be redeemed**. If the goods are not available, there is no question of redemption of the goods under section 125. The question of confiscating the goods would not arise if there are no goods available for confiscation. **[CCus v Finesse Creation Inc. 2009 (248) ELT 122 (Bom)]**



Offences under Customs

The term Offence means a violation or breach of a law, like evasion of duty and breaking prohibitions under the Customs Act, 1962. However, offence not defined under Customs Act, 1962. Thereby, 'Offence' as any act or omission made punishable by any law for the time being in force.

There are basically two types of punishments namely civil penalty and criminal penalty. Civil penalty for violation of statutory provisions involving a penalty and confiscation of goods and can be exercised by the Department of Customs. Criminal punishment is of imprisonment and fine, which can be granted only in a criminal court after prosecution.

Evasion of duty or prohibition under section 135(1) of the Customs Act, 1962

If a person has nexus with misdeclaration of value or evasion of duty or handling in any manner goods liable for confiscation under section 111 (i.e. Confiscation of improperly imported goods) or section 113 (i.e. Export goods liable for confiscation), he shall be punishable in the following manner:

Imprisonment upto seven years and fine for the following four kinds of offences:

- Market value of offending goods exceeds ₹ one crore
- Value of evasion of duty exceeds ₹ 30 lakhs
- Offence pertains to prohibited goods notified by Central Government of India
- Value of fraudulent availment of drawback/exemption exceeds ₹ 30 lakhs

For all other kind of offences imprisonment is upto three years or fine or both.

For repeat conviction, the imprisonment can be seven years and fine and in absences of special and adequate reasons, the punishment shall not be less than one year.

Cognizable and Non-cognizable Offence

Cognizable offence means an offence for which a police officer may arrest without warrant (i.e. without the order of a Magistrate). Non-cognizable offence means offences under Customs where a police officer cannot investigate cases without the order of a Magistrate.

Cognizance of Offences

As per Section 137(1) of the Customs Act, 1962, Court cannot take cognizance of offences under the Customs Act, 1962 in the following cases without previous sanction of the Commissioner of Customs:

False declaration or documents (Section 132)

- (i) Obstruction (i.e. stop the progress) of Officers of Customs (Section 133)
- (ii) Refusal to be X-rayed (Section 134)
- (iii) Evasion of duty or prohibitions (Section 135)
- (iv) Preparation to do clandestine export (i.e. improper export) (Section 135A)

As per Section 137(2) of the Customs Act, 1962, for taking cognizance of an offence committed by a Customs officer under section 136 the Court needs previous sanction of the Central Government in respect of officers of the rank of Assistant or Deputy Commissioner and above and previous sanction of the Commissioner of Customs in respect of officers lower in rank than Assistant or Deputy Commissioner.

Section 136 of the Customs Act deals with offences by Officers of Customs which are as follows:

- An officer of customs facilitated to do fraudulent export
- Search of persons without reason to believe in the secreting of goods on them
- Arrest of person without reason to believe that they are guilty

These are called **vexatious actions** of department officers.

9.32 COMPOUNDING OF OFFENCES

Compounding means basically a compromise between assessee and department. It means to say that instead of going to court for imposition of fine and imprisonment, the offender (i.e. importer or exporter committed an offence) may agree to pay composition amount. If the case is pending, the accused and the complainant can make a joint application to the court that the parties have come to an agreement not to prosecute further.

Applicant: any importer or exporter but shall not include officers of Customs. Therefore, applicant (importer or exporter) can apply for compounding of offence either before or after launching of prosecution.

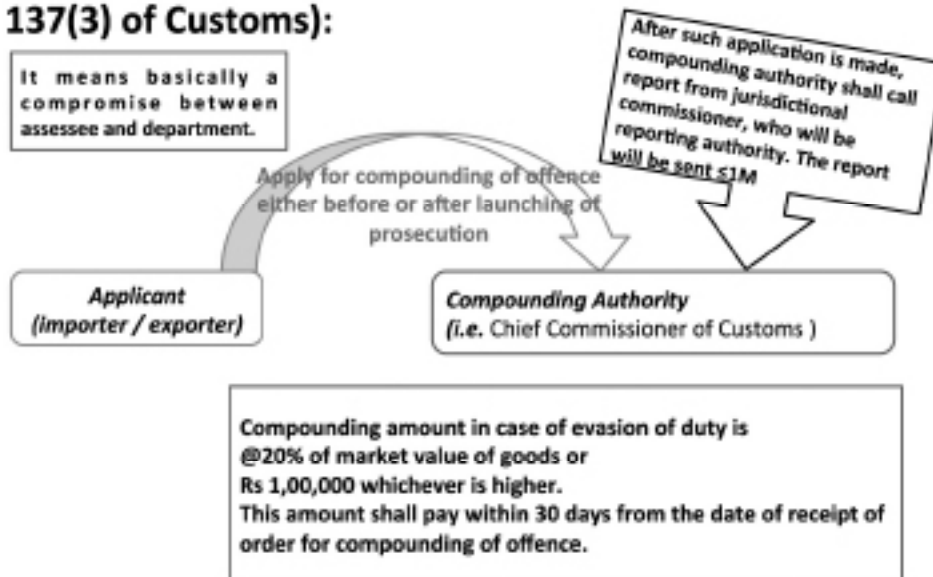
Compounding Authority: means the Chief Commissioner of Customs having jurisdiction over place of applicant. The application can be made for compounding of offence before the Chief Commissioner of Customs by the applicant.

Reporting Authority: means the Commissioner of Customs, from whom report will get by compounding authority with in one month from the date of request. After receiving the report the compounding authority may allow application indicating the compounding amount and grant immunity from prosecution or reject the application.

Compounding amount in case of evasion of duty is @20% of market value of goods or ₹1,00,000, w.e.f. 13-11-2008, whichever is higher. This amount shall pay within 30 days from the date of receipt of order for compounding of offence.

Simplified approach:

Compounding of offences (Sec. 9A(2) of C.Ex. Or Sec. 137(3) of Customs):



Finance (No. 2) Act, 2009 provides that the following mentioned persons shall not be eligible for compounding under section 137(3) of the Customs Act, 1962:

- Offences under section 135 (i.e. Evasion of duty or prohibition) and section 135A (i.e. any person attempting to export goods illegally shall be punishable with imprisonment) of the Customs Act, 1962 already compounded. **(i.e. second time compounding not allowed)**
- Offences under the following Acts, namely:



- the Narcotic Drugs and Psychotropic Substances Act, 1985;
 - the Chemical Weapons Convention Act, 2000;
 - the Arms Act, 1959;
 - the Wild Life (Protection) Act, 1972;
- (iii) A person involved in smuggling of goods falling under any of the following, namely:—
- goods specified in the list of Special Chemicals, Organisms, Materials, Equipment and Technology
 - goods which are specified as prohibited items for import and export
 - any other goods or documents, which are likely to affect friendly relations with a foreign State
- (iv) Offences exceeding ₹ one crore already compounded.
- (v) Person who has been convicted under this Act on or after 30.12.2005

9.33 FIRST CHARGE ON PROPERTY OF ASSESSEE

First Charge on Property of Assessee (Section 142A of the Customs Act, 1962)

Customs duty, interest, penalty and other sum payable will have FIRST CHARGE ON PROPERTY of assessee.

9.34 INTEGRATED DECLARATION UNDER INDIAN CUSTOMS SINGLE WINDOW PROJECT

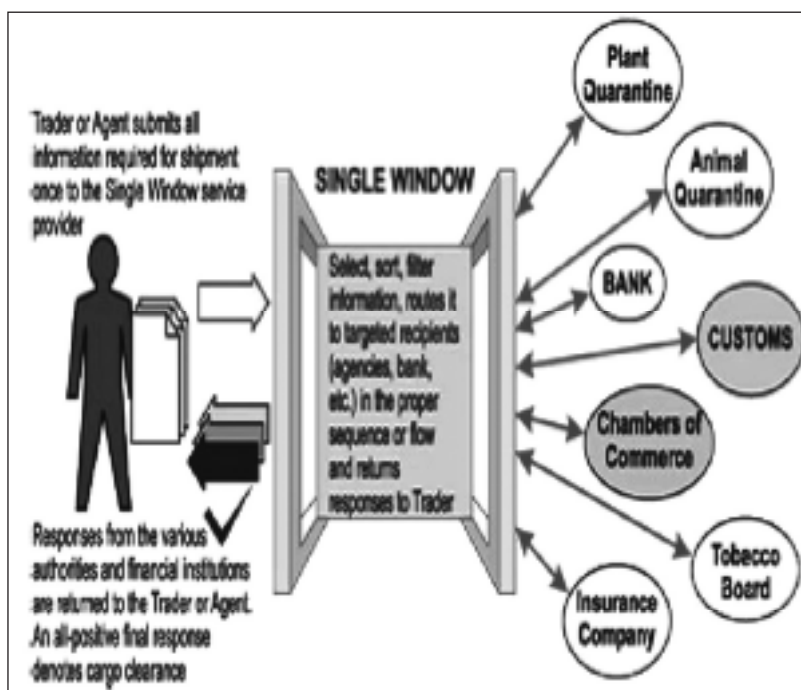
Integrated Declaration under Indian Customs Single Window Project [w.e.f. 1-4-2016]:

- (i) CBEC has taken-up the task of implementing 'Indian Customs Single Window Project' to facilitate trade. This project envisages that the importers and exporters would electronically lodge their Customs clearance documents at a single point only with the Customs.
- (ii) The required permission, if any, from Partner Government Agencies (PGAs) such as Animal Quarantine, Plant Quarantine, Drug Controller, Food Safety and Standards Authority of India, Textile Committee etc. would be obtained online without the importer/exporter having to separately approach these agencies.
- (iii) This would be possible through a common, seamlessly integrated IT systems utilized by all regulatory agencies, logistics service providers and the importers/exporters. The Single Window would thus provide the importers/exporters a single point interface for clearance of import and export goods thereby reducing dwell time and cost of doing business.
- (iv) This online clearance under Single Window Project has been rolled out at main ports and airports in Delhi, Mumbai, Kolkata and Chennai so far. It will be gradually extended across the country.
- (v) CBEC has since developed the 'Integrated Declaration', under which all information required for import clearance by the concerned government agencies has been incorporated into the electronic format of the Bill of Entry.
- (vi) The Customs Broker or Importer shall submit the "Integrated Declaration" electronically to a single entry point, i.e. the Customs Gateway (ICEGATE). Separate application forms required by different PGAs would be dispensed with.
- (vii) The Integrated Declaration will be applicable for consignments to be cleared under the Indian Customs EDI Systems. For the clearance of imported goods in the manual mode, separate documents prescribed by the respective agencies will continue to apply.
- (viii) Apart from incorporating such forms, the Integrated Declaration will also include different types of undertakings, declarations, and letters of guarantee that are presently required to be submitted on company letter heads.
- (ix) Upon filing of the Integrated Declaration, the bill of entry will automatically be referred to concerned agency, if required, based on risk. The system has been modified to enable simultaneous processing of bill of entry by PGA and Customs. The Integrated Declaration has become effective from 1st April, 2016 **[Circular No. 10/2016 Cus dated 15.03.2016]**

Consequently, w.e.f. 01.04.2016, in the Bill of Entry (Electronic Declaration) Regulations, 2011, the term Electronic Declaration has been substituted with the term, Electronic Integrated Declaration vide **Notification No. 45/2016 Cus (NT) dated 01.04.2016**.

Overall view:

Integrated Declaration under Indian Customs Single Window Project w.e.f. 1-4-2016



w.e.f. 14.07.2016 Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016

- (i) Service providers also allowed to import goods at concessional rate of duty Rule 2 has been amended so as to apply these rules mutatis mutandis to a service provider also.
- (ii) Furnishing of security also permitted Rule 5, inter alia, requires a manufacturer who intends to avail the benefit of an exemption notification, to submit a continuity bond with such surety undertaking to pay the amount equal to the difference between the duty leviable on such inputs but for the exemption and that already paid, if any, at the time of importation, along with applicable interest. Said rule has been amended to allow the manufacturer to either submit a security or a surety for the amount specified herein.
- (iii) Time period for re-export of unutilized or defective imported goods extended from 3 months to 6 months Rule 7 allows the manufacturer who has availed the benefit of exemption notification to re-export the unutilized or defective imported goods, with the permission of the jurisdictional Deputy/Assistant Commissioner of Central Excise within 3 months from the date of import, subject to specified conditions. The said time period allowed for re-export has been extended from 3 months to 6 months.

**Self - Examination Questions****Theory Questions with Answer**

Q1. Explain the term Adjudicating Authority

Answer: Please refer point nos. 21.1 and 21.2

Q2. What do you mean by Risk Management System?

Answer: Please refer point no. 21.25

Q3. Write a short note

- (i) Detention Certificate
- (ii) Duty under protest
- (iii) Boat Note
- (iv) Provisional Assessment of Duty

Answer:

- (i) Please refer point no. 21.26
- (ii) Please refer point no. 21.23
- (iii) Please refer point no. 21.27
- (iv) Please refer point no. 21.20

Q4. Write a note on Import General Manifest?

Answer: Please refer point no. 21.19

Q5. Explain the powers of department with regard to appointment of customs ports, airports?

Answer: Please refer point no. 21.6

Q6. Distinguish between the 'Seizure' and 'confiscation' under the customs law.

Answer: Please refer point nos. 21.31

Q7. Enumerate 'Fast Track Clearance' Scheme under Customs Law.

Answer: Please refer point no. 21.15

Q8. Write a short note on Primacy of circulars issued by CBEC over the decisions of Court?

Answer: Please refer point no. 21.5

Q9. Discuss briefly the penalty leviable under section 114 of the Customs Act, 1962 for improper exportation of goods.

Answer: Please refer point no. 21.31

Practical Problems with Answers

Illustration 1. A person makes an unauthorized import of goods liable to confiscation. The value of those goods as computed by the customs officer is ₹ 20 lakhs (exclusive of basic customs duty @12%). You are required to compute penalty under Section 112 of the Customs Act, 1962 from the following independent cases:

- (a) if imported goods are prohibited goods (accepted his fraud after 30 days from the date of receipt of order). Whether your answer is different if accepted his fraud within 30 days from the date of show cause notice.
- (b) if imported goods are non-prohibited goods (duty and interest paid within 30 days of receipt of order under section 112(b)(ii) of Customs Act, 1962). Whether your answer is different if duty and interest has been paid within 30 days of receipt of show cause notice.
- (c) if declared value of imported goods (declared as some other goods) is ₹ 15 lakhs (i.e. non-prohibited goods) if declared value of imported goods (declared as some other goods) is ₹ 15 lakhs (i.e. prohibited goods).



Solution:

- (a) Penalty = ₹ 20 Lakhs
₹ 5,000 or ₹ 20 lakhs whichever is higher.
If duty and interest paid within 30 days of SCN:
Reduced penalty u/s 28(5) = ₹ 3 Lakhs (i.e. ₹ 20 L x 15%)
- (b) Penalty = ₹ 6,180 (i.e. 0.2472 lakhs x 25%)
Working note: ₹ 5,000 or ₹ 0.2472 lakhs whichever is higher (i.e. ₹ 20 lakhs x 12.36% x 10%)
If duty and interest paid within 30 days of RECEIPT OF ORDER, then reduced penalty is 25% of penalty.
If duty and interest has been paid within 30 days of receipt of show cause notice then penalty is nil.
- (c) Penalty = ₹ 5 Lakhs
(i) ₹ 2.472 lakhs
(i.e. ₹ 20 Lakhs x 12.36%)
(ii) ₹ 5 lakhs (i.e. 20 – 15)
whichever is higher
(iii) ₹ 5,000
Therefore, penalty = ₹ 5 lakhs
- (d) Penalty = ₹ 20 lakhs
whichever is higher
(i) ₹ 20 lakhs
(ii) ₹ 20 lakhs – ₹ 15 lakhs = ₹ 5 lakhs.
(iii) ₹ 5,000

Illustration 2. A person makes an unauthorized export of goods liable to confiscation. The value of those goods as computed by the customs officer is ₹ 10 lakhs. You are required to compute penalty under Section 114 of the Customs Act, 1962,

- (a) If export goods are prohibited goods (declared as some other goods) for ₹ 5 lakhs. What is the penalty if the accepted his fraud before issuance of show cause notice? Whether your answer is different if accepted his fraud within 30 days from the date of receipt of show cause notice.
Rework the penalty in case of (a) if accepted his fraud within 30 days from the date of receipt of order.
- (b) if export goods are non-prohibited goods (declared as some other goods) for ₹ 5 lakhs, applicable rate of duty @10%. What is the penalty if duty and interest paid within 30 days from the date of receipt of notice? Whether your answer is different if duty and interest paid within 30 days from the date of receipt of order?
- (c) if export goods are non-prohibited goods (declared as some other goods) for ₹ 5 lakhs, exempt from export duty.

Solution:

- (a) Penalty = ₹ 10 lakhs
Whichever is higher
(i) ₹ 10 lakhs
(ii) ₹ 5,000
if the duty and interest has been paid before issuance of show cause notice, then reduced penalty @15% of penalty. Therefore, penalty is ₹ 1.50 Lakhs (i.e. ₹ 10 L x 15%).
if duty and interest is paid within 30 days from the date of receipt of show cause notice penalty is ₹ 1.50 Lakhs.



(b) Penalty = ₹ 10,000

Whichever is higher

(i) 10% of ₹ 1 lakh = ₹ 10,000

Duty = ₹ 1 lakh (i.e. ₹ 10 lakhs x 10%)

Note: no education cess and SAH education cess on exports.

(ii) ₹ 5,000.

if duty and interest paid within 30 days from the date of receipt of notice, then penalty is nil.

if duty and interest paid within 30 days from the date of receipt of order, then reduced penalty is 25% of such penalty. Therefore, penalty is 2,500 (i.e. ₹ 10,000 x 25%).

(c) Penalty = ₹ 10 lakhs

Whichever is higher

(i) ₹ 5 lakhs

(ii) ₹ 10 lakhs

Redemption Fine

Illustration 3. A person makes an unauthorized import of goods liable to confiscation. After adjudication, Assistant Commissioner provides an option to the importer to pay fine in lieu of confiscation. It is proposed to impose a fine (in lieu of confiscation) equal to 50% of margin of profit. From the following particulars calculate the amount of fine that can be imposed: Assessable value – ₹ 1,50,000, Total duty payable – ₹ 60,000, Market value – ₹ 2,50,000. Also calculate the amount of fine and the total payment to be made by the importer to clear the consignment.

Solution:

In the given case Assistant Commissioner intends to impose redemption fine equal to 50% of margin of profit.

Total cost to importer = ₹ 1,50,000 + ₹ 60,000 = ₹ 2,10,000.

Margin of profit =

Market value – Total cost to importer = ₹ 2,50,000 – ₹ 2,10,000 = ₹ 40,000.

Hence, redemption fine will be ₹ 20,000 (@ 50% of ₹ 40,000). In addition, duty of ₹ 60,000 is payable. Thus, importer will have to pay totally ₹ 80,000 to clear the goods from customs.

Illustration 4. Mr. D, an exporter was held guilty of exporting 'prohibited goods' due to which his goods were confiscated. He demanded the release of goods in lieu of redemption fine under section 125 of the Customs Act, 1962.

However, the customs officer denied to grant him the said option.

Examine whether, in the instant case, the customs officer is bound to release the goods in lieu of redemption fine.

Solution:

In case of prohibited goods	In case of non-prohibited goods
the adjudicating officer may provide an option to the owner of the goods to pay redemption fine in lieu of confiscation if the importation or exportation of goods is prohibited.	if importation or exportation of goods is not prohibited, the option to pay redemption fine shall be given to the owner of goods.

Therefore, an exporter guilty of exporting prohibited goods is not entitled as such to an option to pay fine in lieu of confiscation under section 125 of the Customs Act, 1962.

It is at the discretion of the adjudicating officer to give or not to give such an option to the exporter guilty of exporting prohibited goods.



Case Studies with Answers

Classification

Q.1 Rama Telecoms were engaged in the business of providing telecommunication services in various States in India. For their business Rama Telecoms imported Optic Fibre Cables (OFC) and classified them under Heading 85.44 of the Customs Tariff. However, the Department claimed that the goods should be classified under Heading 90.01. The Commissioner of Customs (Appeals), when the matter was brought before him, held that the impugned goods were classifiable under Heading 85.44 of the Customs Tariff. The Department has filed an appeal before CESTAT against the said order which has yet not been decided.

Meanwhile, the customs authorities (DRI officers) have seized the consignment of OFC imported and cleared by Rama Telecom on payment of duty assessed under Heading 85.44 and forced Rama Telecoms to pay the differential duty between Headings 85.44 and 90.01 by threat and coercion.

Examine the validity of the action of the customs authorities, with the help of a decided case law, if any.

Answer: The action of the Director of Revenue (D.R.I) officers of the Customs is not valid. Optic Fibre Cables correctly classified by the importer as per the order of the Commissioner of Customs (Appeals) and paid the duty accordingly. Therefore, the action of the Director of Revenue Intelligence (D.R.I. officers) in the Customs Department in seizing the goods and collecting money from the petitioners was wholly unjustified. Moreover, in the absence of any reassessment order passed determining the duty liability, there would be no question of recovering differential duty. [*Vodafone Essar South Ltd. v UOI 2009 (237) ELT 35 (Bom)*]

Imported duty exempted based on conditions

Q2. Mr. C is a manufacturer importing the machine without payment of customs duty as an actual user in view of an exemption allowed on the condition that importer would use for its own use for a period of 5 years. The machine was insured by it with the National Insurance Company Limited. The machine met with an accident and assessee reported the accident to the insurance company and claimed insurance. The insurance company settled the claim of assessee on a total loss basis and paid the settled amount to the assessee after deducting its scrap/residual value of machine.

According to Department the machine was allowed to be imported without payment of duty on condition that the importer would use it for its own use for a period of 5 years. Since the machine, though met with an accident, was sold within a period of 5 years of the import, the condition for a duty free import was breached and was liable for confiscation under section 111(o) (i.e. Section 111(o) reads as goods conditionally exempted or prohibited; but conditions are not fulfilled) of the Customs Act, 1962. The Department accordingly seized the machine from the premises of the assessee.

Assessee, contended that, no notice was issued to it prior to the seizure or even after the seizure till date under Section 110(2) read with of Section 124 of the Act within 6 months (which could be extended by a further period of 6 months). Discuss briefly taking support of decided case law, if any.

Answer: Show Cause Notice (SCN) shall be issued within SIX months from the date of seizure. This period can be further extended by SIX months on sufficient cause, by the Commissioner of Central Excise or Customs. If no show cause notice issued within SIX months, the goods shall be returned to person from whose possession they were seized as per section 110 read with section 124 of the Customs Act, 1962.

In the given case, show cause notice under Section 110 read with section 124 of the Act has not been issued to the assessee within a period of 6 months. In fact the notice has not been issued till today. Consequently, the continued detention of the goods seized beyond the statutory period of 6 months under section 110(1) of the Customs Act, 1962 is not valid. [*Gawar Construction Ltd. 2009 (HC)*]

Seizure of goods

Q3. The goods imported by Perfect Ltd., the assessee, were detained on 14th September, 2009. However, the assessee could not produce the documentary evidence. Consequently, the impugned goods were seized on 8th February, 2010. The department issued a show cause notice to the assessee on 15th May, 2010. The assessee put forth a question of limitation alleging that the impugned show cause notice had been issued after a period of six months. The goods were detained on 14th September, 2009, but the show cause notice was issued on 15th May, 2010. Perfect Ltd. has sought for quashing of the show cause notice and also for the return of the goods. Examine.



Answer: Where any goods are seized under section 110(1) and no show cause notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized. [**Pro Musicals v Joint Commissioner Customs (Prev.), Mumbai 2008 (227) ELT 182 (Mad)**]

Hence, the Court ruled out the assessee's contention that detention and seizure were one and the same. It means detention is not the seizure but seizure includes the detention. Goods were seized on 8th February 2010 and show cause notice to the assessee has been issued on 15th May 2010, which is well within the limit of Six months from the date of seizure. The Court further held that the show cause notice issued by the Department was valid.

Therefore, the contention of Perfect Ltd. is not sustainable in law.

Confiscation of goods

Q4. The customs authority confiscated the gold carried by Rafi (assessee) from Dubai. Rafi informed the custom authorities that he was filing an appeal against the order of confiscation. The customs authorities informed Rafi that the confiscated goods had been handed over to the warehouse of the Customs House for disposal and consequently, auctioned the confiscated goods.

Examine the validity of the action of the customs authorities, with the help of a decided case law, if any?

Answer: Handing over the confiscated gold immediately after serving the order of confiscation itself was improper. Hence, the action of the customs authorities is not valid in law. [**Shabir Ahmed Abdul Rehman v UOI 2009 (235) ELT 402 (Bom)**]

Q5. Importer BOPP Ltd. imported two consignments of ethyl alcohol which were allowed to be cleared for home consumption on execution of a bond undertaking to produce licence within a month. Since, appellant failed to fulfill the obligation, proceedings were initiated which culminated in confiscation of the goods under Section 111(d) of the Customs Act, 1962 and imposition of penalty on the importer under section 112(a) of the Customs Act, 1962. Examine the correctness of the decision in terms of statutory provisions.

Answer: The given case is similar to the case of **Hira Lal Hari Bhagwati v CBI (2003) 155 ELT 433 (SC)**. The Supreme Court of India had held that no penalty can be imposed if the goods are imported with bona fide belief that they are entitled to exemption, later on they could not fulfill conditions of exemption but paid the duty. Further it was held that for establishing offence of cheating, complainant (i.e. importer) is required to show dishonest intention at the time of making promise or presentation. Thereby there is no penalty under section 112(a) of the Customs Act, 1962.

With regard to confiscation of the goods under Section 111(d) of the Customs Act, 1962, the Apex Court namely the Supreme Court of India in the case of **Sachinanda Banerji v Sitaram Agarwala 110 ELT 292 (SC)**, held that goods imported against restrictions under section 11 of the Customs Act, 1962 (Section 11 deals with power to prohibit importation or exportation of goods) are liable to confiscation whenever they are found even if this is long after import is over and even if they are in possession of third persons who had nothing to do with actual import.

Thereby, Department action to confiscate the goods under section 111(d) of the Customs Act, 1962 is valid.

Offences and criminal proceedings:

Q6. Pranav and Parul, the petitioners, were engaged in the business of import in trading of textiles and some other consumable goods. During search, the statements of both the petitioners were recorded and the petitioners were arrested for the offence under sections 132 and 135 of the Customs Act, 1962 on account of alleged false declaration, false documents and evasion of customs duty. Simultaneously, adjudication proceedings were also initiated under the Act. The accused persons were exonerated by the competent authority/tribunal in the adjudication proceedings. Criminal proceedings were carried on simultaneously and petitioners were alleged to have committed offences punishable under sections 132 and 135(1)(b). Whether the criminal prosecution can be permitted to continue against both when the adjudication proceedings are in favour of them? Discuss. **Answer:**

In case of **Kapil Rai and Jatin Kapoor v Union of India (2008) (HC)** New Delhi, court held that where the accused persons are exonerated by the competent authorities/Tribunal in adjudication proceedings, one will have to see that reasons for such exoneration to determine whether these criminal proceedings could still continue.



If the exoneration in departmental adjudication is on technical ground or by giving benefit of doubt and not on merits or the adjudication proceedings were on different facts, it would have no bearing on criminal proceedings.

If, on the other hand, the exoneration in the adjudication proceedings is on merits and it is found that allegations are not substantiated at all and the concerned persons(s) is/are innocent, and the criminal prosecution is also on the same set of facts and circumstances, the criminal prosecution cannot be allowed to continue.

If the departmental authorities themselves, in adjudication proceedings, record a categorical and unambiguous finding that there is no such contravention of the provisions of the Act, it would be unjust for such departmental authorities to continue with the criminal complaint.

From the above discussion it is evident that the criminal prosecution can not be permitted to continue against both when the adjudication proceedings are in favour of them. Because, charges in the departmental proceedings as well as criminal complaint are identical and the exoneration of the concerned person in the departmental proceedings is on merits holding that there is no contravention of the provisions of any Act.

Q7. The customs authority confiscated the gold from Mr. Rafi, at the time of import from Dubai. Mr. Rafi informed the custom authorities that he was filing an appeal against the order of confiscation.

Answer 7: Handing over the confiscated gold immediately after serving the order of confiscation itself was improper. Hence, the action of the customs authorities is not valid in law. [**Shabir Ahmed Abdul Rehman v UOI 2009 (235) ELT 402 (Bom)**]

Q8. Case law:

Can customs duty be demanded under section 28 and/or section 125(2) of the Customs Act, 1962 from a person dealing in smuggled goods when no such goods are seized from him?

CCus. v Dinesh Chhajer 2014 (300) ELT 498 (Kar)

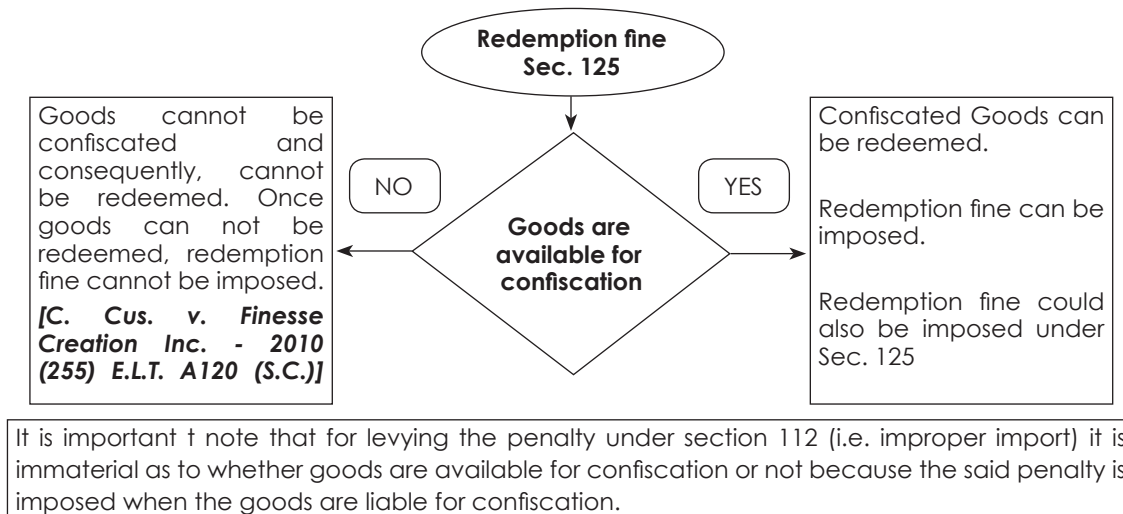
Decision: The High Court held that Tribunal was justified in holding that no duty is

leviable against the assessee as he is neither the importer nor the owner of the goods or was in possession of any goods.

Confiscated goods can be redeemed:

Q9. Under Customs Act, 1962 can redemption fine be imposed and penalty under section 112 be levied after release of imported goods on execution of a bond, if it is found subsequently that there has been an irregularity in the import? Discuss with the help of decided case law(s), if any.

Answer:



Study Note - 10

CUSTOMS (IMPORT OF GOODS AT CONCESSIONAL RATE OF DUTY) RULES, 2017



This Study Note includes

10.1 Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017

10.1 CUSTOMS (IMPORT OF GOODS AT CONCESSIONAL RATE OF DUTY) RULES, 2017

These rules were notified vide Notification No. 68 /2017 - Customs (N. T.) dated 30th June 2017. They shall come into force on the 1st day of July, 2017.

Rule 2 - Application

- (1) These rules shall apply to an importer, who intends to avail the benefit of an exemption notification issued under sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and where the benefit of such exemption is dependent upon the use of imported goods covered by that notification for the manufacture of any commodity or provision of output service.
- (2) These rules shall apply only in respect of such exemption notifications which provide for the observance of these rules.

Rule 3 - Definition

In these rules, unless the context otherwise requires, -

- (a) "Act" means the Customs Act, 1962 (52 of 1962);
- (b) "exemption notification" means a notification issued under sub-section (1) of section 25 of the Act;
- (c) "information" means the information provided by the manufacturer who intends to avail the benefit of an exemption notification;
- (d) "Jurisdictional Custom Officer" means an officer of Customs of a rank equivalent to the rank of Superintendent or an Appraiser exercising jurisdiction over the premises where either the imported goods shall be put to use for manufacture or for rendering output services;
- (e) "manufacture" means the processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly;
- (f) "output service" means supply of service with the use of the imported goods.

Rule 4- Information about intent to avail benefit of exemption notification.

An importer who intends to avail the benefit of an exemption notification shall provide the information to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, the particulars, namely:-



- (i) the name and address of the manufacturer;
- (ii) the goods produced at his manufacturing facility;
- (iii) the nature and description of imported goods used in the manufacture of goods or providing an output service.

Rule 5- Procedure to be followed

- (1) The importer who intends to avail the benefit of an exemption notification shall provide the following information –
- (i) the estimated quantity and value of the goods to be imported,
 - (ii) particulars of the exemption notification applicable on such importand
 - (iii) the port of import in respect of a particular consignment for a period not exceeding one year;
 - (a) in duplicate, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, and
 - (b) in one set, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at the Custom Station of importation.
- (2) Submission of Bond - The importer who intends to avail the benefit of an exemption notification shall submit a continuity bond with such surety or security as deemed appropriate by the Deputy Commissioner of Customs or Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, with an undertaking to pay the amount equal to the difference between the duty leviable on inputs but for the exemption and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.
- (3) The Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, shall forward one copy of information received from the importer to the Deputy Commissioner of Customs, or as the case may be, Assistant Commissioner of Customs at the Custom Station of importation.
- (4) On receipt of the copy of the information under clause (b) of sub-rule (1), the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at the Custom Station of importation shall allow the benefit of the exemption notification to the importer who intends to avail the benefit of exemption notification.

Rule 6 -Maintaining records and furnishingImporter who intends to avail the benefit of an exemption notification to give information regarding receipt of imported goods and maintain records. –

- (1) The importer who intends to avail the benefit of an exemption notification shall provide the information of the receipt of the imported goods in his premises where goods shall be put to use for manufacture, within two days (excluding holidays, if any) of such receipt to the jurisdictional Customs Officer.
- (2) The importer who has availed the benefit of an exemption notification shall maintain an account in such manner so as to clearly indicate the quantity and value of goods imported, the quantity of imported goods consumed in accordance with provisions of the exemption notification, the quantity of goods re-exported, if



any, under rule 7 and the quantity remaining in stock, bill of entry wise and shall produce the said account as and when required by the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service.

- (3) The importer who has availed the benefit of an exemption notification shall submit a quarterly return, in the Form appended to these rules, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, by the tenth day of the following quarter.

Rule 7 Re-export or clearance of unutilised or defective goods

- (1) The importer who has availed benefit of an exemption notification, prescribing observance of these rules may reexport the unutilised or defective imported goods, within six months from the date of import, with the permission of the jurisdictional Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service:

Provided that the value of such goods for re-export shall not be less than the value of the said goods at the time of import.

- (2) The importer who has availed benefit of an exemption notification, prescribing observance of these rules may also clear the unutilised or defective imported goods, with the permission of the jurisdictional Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, within a period of six months from the date of import on payment of import duty equal to the difference between the duty leviable on such goods but for the exemption availed and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

Rule 8 Recovery of duty in certain case. –

The importer who has availed the benefit of an exemption notification shall use the goods imported in accordance with the conditions mentioned in the concerned exemption notification or take action by re-export or clearance of unutilised or defective goods under rule 7 and in the event of any failure, the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service shall take action by invoking the Bond to initiate the recovery proceedings of the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

References in any rule, notification, circular, instruction, standing order, trade notice or other order pursuant to the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 and any provision thereof or to the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 and any corresponding provisions thereof shall, be construed as reference to the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.



QUARTERLY RETURN
Return for the quarter ending _____

Sl. No.	Bill of Entry No. and date	Description of goods imported at concessional rate Description of goods imported at concessional rate	Opening balance on the 1st day of the quarter	Details of goods imported during the quarter							Specified purpose for procuring the goods at concessional rate of duty.	Goods manufactured during the quarter/Output service provided		Whether the goods used for specified purpose or not and in case of export, specify the quantity exported with details of Tax Invoice
				Value of goods received during the quarter	Quantity of goods received during the quarter	Total of column (4) and (6)	Quantity consumed for the intended purpose, during the quarter	Quantity re-exported during the quarter	Quantity cleared in to the domestic market during the quarter	Closing balance on the last day of the quarter		Description	Quantity	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)

Study Note - 11

SEARCH, SEIZURE, CONFISCATION, AND MISCELLANEOUS PROVISIONS



This Study Note includes

- 11.1 Search of Persons, Premises and Conveyances
- 11.2 Seizure of Goods, Documents and Things
- 11.3 Confiscation of Goods, Conveyances and Penalty on Improper Importation and Exportation
- 11.4 Burden of Proof and Redemption Fine
- 11.5 Offences under Customs

11.1 SEARCH OF PERSONS, PREMISES AND CONVEYANCES

Power to Search Suspected Persons Entering Or Leaving India (Section 100)

Under Section 100 of the Act where the proper officer of the Customs has reason to believe that the following categories of persons have secreted any goods, liable to confiscation or any documents thereto, he may search such persons: -

- (a) any person who has landed from or is about to board, or is on board any vessel within the Indian Customs waters;
- (b) any person who has landed from or is about to board, or is on board a foreign-going aircraft;
- (c) any person who has got out of, or is about to get into, or is in vehicle, which has arrived from, or is to proceed to any place outside India;
- (d) any person not included in clauses (a), (b) or (c) who has entered or is about to leave India;
- (e) any person in a customs area.

Power to Search Suspected Persons In Certain Other Cases (Section 101)

Under Section 101 of the Act, an officer of the Customs empowered generally or specially by an order of Principal Commissioner of Customs can search any person if he has reason to believe that any person has secreted about his person, the following goods which are liable to confiscation, or documents relating thereto:

- (a) gold;
- (b) diamonds;
- (c) manufactures of gold or diamond;
- (d) watches;
- (e) any other class of goods which the Central Government may, by notification in the Official Gazette, specify.

The power under Section 101 is without prejudice to the power conferred under Section 100 of the Act. Again under Section 101 any person can be searched.

Persons to Be Searched May Require To Be Taken Before Gazetted Officer Of Customs Or Magistrate (Section 102)

Section 102 of the Act provides that when any officer of Customs is about to search any person in terms of Sections 100 and 101, he shall, if such person so requires, take him without unnecessary delay to the nearest Gazetted Officer of customs or magistrate. If such requisition is made, the officer of customs may detain the person making it until, he can bring him before the gazetted officer of customs or the magistrate.



The Gazetted Officer of customs or the magistrate before whom any —such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person. In other cases, he shall direct that a search be made.

Before making a search, the officer of Customs shall call upon two or more persons to attend and witness the search and may issue an order in writing to them or any of them so to do. The search would be made in the presence of such persons and a list of all things seized in the course of such search shall be prepared by such officer or other person and signed by such witnesses.

Where the person to be searched is a female, the search shall be done by a female only.

Power to Screen or X-Ray Bodies of Suspected Persons for Detecting Secreted Goods (Section 103)

Section 103 of the Act contains powers, to screen or X-Ray bodies of persons suspected of secreting certain goods liable to confiscation.

Where the proper officer has reason to believe that any person referred to in sub-section (2) of section 100 has any goods liable to confiscation secreted inside his body, he may detain such person and produce him without unnecessary delay before the nearest magistrate. The Magistrate before whom any person is brought shall, if he sees how reasonable ground for believing that such person has any such goods secreted inside his body, forthwith discharge such person.

On the other hand, where the Magistrate has reasonable ground for believing that any such person has any such goods liable for confiscation secreted in his body and the Magistrate is satisfied that an X-Ray is necessary for this purpose, he may make an order and such person would be taken to a radiologist possessing qualifications recognized by the Central Government for the purpose of screening or X-raying the body and such person shall allow the radiologist to screen or X-ray his body.

The radiologist shall, after the screening or X-Ray, forward his report together with the X-Ray picture taken by him to the Magistrate without unnecessary delay. On receipt of the report of radiologist, if the Magistrate is satisfied that any person has any goods liable to confiscation secreted inside his body, he may direct; that suitable action for bringing out such goods be taken on the advice and under the supervision of a registered medical practitioner and such person shall be bound to comply with such direction.

In the case of a female, the advice and supervision of a female registered medical practitioner is required. For the purposes of complying with the provisions of this section any person brought before the Magistrate may be detained by him for such period as the Magistrate may direct. The above provisions will not apply to any such person who admits that goods liable to confiscation are secreted in his body and who voluntarily submits himself for suitable action being taken for bringing out such goods.

Power to Arrest (Section 104)

If an officer of customs empowered in this behalf by general or special order of the Principal Commissioner of Customs or Commissioner of Customs has reason to believe that any person in India or within the Indian customs waters has committed an offence punishable under section 132 or section 133 or section 135 or section 135A or section 136, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

Every person arrested shall, without unnecessary delay, be taken to a magistrate.

Where an officer of customs has arrested any person he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police station has and is subject to under the Code of Criminal Procedure, 1898. As per sub-section (4), notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence relating to

(a) prohibited goods; or

(b) evasion or attempted evasion of duty exceeding ₹ 50 Lakh, shall be cognizable.

All other offences under the Act shall be non-cognizable except the two above.



As per sub-section (6), notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under section 135 relating to –

- (a) evasion or attempted evasion of duty exceeding fifty lakh rupees; or
- (b) prohibited goods notified under section 11 which are also notified under sub-clause (C) of clause (i) of sub-section (1) of section 135; or
- (c) import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds one crore rupees; or
- (d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds fifty lakh rupees, shall be non-bailable.

Except as provided in sub section (6), all other offences under this Act shall be bailable.

Power to Search Premises (Section 105)

Section 105 of the Act provides that if the Assistant/Deputy Commissioner of Customs or any other officer of customs in case of any area adjoining the land frontier or the coast of India specially empowered by name in this behalf by the Board, has reason to believe that any goods liable to confiscation or any documents or things which in his opinion will be useful to any proceedings under the Act, are secreted in any place, he may authorise any officer of customs to search or may himself search for such goods, documents, or things.

The provisions of the Code of Criminal Procedure, 1898 relating to searches shall, so far as may be, apply to searches under this section

Power to Stop and Search Conveyances (Section 106)

Where the proper officer has reason to believe that any aircraft, vehicle or animal in India or any vessel in India or within the Indian customs waters has been, is being, or is about to be, used in the smuggling of any goods or in the carriage of any goods which have been smuggled, he may at any time stop any such vehicle, animal or vessel or, in the case of an aircraft, compel it to land, and -

- (a) rummage and search any part of the aircraft, vehicle or vessel;
- (b) examine and search any goods in the aircraft, vehicle or vessel or on the animal;
- (c) break open the lock of any door or package for exercising the powers conferred by clauses (a) and (b), if the keys are withheld.

Where for the purposes above -

- (a) it becomes necessary to stop any vessel or compel any aircraft to land, it shall be lawful for any vessel or aircraft in the service of the Government while flying her proper flag and any authority authorised in this behalf by the Central Government to summon such vessel to stop or the aircraft to land, by means of an international signal, code or other recognized means, and thereupon, such vessel shall forthwith stop or such aircraft shall forthwith land; and if it fails to do so, chase may be given thereto by any vessel or aircraft as aforesaid and if after a gun is fired as a signal the vessel fails to stop or the aircraft fails to land, it may be fired upon;
- (b) it becomes necessary to stop any vehicle or animal, the proper officer may use all lawful means for stopping it, and where such means fail, the vehicle or animal may be fired upon.

Power to Inspect (Section 106A)

Section 106A of the Act empowers an Officer of Customs to enter any place intimated under Chapter IVA or IVB of the Act and inspect the goods kept or stored therein and require any person found therein, who is for the time being in charge thereof, to produce to him for this inspection the accounts maintained under the said Chapter IVA or Chapter IVB and to furnish to him such other information as he may reasonably require for the purpose of ascertaining whether or not such goods have been illegally imported, exported or likely to be illegally exported.



Power to Examine Persons (Section 107)

Any officer of customs empowered in this behalf by general or special order of the Principal Commissioner of Customs or Commissioner of Customs may, during the course of any enquiry in connection with the smuggling of any goods, -

- (a) require any person to produce or deliver any document or thing relevant to the enquiry ;
- (b) examine any person acquainted with the facts and circumstances of the case.

Power to Summon Persons to Give Evidence and Produce Documents (Section 108)

Any Gazetted officer of Customs (the words "empowered by the Central Government", has been omitted by Finance Act, 2008 w.e.f. 13th July 2006) shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making under this Act. 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. All persons so summoned shall be bound to attend either in person or by an authorised agent and state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required.

Provided that the exemption under section 132 of the Code of Civil Procedure, 1908 (5 of 1908), shall be applicable to any requisition for attendance under this section.

Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860).

Obligation to furnish information

Section 108A- Any person who is responsible for maintaining record of registration or statement of accounts or holding any other information under any of the Acts specified above or under any other law for the time being in force, which is considered relevant for the purposes of this Act, shall furnish such information to the proper officer in such manner as may be prescribed by rules made under this Act.

Where the proper officer considers that the information furnished is defective, he may intimate the defect to the person who has furnished such information and give him an opportunity of rectifying the defect within a period of seven days from the date of such intimation or within such further period which, on an application made in this behalf, the proper officer may allow and if the defect is not rectified within the said period of seven days or, further period, as the case may be, so allowed, then, notwithstanding anything contained in any other provision of this Act, such information shall be deemed as not furnished and the provisions of this Act shall apply.

Where a person who is required to furnish information has not furnished the same within the time specified, the proper officer may serve upon him a notice requiring him to furnish such information within a period not exceeding thirty days from the date of service of the notice and such person shall furnish such information.

Penalty for failure to furnish information return

Section 108B - Where the person who is required to furnish information under section 108A fails to do so within the period specified in the notice issued, the proper officer may direct such person to pay, by way of penalty, a sum of one hundred rupees for each day of the period during which the failure to furnish such information continues.

Power to Require Production of Order Permitting Clearance of Goods Imported By Land (Section 109)

Any officer of customs appointed for any area adjoining the land frontier of India and empowered in this behalf by general or special order of the Board, may require any person in possession of any goods which such officer has reason to believe to have been imported into India by land, to produce the order made under section 47 permitting clearance of the goods :

However, this section shall not apply to any imported goods passing from a land frontier to a land customs station by a route appointed under clause (c) of section 7.

Power to undertake controlled delivery



Section 109A – The proper officer or any other officer authorised by him in this behalf, may undertake controlled delivery of any consignment of such goods and in the prescribed manner, to-

- (a) any destination in India; or
- (b) a foreign country, in consultation with the competent authority of such country to which such consignment is destined.

"Controlled delivery" means the procedure of allowing consignment of such goods to pass out of, or into, the territory of India with the knowledge and under the supervision of proper officer for identifying the persons involved in the commission of an offence or contravention under this Act.

11.2 SEIZURE OF GOODS, DOCUMENTS AND THINGS

Persons involved in smuggling and other modus operandi (i.e. Manner of operation) of imports and exports, in violation of prohibitions or restrictions with intent to evade duties or fraudulently claim export incentives are liable to serious penal action under the Customs Act, 1962.

The offending goods can be confiscated and heavy fines and penalties imposed. There are provisions for arrests and prosecutions.

Detention of goods

It means the goods are temporarily detained by officer to check whether there is any violation of law. In the case of **Pro Musicals v Joint Commissioner Customs (Prev.), Mumbai 2008 (227) ELT 182 (Mad)** the Court clarified that the detention of goods is actually taking the custody of the goods and keeping it under restraint from being taken by the parties; but, the party is entitled to produce sufficient documentary evidence, and if he shows proof, he can take it. At that juncture, no question of seizure would arise. If such person not shows proof, then said goods are seized.

Seizure of goods (Section 110 of the Customs Act, 1962)

The term seizure meant to take possession of the property contrary to the wishes of the owner of the goods in pursuance of a demand under legal right. Seizure involved not merely the custody of goods but also a deprivation (i.e. losing something) of possession of goods. It means to say that under seizure goods are taken in custody by the department. A stage before confiscation is called seizure. Generally goods liable to be confiscated may be seized.

Detention is without seizure and possession of goods whereas seizure of goods necessarily means detention plus taking possession of goods by officer.

Goods should be returned within six months if no Show Cause Notice has been issued

Show Cause Notice (SCN) shall be issued within six months from the date of seizure. This period can be further extended by SIX months on sufficient cause, by the Commissioner of Central Excise or Customs. If no show cause notice issued within SIX months, the goods shall be return to person from whose possession they were seized.

Release of seized goods and documents (w.e.f. 8-4-2011):

Seized goods and documents can be released by adjudicating authority on submission of bond and security under section 110A of the Customs Act, 1962. Therefore, permission of Commissioner of Customs is not required w.e.f. 8-4-2011.

Case Law : 2

Manish Lalith Kumar Bavishi (2011).

Point of dispute: If any documents seized during the course of any action by an officer and relatable to the provisions of Customs Act, that officer was bound to make the documents available copies of those documents?

Answer: Yes. The Bombay High Court held the same view in the case of **Manish Lalith Kumar Bavishi (2011).**



11.3 CONFISCATION OF GOODS, CONVEYANCES AND PENALTY ON IMPORTER IMPORTATION AND EXPORTATION

Confiscation of goods

The term confiscation of goods means the goods become property of Government and Government can deal with these goods as it desires. Once confiscated goods are become property of Central Government, no duty liability arises on assessee whose goods are confiscated.

Search, seizure and confiscation not applicable to service tax.

However, in some cases, the person from whom goods were seized can be get them back on payment of fine (i.e. Redemption fine in lieu of confiscation) under section 125(1) of the Customs Act, 1962.

Provisions governing Confiscation under Customs Act, 1962

Goods are liable for confiscation in the following circumstances:

- Confiscation of improperly imported goods – Section 111
- Export goods liable for confiscation – Section 113
- Confiscation of Conveyances (i.e. Vehicles, Vessels, Air crafts, animals used as a means of transport in the smuggling) if used improperly for import or export of goods – Section 115
- Confiscation of packages and their contents – Section 118
- Confiscation of goods used for concealing smuggled goods – Section 119
- Confiscation of smuggled goods notwithstanding any change in form, etc. – Section 120

For example gold biscuits converted into jewellery. Hence, the entire value of jewellery is liable for confiscation.

- Confiscation of sale proceeds of smuggled goods – Section 121

As per section 124 of the Customs Act, 1962, before confiscating goods, Show Cause Notice must be issued to owner of goods giving grounds for confiscation. Time limit of SIX months as given in Section 110 of the Customs Act, 1962 is not applicable. It means there is no time limit is specified in case of issue of SCN for confiscation of goods. As per section 28 of the Customs Act, 1962, goods can be confiscated even after the goods are cleared from customs station.

Goods already exported cannot be confiscated under Section 113 of the Customs Act, 1962

Wrong confiscation of goods:

Once the action of the Customs department with regard to confiscation of goods, set aside by Tribunal or Court (i.e. set aside means make inoperative or stop) the person is eligible to get back the goods. If in the meanwhile, goods have been sold by the Customs authorities, market value of goods as on date of setting aside confiscation of the order of confiscation by the judgment is payable (**Northern Plastics Ltd. v CCE (2000) (SC)**).

Confiscation of improperly imported goods – Section 111:

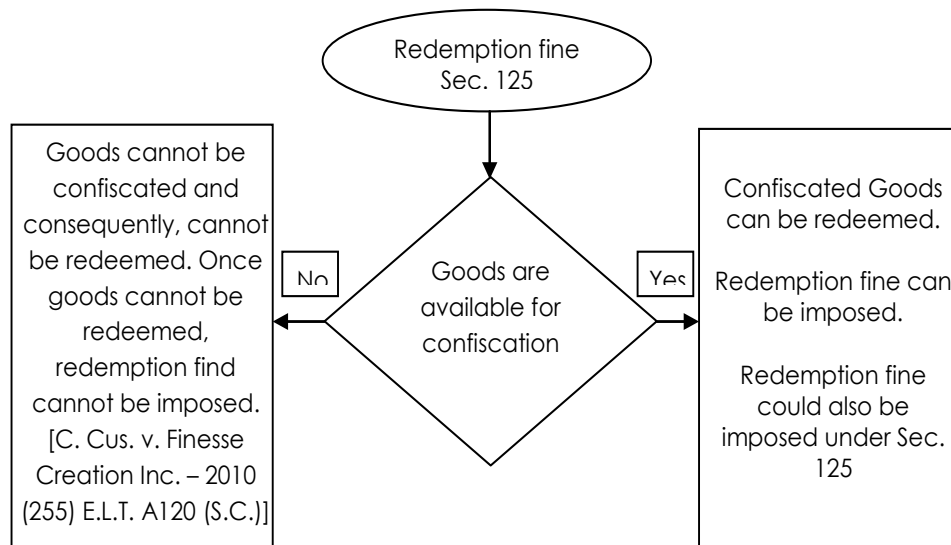
The following goods brought from a place outside India shall be liable to confiscation:

- (a) Any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport.
- (b) Any goods imported by land or inland water through any route other than a route specified by the Govt.
- (c) Any dutiable or prohibited good brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port.

- (d) Any goods which are imported or attempted to be imported or are brought within the Indian customs waters contrary to the provisions which are in force.
- (e) Any dutiable or prohibited goods found concealed (i.e. hid) in any manner in any conveyance
- (f) Goods not mentioned in the Import manifest or import report
- (g) Goods unloaded in contravention of the provisions of customs law
- (h) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof
- (i) any dutiable or prohibited goods removed or attempted to be removed from a customs area or warehouse without the permission of the proper officer.
- (j) Any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper
- (k) Any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77.
- (l) Any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77.
- (m) Any dutiable or prohibited goods transited with or without transshipment in contravention of the provisions of customs.

Confiscated goods can be redeemed:

Under Customs Act, 1962 can redemption fine be imposed and penalty under section 112 be levied after release of imported goods on execution of a bond, if it is found subsequently that there has been an irregularity in the import? Discuss with the help of decided case law(s), if any.



It is important to note that for levying the penalty under section 112 (i.e., improper import) it is immaterial as to whether goods are available for confiscation or not because the said penalty is imposed when the goods are liable for confiscation.

Penalties for improper import under section 112 of the Customs Act, 1962

Penalty can be imposed for improper import as well as attempt to improperly export goods. 'Improper' means without the knowledge of the Customs officers.

**No question of penalizing the partners separately for the same contravention under section 112:**

Once penalty was levied on the firm for contravention of any provision of the Act or the Rules framed there under, it amounted to levy of penalty on the partners. Hence, there was no question of penalizing the partners separately for the same contravention, unless the intention of the legislature to treat the firm and partners as distinct entities was borne out from the statute itself, i.e., expressly provided in the statute.

For Example: Explanation to section 140 of the Customs Act equated partnership firm with company (which stands as separate entity distinct from its shareholders) in respect of commission of offences.

However, there was no such corresponding provision in relation to imposition of penalty under section 112. The High Court held that separate penalty could not be imposed on the partners in addition to the penalty on the partnership firm [**CCE & C, Surat-II v Mohammed Farookh Mohammed Ghani 2010 (259) ELT 179 (Guj)**].

Penalties for improper import [section 112 of the Customs Act, 1962]:

Imported Goods (A)	Value in (₹) (B)	Minimum Penalty in (₹) (C)	Penalty in (₹) (B) or (C)
Prohibited Goods	Not exceeding the value of prohibited goods	₹ 5,000	Whichever is Higher
Dutiable Goods (Other than Prohibited goods)	w.e.f 14-5-2015: Not exceeding 10% of the Duty sought to be evaded.	₹ 5,000	Whichever is Higher
	w.e.f 14-5-2015: Penalty = 25% of the penalty imposed, if the duty, interest and reduced penalty is paid within 30 days from the date of receipt of adjudication order [Section 112(b)(ii) of the Customs Act, 1962].		
Misdeclaration of value	If actual value is higher than the value declared in Bill of Entry or declaration of contents of baggage: Actual value = xxx Less: Declared value = (xx) -----Difference = xxx =====	₹ 5,000	Whichever is Higher
Prohibited Goods plus Misdeclaration value	(i) Not exceeding the value of prohibited goods OR (ii) Actual value = xxx Less: Declared value = (xx) -----Difference = xxx =====	₹ 5,000	Whichever is Higher
	Whichever is higher		
Dutiable Goods plus Misdeclaration of Value	(i) Duty sought to be evaded OR (ii) Actual value = xxx Less: Declared value = (xx) -----Difference = xxx =====	₹ 5,000	Whichever is Higher
	Whichever is higher		

Export goods liable for confiscation — Section 113

These are goods attempted to be improperly exported under clauses of section 113:—

- Goods attempted to be exported by sea or air from place other than customs port or customs airport
- Goods attempted to be exported by land or inland water through unspecified route
- Goods brought near land frontier or coast of India or near any bay, gulf, creek or tidal river for exporting from place other than customs port or customs station



- (d) Goods attempted to be exported contrary to prohibition under Customs Act or any other law
- (e) Goods concealed in any conveyance brought within limits of customs area for exportation
- (f) Goods loaded or attempted to be loaded for eventual export out of India, without permission of proper officer, in contravention of section 33 and 34 of the Customs Act, 1962
- (g) Goods stored at un-approved place or loaded without supervision of Customs Officer
- (h) Goods not mentioned or found excess of those mentioned in Shipping Bill or declaration in respect of baggage
 - (i) Any goods entered for exportation not corresponding in respect of value or any other particular in Shipping Bill or declaration of contents of baggage.
 - (ii) Goods entered for export under claim for duty drawback which do not correspond in any material particulars with any information provided for fixation of duty drawback.
- (i) Goods imported without duty but being re-exported under claim for duty drawback
- (j) Goods cleared for exportation which are not loaded on account of willful act, negligence or default, or goods unloaded after loading for exportation, without permission.
- (k) Provision in respect of 'Specified Goods' are contravened.

Penalties for improper export under section 114 of the Customs Act, 1962

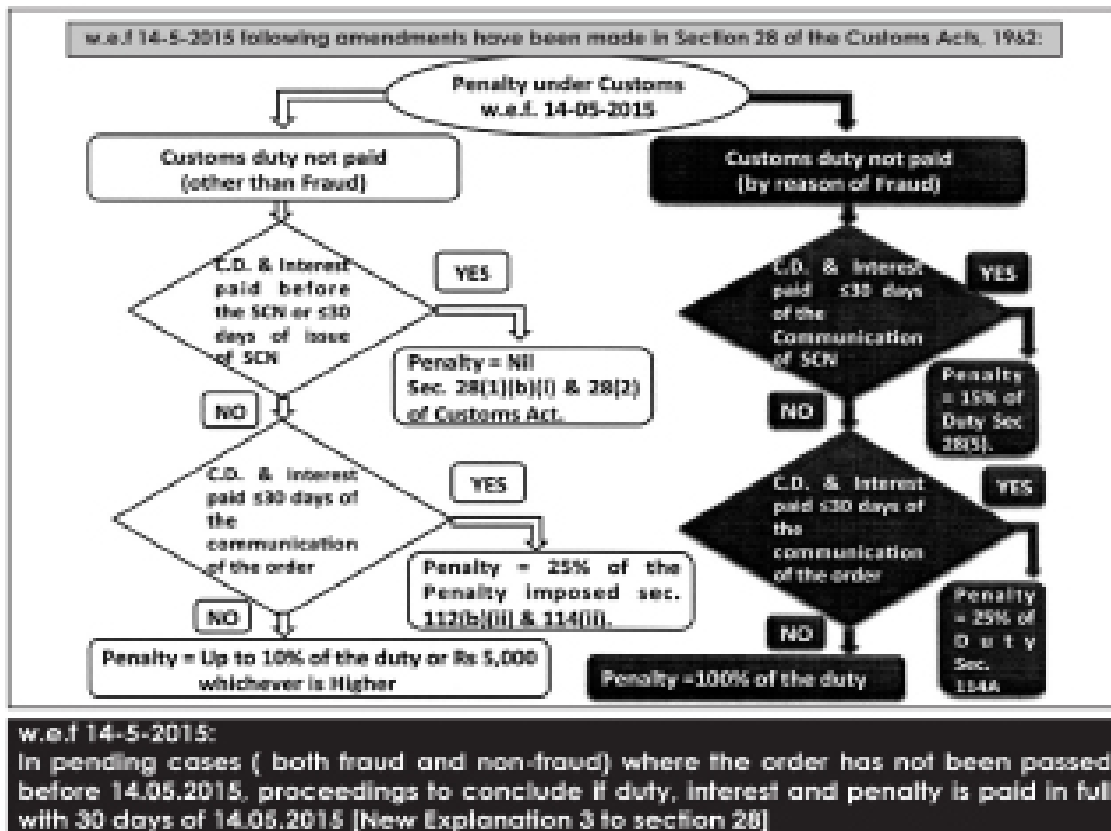
Following monetary penalties prescribed under the Customs Act, with regard to improper export:

Attempt to improperly export (A)	Value in (₹) (B)	Minimum Penalty in (₹) (C)	Penalty in (₹) (B) or (C)
Prohibited Goods	Three times the value of the goods as declared by the exporter	The value as determined under the Customs Act.	Whichever is Higher
Dutiable Goods (other than Prohibited goods)	Duty sought to be evaded	₹ 5,000	Whichever is Higher
Other goods	Value declared in short	The value as determined under the Customs Act.	Whichever is Higher

Penalties for improper export U/S 114 of the Customs Act, 1962 (w.e.f.14-5-2015)

Attempt to improperly export (A)	Value in (₹) (B)	Minimum Penalty in (₹) (C)	Penalty in (₹) (B) or (C)
Prohibited Goods	The value as determined under the Customs Act.	₹ 5,000	Whichever is Higher
Dutiable Goods (other than Prohibited goods)	w.e.f 14-5-2015: Not exceeding 10% of duty sought to be evaded.	₹ 5,000	Whichever is Higher
	w.e.f 14-5-2015: Penalty = 25% of penalty imposed, if duty, interest and reduced penalty is paid within 30 days from date of receipt of adjudication order - Section 114(ii) of Customs Act, 1962.		
Other goods	Not exceeding the value of goods as declared by exporter	The value as determined under the Customs Act.	Whichever is Higher

w.e.f. 14-5-2015 following amendments have been made in Section 28 of the Customs Act, 1962:



w.e.f 14-5-2015:

In pending cases (both fraud and non-fraud) where the order has not been passed before 14.05.2015, proceedings to conclude if duty, interest and penalty is paid in full within 30 days of 14.05.2015 [New Explanation 3 to section 28]

Explanation 3 has been inserted in section 28 to provide that where a notice under section 28(1) [non-fraud cases] or section 28(4) [fraud cases], as the case may be, has been served but an order determining duty under section 28(8) has not been passed before 14.05.2015 then, without prejudice to the provisions of sections 135, 135A and 140, as may be applicable, the proceedings in respect of such person or other persons to whom the notice is served will be deemed to be concluded if the payment of duty, interest and penalty under the proviso to section 28(2) or under section 28(5), as the case may be, is made in full within 30 days from 14.05.2015.

Confiscation of Conveyances [Section 115 of the Customs Act, 1962]:

Vehicles, Vessels, Aircrafts, animals used as a means of transport in the smuggling or improperly for import or export of goods shall be liable to confiscation.

Any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding the market price of the goods which are sought to be smuggled or the smuggled goods as the case may be.

Penalty for not accounting for goods [section 116 of the Customs Act, 1962]:

The person-in-charge of the conveyance shall be liable to pay penalty if any goods loaded in a conveyance for importation into India, or any goods transhipped under the provisions of this Act or coastal goods carried in a conveyance:



- If not unloaded at their place of destination in India, or
- If the quantity unloaded is short of the quantity to be unloaded at that destination, or
- If the failure to unload or the deficiency is not accounted

Quantum of penalty under section 116:

Imported goods:	Exported goods
Penalty not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or deficient goods, as the case may be, had such goods been imported.	Penalty not exceeding twice the amount of export duty that would have been chargeable on the goods not unloaded or deficient goods, as the case may be, had such goods been exported.

Residual Penalty [Section 117]:

As per section 117 of the Customs Act, 1962, if no penalty has been prescribed for contravenes, then the penalty would be ₹ 1,00,000 can be levied (w.e.f. 10.5.2008).

Confiscation of packages and their contents – Section 118

Where any goods imported in a package or brought within the limits of a customs area for the purpose of exportation in a package shall also be liable to confiscation if the importer or exporter violates the provisions of the customs provisions.

Confiscation of goods used for concealing smuggled goods – Section 119

Any goods used for concealing smuggled goods shall also be liable to confiscation. However, goods does not include a conveyance used as a means of transport.

Confiscation of smuggled goods notwithstanding any change in form, etc. – Section 120:

Smuggled goods may be confiscated notwithstanding (i.e. in spite of) any change in their form. Where smuggled goods are mixed with other goods in such manner that the smuggled goods cannot be separated from such other goods, the whole of the goods shall be liable to confiscation.

Confiscation of sale proceeds of smuggled goods – Section 121

Where any smuggled goods are sold by a person having knowledge or reason to believe that the goods are smuggled goods, the sale-proceeds thereof shall be liable to confiscation.

Case Law 3:

Smuggled goods cannot be treated par with imported goods for the purpose of granting the benefit of the exemption notification:

The Honorable Supreme Court of India held that if the smuggled goods and imported goods were to be treated as the same, then there would have been no need for two different definitions under the Customs Act, 1962.

The Court observed that one of the principal functions of the Customs Act, 1962 was to curb the ills of smuggling on the economy. Hence, it held that it would be contrary to the purpose of exemption notifications to give the benefit meant for imported goods to smuggled goods. Therefore, the court held that the smuggled goods could not be considered as 'imported goods' for the purpose of benefit of the exemption notification [CCus. (Prev.), Mumbai v M. Ambalal & Co. 2010 (260) E.L.T. 487 (SC)].

11.4 BURDEN OF PROOF AND REDEMPTION FINE

Burden Of Proof in Certain Cases

Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be -



- (a) in a case where such seizure is made from the possession of any person, -
- (i) on the person from whose possession the goods were seized; and
 - (ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;
- (b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

This section shall apply to gold, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

Issue of show cause notice before confiscation of goods etc. (section 124)

Section 124 provides that no order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person:

- (a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or impose a penalty;
- (b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and
- (c) is given a reasonable opportunity of being heard in the matter;

The notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned, be oral.

Notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed – (Inserted vide THE FINANCE ACT, 2018)

Redemption Fine (Section 125)

The term redemption fine means Option to pay fine in lieu of confiscation. A person makes an unauthorized import of goods liable to confiscation. After adjudication, Assistant Commissioner of Customs provides an option to the importer to pay fine in lieu of confiscation [Section 125(1) of the Customs Act.]:

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

Such an importer is liable to pay in addition to the customs duty and charges payable in respect of such imports, the penalty.

Example 4:

A person makes an unauthorized import of goods liable to confiscation. After adjudication, Assistant Commissioner provides an option to the importer to pay fine in lieu of confiscation. It is proposed to impose a fine (in lieu of confiscation) equal to 50% of margin of profit. From the following particulars calculate the amount of fine that can be imposed: Assessable value – ₹ 50,000, Total duty payable – ₹ 20,000, Market value – 1,00,000. Also calculate the amount of fine and the total payment to be made by the importer to clear the consignment.

Answer:

In the given case Assistant Commissioner intends to impose redemption fine equal to 50% of margin of profit.

Total cost to importer = ₹ 50,000 + ₹ 20,000 = ₹ 70,000.

Margin of profit:

Market value – Total cost to importer = ₹ 1,00,000 – ₹ 70,000 = ₹ 30,000.

Hence, redemption fine will be ₹ 15,000 (@ 50% of ₹ 30,000). In addition, duty of ₹ 20,000 is payable. Thus, importer will have to pay totally ₹ 35,000 to clear the goods from customs.



Option to pay fine in lieu of confiscation also given to exporter of prohibited goods

An exporter who had been held guilty of exporting 'prohibited goods', has an option to pay fine in lieu of confiscation under section 125 of the Customs Act. **CCus. (Preventive), West Bengal v India Sales International 2009 (241) ELT 182 (Cal).**

Selling the confiscated goods during the period of pendency of appeal was not justified

The Customs Officer confiscated the gold carried by the petitioner from Muscat. The Customs Department received the letter from the petitioner about his willing to file an appeal against the order of confiscation. Revenue informed the petitioner that the confiscated goods had been handed over to the warehouse of the Custom House for disposal and consequently, auctioned the confiscated goods. The action of the custom authorities in selling the gold during the pendency of the appeal was not justified. **[Shabir Ahmed Abdul Rehman v UOI 2009 (235) ELT 402 (Bom)]**

Option to redeem the goods with Adjudicating Authority under section 125

Adjudicating Authority is vested with the **discretion to give an option either to confiscate or redeem** the prohibited goods imported/exported even though the goods are liable to absolute confiscation but in case of other goods **[CCus v Alfred Menezes 2009 (242) ELT 334 (Bom)]**

Goods are not redeemed by paying fine

Where the imported goods are confiscated, u/s 125 and goods are not redeemed by paying fine, **the importer is bound to pay the customs duty [Poona Health Services v CCus. 2009 (242) ELT 335 (Bom)]**

No redemption of fine, if goods not available for confiscation

The concept of **redemption fine arises in the event when the goods are available and are to be redeemed**. If the goods are not available, there is no question of redemption of the goods under section 125. The question of confiscating the goods would not arise if there are no goods available for confiscation. **[CCus v Finesse Creation Inc. 2009 (248) ELT 122 (Bom)]**

11.5 OFFENCES UNDER CUSTOMS

Offences under Customs

The term Offence means a violation or breach of a law, like evasion of duty and breaking prohibitions under the Customs Act, 1962. However, offence not defined under Customs Act, 1962. Thereby, 'Offence' as any act or omission made punishable by any law for the time being in force.

There are basically two types of punishments namely civil penalty and criminal penalty. Civil penalty for violation of statutory provisions involving a penalty and confiscation of goods and can be exercised by the Department of Customs. Criminal punishment is of imprisonment and fine, which can be granted only in a criminal court after prosecution.

Evasion of duty or prohibition under section 135(1) of the Customs Act, 1962

If a person has nexus with misdeclaration of value or evasion of duty or handling in any manner goods liable for confiscation under section 111 (i.e. Confiscation of improperly imported goods) or section 113 (i.e. Export goods liable for confiscation), he shall be punishable in the following manner:

Imprisonment upto seven years and fine for the following four kinds of offences:

- Market value of offending goods exceeds ₹ one crore
- Value of evasion of duty exceeds ₹ 30 lakhs
- Offence pertains to prohibited goods notified by Central Government of India
- Value of fraudulent availment of drawback/exemption exceeds ₹ 30 lakhs



For all other kind of offences imprisonment is upto three years or fine or both.

For repeat conviction, the imprisonment can be seven years and fine and in absences of special and adequate reasons, the punishment shall not be less than one year.

Cognizable and Non-cognizable Offence

Cognizable offence means an offence for which a police officer may arrest without warrant (i.e. without the order of a Magistrate). Non-cognizable offence means offences under Customs where a police officer cannot investigate cases without the order of a Magistrate.

Cognizance of Offences

As per Section 137(1) of the Customs Act, 1962, Court cannot take cognizance of offences under the Customs Act, 1962 in the following cases without previous sanction of the Commissioner of Customs:

False declaration or documents (Section 132)

- (i) Obstruction (i.e. stop the progress) of Officers of Customs (Section 133)
- (ii) Refusal to be X-rayed (Section 134)
- (iii) Evasion of duty or prohibitions (Section 135)
- (iv) Preparation to do clandestine export (i.e. improper export) (Section 135A)

As per Section 137(2) of the Customs Act, 1962, for taking cognizance of an offence committed by a Customs officer under section 136 the Court needs previous sanction of the Central Government in respect of officers of the rank of Assistant or Deputy Commissioner and above and previous sanction of the Commissioner of Customs in respect of officers lower in rank than Assistant or Deputy Commissioner.

Section 136 of the Customs Act deals with offences by Officers of Customs which are as follows:

- An officer of customs facilitated to do fraudulent export
- Search of persons without reason to believe in the secreting of goods on them
- Arrest of person without reason to believe that they are guilty

These are called **vexatious actions** of department officers.

Compounding Of Offences

Compounding means basically a compromise between assessee and department. It means to say that instead of going to court for imposition of fine and imprisonment, the offender (i.e. importer or exporter committed an offence) may agree to pay composition amount. If the case is pending, the accused and the complainant can make a joint application to the court that the parties have come to an agreement not to prosecute further.

Applicant: any importer or exporter but shall not include officers of Customs. Therefore, applicant (importer or exporter) can apply for compounding of offence either before or after launching of prosecution.

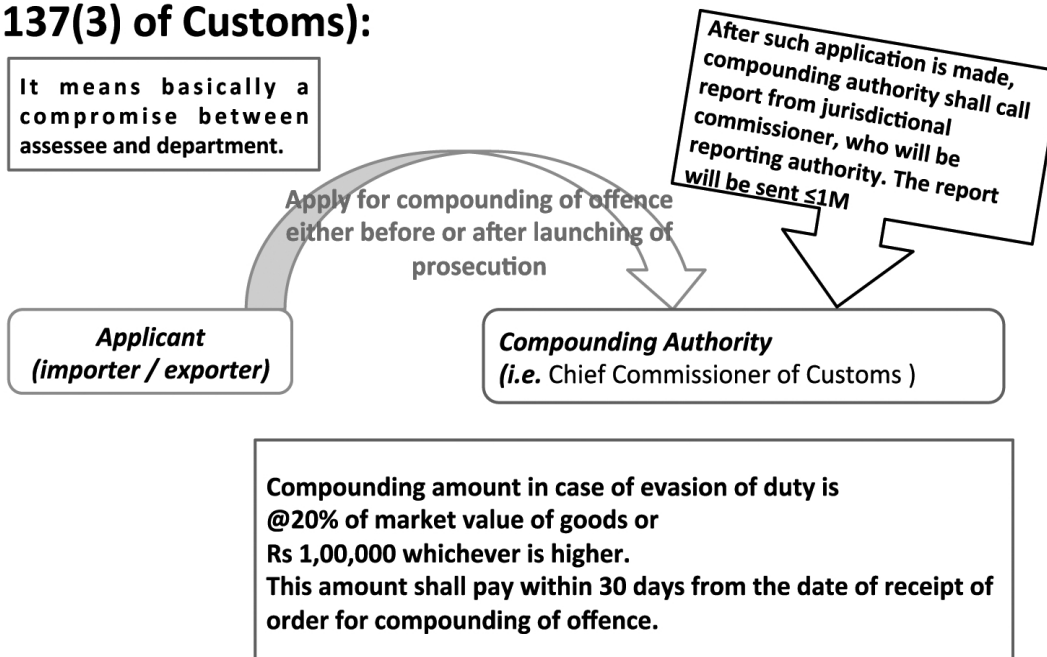
Compounding Authority: means the Chief Commissioner of Customs having jurisdiction over place of applicant. The application can be made for compounding of offence before the Chief Commissioner of Customs by the applicant.

Reporting Authority: means the Commissioner of Customs, from whom report will get by compounding authority within one month from the date of request. After receiving the report the compounding authority may allow application indicating the compounding amount and grant immunity from prosecution or reject the application.

Compounding amount in case of evasion of duty is @ 20% of market value of goods or ₹ 1,00,000, w.e.f. 13-11-2008, whichever is higher. This amount shall pay within 30 days from the date of receipt of order for compounding of offence.

Simplified approach:

Compounding of offences (Sec. 9A(2) of C.Ex. Or Sec. 137(3) of Customs):



Finance (No. 2) Act, 2009 provides that the following mentioned persons shall not be eligible for compounding under section 137(3) of the Customs Act, 1962:

- (i) Offences under section 135 (i.e. Evasion of duty or prohibition) and section 135A (i.e. any person attempting to export goods illegally shall be punishable with imprisonment) of the Customs Act, 1962 already compounded. (i.e. second time compounding not allowed)
- (ii) Offences under the following Acts, namely:
 - the Narcotic Drugs and Psychotropic Substances Act, 1985;
 - the Chemical Weapons Convention Act, 2000;
 - the Arms Act, 1959;
 - the Wild Life (Protection) Act, 1972;
- (iii) A person involved in smuggling of goods falling under any of the following, namely:—
 - goods specified in the list of Special Chemicals, Organisms, Materials, Equipment and Technology
 - goods which are specified as prohibited items for import and export
 - any other goods or documents, which are likely to affect friendly relations with a foreign State
- (iv) Offences exceeding ` one crore already compounded.
- (v) Person who has been convicted under this Act on or after 30.12.2005



Study Note - 12

COMPREHENSIVE ISSUES UNDER CUSTOMS



This Study Note includes

- 12.1 Introduction
- 12.2 Adjudicating Authority
- 12.3 Offences
- 12.4 Protective Demand
- 12.5 Recovery of Duties in Certain Cases
- 12.6 Appeals under Customs
- 12.7 Authority for Advance Ruling

12.1 INTRODUCTION

It is essential to know the Customs Department's hierarchy before dealing with their officers. Any aggrieved person against the order of adjudicating authority can knock the doors of the higher authority for want of justice. In this chapter it has been explained to the core by highlighting the important issues in a simplified manner. There are many provisions are commonly applicable for GST Law and Customs. The same has been explained in this lesson at appropriate places.

12.2 ADJUDICATING AUTHORITY

Principal Chief Commissioner of Central Excise/Chief Commissioner of Customs



Principal Commissioner of Customs /Commissioner of Customs



Additional Commissioner of Customs



Joint Commissioner of Customs



Deputy Commissioner of Customs /Assistant Commissioner of Customs



Superintendent of Customs



Inspector of Customs



Hierarchy of the Department of Customs

**Adjudicating Authority for Confiscating Goods u/s 122 of the Customs Act, 1962**

Adjudicating Authority for Confiscating Goods u/s 122 of the customs Act, 1962	
Authority	Goods liable for confiscation (w.e.f. 28-5-2012)
The Superintendent	≤ ₹ 50,000
The Deputy/Assistant Commissioner	> ₹ 50,000 ≤ 5,00,000
The Joint/Additional Commissioner	without any upper limit
Commissioner	without any upper limit

Power to Arrest u/s 104 of the Customs**Powers to arrest and summon****Certain specified offences to be non-bailable [Section 104(6) of Customs Act, 1962] w.e.f. 10-5-2013:****Non-bailable offences**

An offence punishable under section 135 relating to:—

- evasion or attempted evasion of duty exceeding ₹50 lakh; or
- prohibited goods [notified under section 11 also notified under section 135(1)(i)(C)]; or
- import/export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds ₹1 crore; or
- fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds ₹50 lakh, shall be a non-bailable offence.

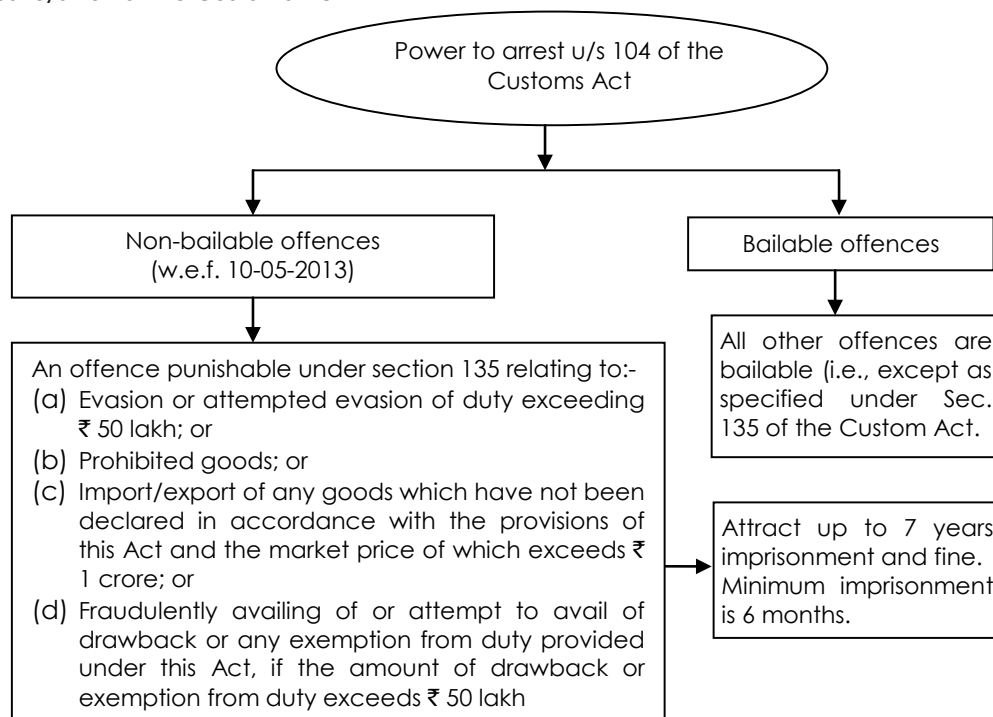
Bailable offences

All other offences under the Customs Act, 1962 except those specified above shall be bailable.

Offences involving evasion of duty [Sub-clause (C) and (D) of section 135(1)(i)]

Section 135 stipulates the penal provisions applicable to a person who has committed any of the offences specified therein (hereafter referred to as offender who committed the offence u/s 135 of the Customs Act, 1962).

Prior to 10th May, 2013	W.e.f. 10th May, 2013
such an offender was punishable with an imprisonment for a term which may extend upto 7 years and with fine in case of an offence relating to:—	such an offender was punishable with an imprisonment for a term which may extend upto 7 years and with fine in case of an offence relating to:—
- evasion or attempted evasion of duty exceeding ₹30 lakh or - fraudulently availing of or attempting to avail of drawback or any exemption from duty provided under the Customs Act in connection with export of goods, if the amount of drawback or exemption from duty exceeds ₹30 lakh.	- evasion or attempted evasion of duty exceeding ₹50 lakh or - fraudulently availing of or attempting to avail of drawback or any exemption from duty provided under the Customs Act in connection with export of goods, if the amount of drawback or exemption from duty exceeds ₹50 lakh.

Power to Arrest u/s 104 of the Customs Act**Immediate prosecution in case of gold (Circular No. 46/2016-Cus, dated 04.10.2016)**

Where the offence relates to gold, prosecution may preferably be launched immediately after issuance of show cause notice.

Silver bullion and cigarettes notified under section 123 of the Customs Act, 1962 Notification 103/2016 Cus (NT) dated 25.07.2016

Where these goods are seized under the Customs Act, 1962 in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be on the accused and not on the Department.

Guidelines for arrest and bail under Customs Act, 1962:**[Circular No. 974/08/2013-CX, dated 17.09.2013]**

1. The power to arrest a person must be exercised with utmost care and caution by the Commissioner of Customs or Additional Director General of Customs.
2. The decision to arrest should be taken in cases which fulfil the requirement of the provisions of section 104(1) of Customs Act, 1962 and after considering the nature of offence, the role of the person involved and evidence available.
3. Persons involved should not be arrested unless the exigencies of certain situations demand their immediate arrest. These situations may include circumstances:
 - (a) to ensure proper investigation of the offence;
 - (b) to prevent such person from absconding;
 - (c) cases involving organised smuggling of goods or evasion of customs duty by way of concealment;
 - (d) masterminds or key operators effecting proxy/benami imports/ exports in the name of dummy or non-existent persons/IECs, etc.
4. While the Act does not specify any value limits for exercising the powers of arrest, the same should be effected *in respect of bailable offence only in exceptional situations which may include:*
 - (a) Outright smuggling of high value goods such as precious metal, restricted items or prohibited items or goods notified under section 123 of the Customs Act, 1962 or foreign currency where the value of offending goods exceeds ₹20 lakh.



- (b) In a case related to importation of trade goods (i.e. appraising cases) involving wilful mis-declaration in description of goods/ concealment of goods/goods covered under section 123 of Customs Act, 1962 with a view to import restricted or prohibited items and where the CIF value of the offending goods exceeds ₹50 lakh.
5. In every case of arrest effected in accordance with the provisions of section 104(1) of the Customs Act, 1962, there should be immediate intimation to the jurisdictional Chief Commissioner or DGRI, as the case may be.
 6. A person arrested for a non-bailable offence should be produced before concerned Magistrate without unnecessary delay in terms of provisions of section 104(2) of the Act.
 7. However, a Customs officer (arresting officer) is bound to offer release on bail to a person arrested in respect of bailable offence and accept bail bond for bailable offence.
 8. Arrested person should produce within 24 hours before the Magistrate.
 9. In case customs officer is not able to produce the arrested person before the Magistrate, then handed over to the nearest police station during night for safe custody.

Section 153 of the Customs Act, 1962:

Service of order or decision or summons or notice by the commissioner of customs is valid even if it sent by the

By Registered post

OR

By Speed post with proof of delivery or courier approved by CBEC

OR

Tendering (Physical delivery)

As may be approved by the commissioner of customs or Central Excise as the case may be.

Jay Balaji Jyoti Steels Limited v CESTAT Kolkata 2015 (37) STR 673 (Ori):

Decision: The High Court, held that insertion of words "or by speed post with proof of delivery" in section 37C(1)(a) of the Central Excise Act, 1944 is clarificatory and a procedural amendment and hence, would have retrospective effect.

Case Law 1:

Jyoti Enterprises v CCEx. & ST 2016 (41) STR 0019 (All)

Facts of the Case: The order-in-original, in assessee's case, was passed by the Department. However, the assessee was unaware of the order passed and came to know about it two years later when the Department started recovery proceedings.

Point of Dispute: The assessee argued that there was no proper service of order by the Department. However, Department submitted that the order was served 2 years ago at the residential premises of the assessee to a person named Virendra Yadav who represented himself to be assessee's nephew.

The assessee contended that the order was required to be served to the person for whom it was intended, namely, the assessee or its authorised agent. Since Virendra Yadav was neither the authorised representative nor the order was served upon the assessee, there was no proper service of the order.

Decision: The High Court held that the order in original was duly served upon the assessee. The High Court observed that if the order is served on a member of the family of the assessee, it is duly served and there is sufficient service of the order. No assertion was made by the assessee that Virendra Yadav was not a family member or that he was not connected with the business. The assessee had nowhere stated that Virendra Yadav was not her nephew. Further, nothing has been stated that the address where the service of the original order was made was incorrect.



Therefore, decision is given in favour of the Department and against the assessee.

Case Law 2:

Santosh Handlooms v CCus. 2016 (331) ELT 44 (Del)

The issue which arose for consideration was whether in case of seizure of goods under section 110 of the Customs Act, 1962, the show cause notice [required to be issued under section 124(a) within six months of seizure] can be issued to the Customs House Agent [now Custom Broker] of the importer instead of importer himself.

Decision: The CHA [now Custom Broker], is an agent, who operates under a special contract with an importer or exporter, and in this context is authorized to perform various functions to clear the goods from customs. It is no part of the general duty cast upon the CHA to accept service of notices, summons, orders or decisions of the customs authorities, unless he has been specially authorized to do so. The High Court held that the show cause notice served on CHA [now Custom Broker] is not tenable in law.

"Circulars of CBEC v Judgments of the Supreme Court and the High Courts: Which one is binding on the authorities under the respective statutes?"

Case Law 3:

Ratan Melting & Wire Industries v CCE 2008 (231) ELT 22 (SC):

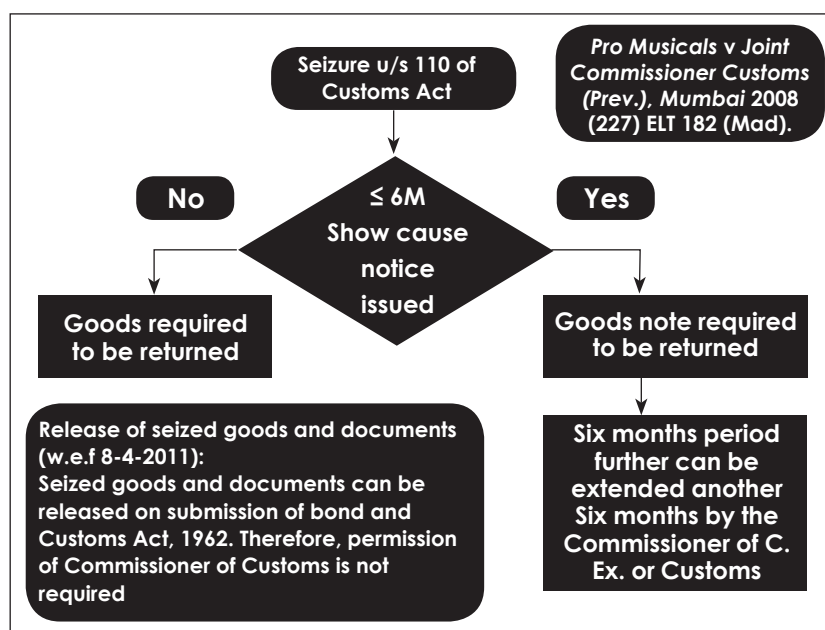
The Supreme Court has held that so far as the clarifications/circulars issued by the Central Government and of the State Government are concerned, they represent merely their understanding of the statutory provisions. They are not binding upon the Court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. A circular which is contrary to the statutory provisions has really no existence in law.

Therefore, "Circulars issued by the Central Board of Excise and Customs (CBEC), which are contrary to the judgements of the Supreme Court and the High Courts are not binding on the authorities under the respective statutes."

Circular No. 1006/13/2015-CX, dated 21.09.2015:

In the light of the aforesaid judgment, CBEC, has instructed its officers not to follow the Board Circulars contrary to the judgements of Hon'ble Supreme Court and High Court where Board has decided not to file an appeal on merit as such circulars become non-est in law.

Seizure u/s 110 of Customs Act





In case of *Pro Musicals* case it is clarified that 6 months time period reconed from the date of seizure but not from the date of detention.

If any documents seized during the course of any action by an officer and relating to the provisions of Customs Act, that officer was bound to make the documents available copies of those documents?

Answer: Yes. The Bombay High Court held the same view in the case of *Manish Lalith Kumar Bavishi* (2011).

Case Law 4:

Akanksha Syntex (P) Ltd. v Union of India 2014 (300) ELT 49 (P&H)

Facts of the case: An order for provisional release of the seized goods had been made under section 110A of the Act pursuant to an application filed by the petitioner in this regard. However, the petitioner claimed unconditional release of its seized goods in terms of sections 110(2) and 124 of the Act as no show cause notice had been issued within the extended period of six months (initial period of six months was extended by another six months by the Commissioner of Customs in this case).

Akanksha Syntex (P) Ltd. v Union of India 2014 (300) ELT 49 (P&H)

Decision: Where no action is initiated by way of issuance of show cause notice under section 124(a) of the Act within six months or extended period stipulated under section 110(2) of the Act, the person from whose possession the goods were seized becomes entitled to their return.

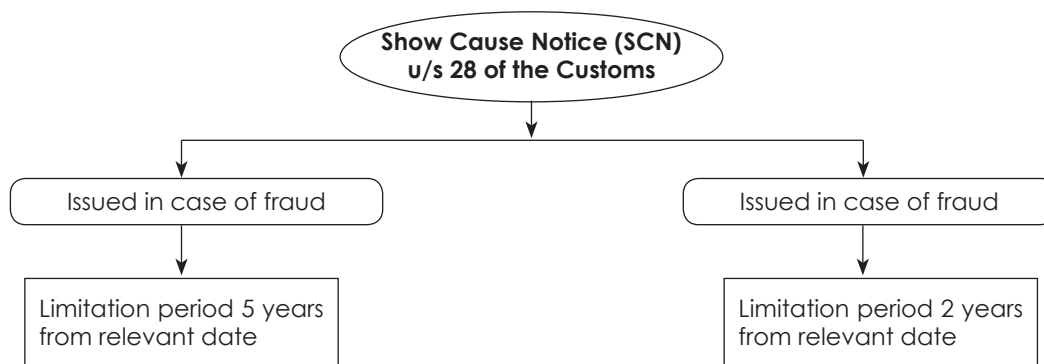
The remedy of provisional release is independent of remedy of claiming unconditional release in the absence of issuance of any valid show cause notice during the period of limitation or extended limitation prescribed under section 110(2) of the Customs Act, 1962.

Refund of Duty / Rebate of Duty / Remission of Duty

Refund of duty	Rebate of duty	Remission of duty
It means person paid tax or duty where subsequently noticed that not required to pay. Hence, such person is entitled to claim refund. For an example: Duty paid on exempted goods is qualify for refund	It means duty or tax paid where required to pay, thereafter, on account of satisfying certain conditions qualify for rebate of duty paid earlier. For an example: Rebate of duty can be understood as duty draw back. Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification.	It means duty or tax is levied but not paid, subsequently got exempted from payment of duty or tax. For an example: Warehoused goods after import got destroyed due to fire or natural calamities (i.e. loss occurred within the warehouse).

12.3 OFFENCES

Show Cause Notice (SCN): Section 28 of the Customs Act, 1962





w.e.f. 14-5-2015 relevant date in the case of customs law on which customs duty has not been levied or paid or has been short-levied or short-paid and the return has been filed is the date on which such return has been filed.

- (i) in any other case, the date on which duty is required to be paid under this Act or the rules made thereunder;
- (ii) in a case where duty of provisionally assessed under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;
- (iii) in the case on which duty of customs has been erroneously refunded, the date of such refund;
- (iv) w.e.f. 14-5-2015, in a case where only interest is to be recovered, then the relevant date will be the date of payment of duty to which such interest relates.

Case Law 5:

In the case of C.Cus. v. SAYED ALI 2011 (S.C.) the Apex Court held that

- Director General of Revenue Intelligence OR
- Director General of Central Excise Intelligence

are not eligible for issuing show cause notices.

However, w.e.f. 16.9.2011 the law amended retrospectively by providing validity to those show cause notices issued by the Director General of Revenue Intelligence or, Director General of Central Excise Intelligence.

12.4 PROTECTIVE DEMAND

Means issue show-cause notice-cum-demand in time, so that it does not become time barred, especially in the case of receipt of audit objections, protective demands should be issued in time.

12.5 RECOVERY OF DUTIES IN CERTAIN CASES

Recovery of duties in certain cases [section 28AAA of the Customs Act]:

An instrument (i.e. any scrip or authorisation or licence or certificate as a reward or incentive scheme or duty exemption scheme or duty remission scheme) has been obtained by the person by means of

- (a) Collusion; or
- (b) Wilful misstatement; or
- (c) Suppression of facts

Duty and interest should be recovered within 30 days from the date of passing order to recover the same.

Provisional attachment of property applicable u/s 28BA.

Proper officer empowered to provisionally attach the property in case of non-payment of customs duty or interest thereon on account of fraud, collusion, suppression of facts etc. as well [Section 28BA(1)]

Section 28BA of Customs Act, 1962	Prior to 10th May, 2013	W.e.f. 10th May, 2013
Provisional attachment of property in case of non payment of customs duty and interest on account of fraud	Provisionally attach the property belonging to only such person on whom notice has been served u/s 28(1) of the Customs Act, 1962	Provisionally attach the property belonging to any person on whom notice has been served u/s 28(1) or (4) of the Customs Act, 1962

No recovery if the amount of customs duty involved is less than ₹100 [Section 28(1) - w.e.f. 10.05.2013]

Proviso inserted in section 28(1)

Hitherto, no minimum limit for recovery of customs duty had been specified under the Customs Act, 1962. Thus, recovery proceedings could be initiated even for the default of ₹ 1.



The Finance Act, 2013 has inserted third proviso in section 28(1) which provides that the proper officer will not serve the show cause notice, where the amount involved is less than ₹ 100. In other words, there would be no recovery of the customs duty if the amount of customs duty involved is less than ₹ 100.

Case Law 6:

Uniworth Textiles Ltd. v. CCEx. 2013 (288) ELT 161 (SC):

Statement of Facts: Assessee imported furnace oil and supplied the same to sister unit for generation of electricity, which is used by the assessee. The assessee claimed exemption on import of furnace oil.

The assessee is also obtained a clarification from Development Commissioner for claiming exemption.

However, irrespective of the clarification from Development Commissioner, a show cause notice demanding duty was issued on the assessee more than 1 year (i.e. longer limitation) after he had imported furnace oil on behalf of its sister unit.

Department Contention: The entitlement of duty free import of fuel for its captive power plant lies with the owner of the captive power plant, and not the consumer of electricity generated from the power plant.

Decision: As per Section 28 of Customs Act, 1962, longer limitation period in the given case not applicable. The assessee had shown bona fide conduct by seeking clarification from Development Commissioner and in a sense had offered its activities to assessment.

Therefore, mere non-payment of duties could not be equated with collusion or willful misstatement or suppression of facts.

Judgment is given in favour of the assessee.

Case Law 7:

Anita Grover v. CCEx. 2013 (288) ELT 63 (Del):

Statement of Facts: A demand notice was raised against the petitioner in respect of the customs duty payable by the company (namely Shri Ram Casting P. Ltd) which she was formerly a director of. She had resigned from the Board of the company long time back. The Customs Department sought to attach the properties belonging to the petitioner for recovery of the dues to the company.

Whether department action is justifiable?

As per sec. 142 of the Customs Act, 1962 and relevant rules, it was only the defaulter against whom steps might be taken under Rules. The defaulter was the person from whom dues were recoverable under the Act. In the present case, it was the company who was the defaulter.

Therefore, department claim is not justifiable.

The same view has been expressed by the Hon'ble Bombay High Court in case of **Vandana Bidyut Chatterjee v. UOI 2013 (292) E.L.T. 6 (Bom.)**.

w.e.f. 10-5-2013:

Recovery under sec.142(1)(d) of the Customs Act, 1962 :

Issuance of the notice for recovery to any person other than from whom money is due

The Customs Officer may issue a written recovery notice to the following persons:

- any person from whom money is due to such person
- any person from whom money may become due to such person
- any person who holds money for or on account of such person
- any person who may subsequently hold money for or on account of such person.

The noticee would be required to pay to the credit of the Central Government so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount.

The money would be paid either forthwith upon the same becoming due or being held, or at or within the time specified in the notice. However, in no case the money would be required to be paid before it becomes due or is held.

In a case where the person to whom a notice under this sub-section has been issued, fails to make the payment is called as “**assessee in default**”.

Case Law 8:

Kemtech International Pvt. Ltd. v. CCus. 2013 (292) E.L.T. 321 (S.C.)

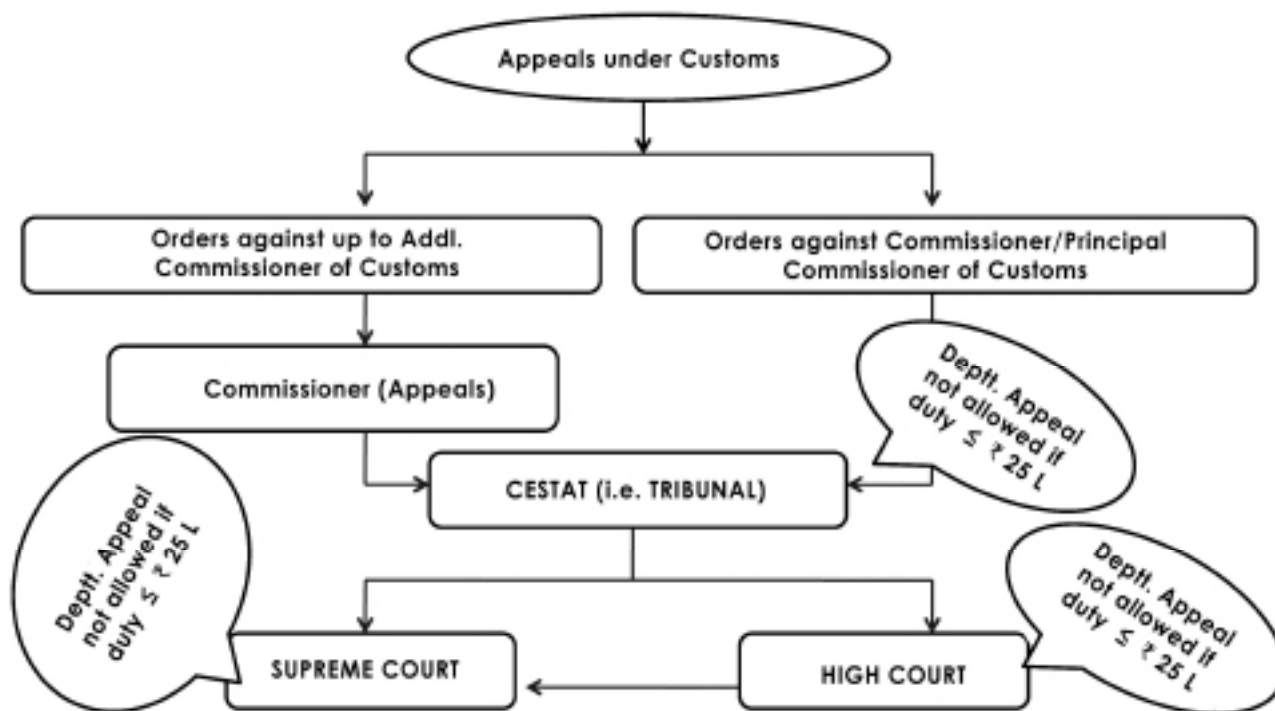
Point of dispute: Is the adjudicating authority required to supply to the assessee copies of the documents on which it proposes to place reliance for the purpose of re-quantification of short-levy of customs duty?

Decision: The Apex Court elucidated that for the purpose of re-quantification of short-levy of customs duty, the adjudicating authority, following the principles of natural justice, should supply to the assessee all the documents on which it proposed to place reliance.

Thereafter the assessee might furnish their explanation thereon and might provide additional evidence, in support of their claim.

12.6 APPEALS UNDER CUSTOMS

Hierarchy of appeals under Customs:



However, Departmental appeals in case of adverse judgments relating to the following disputes shall be allowed irrespective of the amount involved:

- Where the constitutional validity of the provisions of an Act or Rule is under challenge.
- Where notification/instruction/order or Circular has been held illegal or ultra vires.



The instruction has been further amended to provide that adverse judgments relating to classification and refunds issues which are of legal and/or recurring nature should also be contested irrespective of the amount involved [Instruction F.No.390/Misc./163/2010 JC dated 17.12.2015].

Example 1:

X Ltd. received a protective demand notice from the department on 1.9.2017 under Section 28 of the Customs Act, 1962 where

	Amount ₹
Customs Duty	= 15,00,000
Interest	= 15%
Penalty	= 50% of Duty

The assessee went for appeal and filed the case in the Commissioner (Appeals) on 1.10.2017. Subsequently on 31.10.2017, the Commissioner (Appeals) decided the case in favour of the assessee.

The Committee of Commissioners can delegate the authority to the department officers to go for further appeal on its behalf to the Appellate Tribunal (CESTAT) against such order?

Answer:

As per the CBE&C instructions in a case involving duty of ₹10 lakh and below, no appeal shall be filed in the Tribunal (CESTAT).

In the given case, appeal can be filed in the Tribunal (since, amount of duty is more than ₹10 lakhs)

Mandatory pre-deposit for entertaining appeal (w.e.f. 6-8-2014): –

Section 129E of the Customs Act, 1962, as amended by Finance (No. 2) Act, 2014 w.e.f. 6-8-2014, provides that Commissioner (Appeals) or CESTAT shall not ‘entertain’ appeal unless specified pre-deposit of duty or penalty is made.

The pre-deposit is as follows –

- 7.5% if appeal is filed before Commissioner (Appeals)
- 7.5% if appeal is filed before CESTAT against order of Principal Commissioner/ Commissioner as adjudicating authority
- 10% if appeal is filed before CESTAT against order of Commissioner (Appeals).

Note: Maximum amount of pre-deposit is ₹10 crores.

The aforesaid percentage is to be calculated as follows –

- if both duty and penalty is confirmed, then the percentage (7.5% or 10%) is only of the duty or service tax.
- if only penalty is imposed, then the percentage (7.5% or 10%) is of the penalty.

Note: Maximum amount of pre-deposit is ₹10 crores.

Example 2:

X Ltd. received a protective demand notice from the department Assistant Commissioner of Central Excise on 1.9.2017 under Section 28 of the Customs Act, 1962 where

	Amount ₹
Customs Duty	= 5,00,000
Interest	= @15% p.a. for no. of days delay.
Penalty	= Nil

The assessee went for appeal and filed the case in the Commissioner (Appeals) on 25.9.2017. This appeal has been taken up for hearing on 06-10-2017. How much has to pay as pre-deposit of duty under section 129E of the Customs Act, 1962 and date of pre-deposit of duty by X Ltd. to entertain appeal by the Commissioner (Appeals).



Answer:

Pre-deposit amount = ₹ 37,500

(i.e. ₹ 5,00,000 x 7.5%)

Therefore, in the given case pre-deposit can be paid before 06-10-2017.

Example 3:

Y Ltd. received a protective demand notice from the department Principal Commissioner of Central Excise on 29.8.2017 under Section 28 of the Customs Act, 1962 where

	Amount ₹
Excise Duty	= 9,75,00,000
Interest	= @15% p.a. for no. of days delay
Penalty	= 25% of Customs duty

The assessee went for appeal and filed the case in the office of the Appellate Tribunal (CESTAT) against such order on 11.10.2017. Subsequently on 18.10.2017, CESTAT entrain the appeal for hearing.

How much has to pay as pre-deposit of duty under section 129E of the Customs Act, 1962 and date of pre-deposit of duty by Y Ltd. to entertain appeal by the Appellate Tribunal (CESTAT).

Answer:

The pre-deposit is ₹ 73,12,500

(9,75,00,000 x 7.5%)

In the given case pre-deposit can be paid before 18-10-2017.

CBEC has issued Circular No. 984/08/2014 CX dated 16.09.2014 which clarifies the Quantum of pre-deposit: Where an appeal is made against the order of Commissioner (Appeals) before the Tribunal, 10% is to be paid on the amount of duty demanded or penalty imposed by the Commissioner (Appeals). This amount may or may not be same as the amount of duty demanded or penalty imposed in the Order-in-Original in the said case.

Example 4:

Z Ltd. received a protective demand notice from the department on 1.8.2017 under Section Section 28 of the Customs Act, 1962 where

	Amount ₹
Excise Duty	= 45,00,000
Interest	= @15% p.a. for no. of days delay
Penalty	= 100% of customs duty

The assessee went for appeal and filed the case in the Commissioner (Appeals) on 5.8.2017. The Commissioner (Appeals) entertained the appeal on 11.8.2017. Subsequently on 31.10.2017, the Commissioner (Appeals) decided the case in favour of the department.

The assessee went for further appeal and filed the case in the office of the Appellate Tribunal (CESTAT) against such order on 24.11.2017. Subsequently on 28.11.2017, CESTAT entrained the appeal for hearing.

How much has to pay as pre-deposit of duty under section 129E of the Customs Act, 1962 and date of pre-deposit of duty by Y Ltd. to entertain appeal by the Commissioner (Appeals) and the Appellate Tribunal (CESTAT).

**Answer:****Statement showing pre-deposit of duty by Z Ltd.**

Particulars	Pre-deposit in %	Pre-deposit duty ₹	Pre-deposit of duty is before	Working note
Appeals to Comm. (appeals)	7.5%	3,37,500	11-8-2017	₹ 45 L × 7.5% = ₹ 3.375 L
Appeals to CESTAT	10%	4,50,000	28-11-2017	₹ 45 L × 10% = ₹ 4.5 L

Circular No. 984/08/2014 CX dated 16.09.2014 issued by CBEC has clarified that where penalty alone is in dispute and penalties have been imposed under different provisions of the Act, pre-deposit would be calculated based on the aggregate of all penalties imposed in the order sought to be appealed against.

Example 5:

In an order dated 20.08.2017 issued to M/s. GH & Sons, the Joint Commissioner of Customs has imposed a penalty of ₹10,50,000 (i.e. equal amount of customs duty) under section 112 of the Customs Act, 1962 plus a penalty of ₹ 2,50,000 under Section 112(b)(ii) of the Customs Act, 1962. M/s GH & Sons intends to file an appeal with the Commissioner (Appeals) against the said adjudication order.

Compute the quantum of pre-deposit required to be made by M/s. GH & Sons for filing the appeal with the Commissioner (Appeals).

Answer:

The quantum of pre-deposit will be ₹97,500.

[i.e. ₹ 10,50,000 + ₹ 2,50,000] × 7.5% = ₹ 97,500.

Meaning of 'duty demanded' – The term 'duty demanded' includes customs duty

Interest if pre-deposit is to be refunded - @ 6% p.a. simple interest (Section 129EE of the Customs Act, 1962):

If the assessee finally wins the case, the pre-deposit is to be refunded with interest from the date of pre-deposit till the date of refund of such amount @ 6% p.a. simple interest.

However, interest on delayed refund of pre-deposit made prior to 06.08.2014 will continue to be governed by the erstwhile provisions.

Example 6:

In an order dated 30.08.2017 issued to M/s. KK & Sons, the Commissioner of Central Excise has confirmed a duty demand of ₹ 50,50,000 and imposed a penalty of equal amount under Customs Act, 1962 plus a penalty of ₹ 5,50,000 under Customs Act, 1962.

M/s. KK & Sons deposits the required amount of pre-deposit on 10.09.2017 and files an appeal with CESTAT. CESTAT decides the appeal in favour of M/s. KK & Sons on 10.11.2017. M/s. KK & Sons submits a letter seeking refund of the pre deposit on 30.11.2017. The pre-deposit is refunded to M/s KK & Sons on 15.12.2017.

Compute the amount of interest payable on refund of such pre-deposit, if any under Sec. 129EE of the Customs Act, 1962.

Answer:

Interest = ₹5,977 (₹ 50,50,000 × 7.5%) × 6/100 × 96/365

Month	No. of day delay
Sep 2014	21
Oct 2014	31
Nov 2014	30
Dec 2014	14
Total	96

**Important points:**

- (1) for pre-deposits made prior to the amendments to Section 35FF of CEA, 1944 and Sec 129EE of Customs Act, 1962, the provisions of earlier sections shall apply (i.e. Section 11BB of CEA, 1944).
- (2) Application for stay is still required? – The provisions of sections 35F of Central Excise Act and 129E of Customs Act relating to pre-deposit of duty or penalty [as amended by Finance (No.2) Act, 2014 w.e.f. 6-8-2014] are only in respect of 'entertaining' appeal by Commissioner (Appeals) or CESTAT. There is no provision that once the pre-deposit is made, the recovery of balance amount will be stayed. Technically, department can start recovery of balance amount. Hence, till the issue is clarified by CBE&C, it is highly advisable to file stay application, along with the appeal.

Case Law 9:

Whether the word 'include' used in a statutory definition enlarges the scope of preceding words or restricts their scope?

Ramala Sahkari Chini Mills Ltd. v. CCEX. 2016 (334) ELT 3 (SC)

Decision: The Supreme Court referring to the case of *Regional Director, Employees' State Insurance Corporation v. High Land Coffee Works of P.F.X. Saldanha and Sons & Anr.* [(1991) 3 SCC 617] held that the word "include" in a statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction.

Appeal to Commissioner (Appeal)

(Section 128 of the Customs Act, 1962).

1. Appeal against orders up to Additional Commissioner lies with Commissioner (Appeals)
2. Appeal against Commissioner (Appeals) lies directly to CESTAT
3. Period of limitation for appeal:

In case of Customs
Original period of limitation
2 months from the date of communication of the order
Extended period of limitation
1 month from the date of communication of the order
However, Commissioner (Appeals) cannot condone the delay beyond period of One month [Amchong Tea Estate 2010 (SC)]. W.e.f. 28-5-2012 same provision for Service Tax appeals.

Case Law 10:**CCus & CEx. v. Ashok Kumar Tiwari 2015 (37) STR 727 (All.):**

The High Court noted that section 3(35) of the General Clauses Act, 1897 also defines the expression "month" to mean a month reckoned according to the British calendar. Further, the day on which order was received by the assessee, had to be excluded while computing the period of limitation. Since the original period of limitation and the period within which delay could be condoned expired on a public holiday, the assessee filed the appeal on the next working day. Therefore, Commissioner of Central Excise (Appeals) had the jurisdiction to condone the delay.

Example 7:

The assessee received the adjudication order on 08.10.2011 and filed an appeal against the said order before Commissioner of Central Excise (Appeals) on 09.04.2012 along with an application for condonation of delay.

However, the Commissioner dismissed the appeal as being time barred and declined to condone the delay. The Commissioner (Appeals) has jurisdiction to condone the delay?



Answer:

The Commissioner of Central Excise (Appeals) had the jurisdiction to condone the delay in filing of appeal by the assessee as the same had been filed within the stipulated time prescribed for the same [CCus & CEx. v. Ashok Kumar Tiwari 2015 (37) STR 727 (All.)].

Note: 8th April 2012 Sunday (also Easter a regional holiday).

4. Appeal should also state statement of facts and grounds of appeal. New grounds of appeal generally not allowed.
5. In general appeals can be finalized within 6 months from the date on which it is filed.
6. Committee of Commissioners can file an appeal if the Commissioner (Appeals) has given a decision in favour of assessee, if it is of the opinion that the order is not legal or proper.
7. Appeal against the order of Principal Commissioner or Commissioner or Commissioner (Appeals) lies with Tribunal, except following (Sec. 129DD of Customs Act, 1962):
 - Loss of goods occurring in transit from the factory to warehouse
 - Rebate of duty on goods exported
 - Goods exported without payment of duty

In the aforesaid matters, Tribunal has no jurisdiction, but revision application can be filed with Central Government [section 129DD of Customs Act, 1962] within 3 MONTHS. The Central Government of India can annul or modify the order. In all other matters, appeal lies with Tribunal. Revision application can be filed by the assessee or the Commissioner of Customs.

Revision application can be filed with Central Government along with fee of ₹200 if the amount, interest and penalty ≤ ₹1,00,000, otherwise ₹1,000. An officer of the rank of Joint Secretary hears the issue and passes orders on behalf of Central Government of India.

Therefore, while mandatory pre-deposit would be required to be paid in cases of drawback, rebate and baggage at the first stage appeal before Commissioner (Appeals), no pre-deposit would be payable in such cases while filing appeal before the Joint Secretary (Revision Application) [circular no. 993/17/2014-CX dt. 5-1-2015].

8. Commissioner (Appeals) cannot remand the matter to lower adjudicating authority.
9. w.e.f 06.08.2014 to enable Commissioner (Appeals) also [apart from CESTAT and Court to take into consideration the fact that a particular order being cited as a precedent decision on the issue has not been appealed against for reasons of low amount (the Customs Act, 1962 in section 131BA).

Case Law 11:

Chakiat Agencies v. UOI 2015 (37) STR 712 (Mad.)

Facts of the case: The assessee filed an appeal to Commissioner, but mistakenly gave it to the adjudicating officer who had passed the original order. The appellate authority rejected the appeal on the ground that the appeal was not received in time in his office.

Decision: The High Court noted that the appeal had been preferred in time, but reached different wing of the same building. Since, the appeal was received by the adjudicating officer who has passed the original order, he ought to have sent it to the other wing of the same building, but he had not done the same. Therefore, the order passed by the appellate authority cancelling the appeal on the ground that it was not received in time, could not be accepted.

The High Court directed the appellate authority to entertain the appeal of the assessee and to pass appropriate orders on merits and in accordance with law, after affording him an opportunity of being heard.

Case Law 12:

Raja Mechanical Co. (P) Ltd. (2012) (SC):

Assessee Claim: Commissioner (Appeals) rejected the appeal on the ground of limitation. Therefore, the order passed by the original authority would merge with the orders passed by the first appellate authority.



Decision: an appeal is dismissed on the ground of limitation and not on merits that order would not merge with the orders passed by the first appellate authority.

Judgment is given in favour of department and against the assessee.

Case Law 13:

Commissioner of C.Ex. Mumbai III v. TIKITAR INDUSTRIES, 2012 (277) E.L.T. 149 (S.C.):

Assessee Claim:

If Revenue accepts judgment of Commissioner (Appeals) on an issue for one period, then it should be precluded to make an appeal on the same issue for another period

Decision: Since, the Revenue had not questioned the correctness or otherwise of the findings on the conclusion reached by the first appellate authority, it may not be open for the Revenue to contend this issue further by issuing the impugned (i.e. disputed the truth) show cause notices on the same issue for further periods.

Case Law 14:

C.C.E. & S.T. (LTU), Bangalore v. Dell Intl. Services India P. Ltd. 2014 (33) S.T.R. 362 (Kar.)

Can the Committee of Commissioners review its decision taken earlier under section 86(2A) of the Finance Act, 1994, at the instance of Chief Commissioner?

Decision: The Karnataka High Court held that once the Committee of Commissioners, on a careful examination of the order of the Commissioner (Appeals), did not differ in their opinion against the said order of the Commissioner (Appeals) and decide to accept the said order, the matter ends there. The said decision is final and binding on the Chief Commissioner also. The Chief Commissioner is not vested with any power to call upon the Committee of Commissioners to review its order so that he could take decision to prefer an appeal. Such a procedure is not contemplated under law and is without jurisdiction.

Case Law 15:

M/s Venus Rubbers v. The Additional Commissioner of Central Excise, Coimbatore 2014 (310) ELT 685 (Mad.)

Decision: The High Court held that there is no provision of law under the Central Excise Act, 1944 which gives power to the Commissioner (Appeals) to review his order. However, such a power is available to the Tribunal under section 35C(2) of the Central Excise Act, 1944 to rectify any mistake apparent on the record. The High Court elaborated that when there is no power under the statute, the Commissioner (Appeals) has no authority to entertain the application for review of the order.

Case Law 16:

Enestee Engineering Pvt. Ltd. v. UOI 2016 (41) STR 0061 (Bom.)

Facts of the Case: The adjudication order was passed and was forwarded to the assessee. However, assessee did not receive the same. It learned about the order only after receipt of a letter from the Superintendent, nearly after two years, directing it to pay the dues as per said order. Thereafter, a copy of that order was made available to the assessee.

Point of Dispute: The appeal filed by the assessee against the said order was rejected by the Commissioner (Appeals) as well as by the Tribunal, as being barred by limitation.

The assessee contended that the appeal could not be held to be barred by limitation as no order was received by it.

Decision: The High Court noted that the period of limitation prescribed under erstwhile section 85(3) [now section 85(3A)] of the Finance Act, 1994 to prefer an appeal against order-in-original is 3 months [now 2 months]. The said period begins from the date of receipt of the decision or the order of adjudicating authority. Further, section 37C(2) of the Central Excise Act, 1944 stipulates that every decision/order passed or any summons/notice issued under the said Act is deemed to have been served on the date on which such decision, order or summons is tendered or delivered by post or is affixed in the prescribed manner.

Thus, a perusal of section 37C (as supported by erstwhile section 85(3) [now section 85(3A)] of the Finance Act, 1994) shows insistence upon the service of such adjudication order upon the assessee. Hence, the observation in



the Tribunal's order that the order- in-original had been forwarded to the assessee on a particular date was not sufficient in the eyes of law to start computing the period of limitation.

The High Court observed that neither the order of Commissioner (Appeals) nor the order of Tribunal recorded a finding that the adjudication order was actually tendered to the assessee on a particular date or received by him on a particular date.

The High Court quashed and set aside both the orders - order of Commissioner (Appeals) and the order of Tribunal, and placed back the matter for fresh consideration before Commissioner (Appeals).

Committee of Commissioners/ Chief Commissioners cannot review the same order twice under CEx., Customs and Service Tax law

The power of review of order of Commissioner (Appeals) or order of Principal Commissioner/ Commissioner as an adjudicating authority vests with the Committee of Commissioners and Committee of Chief Commissioners respectively and there is no provision for reviewing the same order twice [Instruction F.No.390/Review/36/2014 JC dated 17.03.2016].

Appeals to the Customs, Excise and Service Tax Appellate Tribunal (CESTAT):

(Sec. 129 Customs Act, 1962)

- (1) CESTAT hears appeals against orders of Commissioner as adjudicating authority and Commissioner (Appeals).
- (2) CESTAT is final fact finding authority
- (3) Appeal should be in prescribed form EA-3
- (4) Appeal should be filed within 3 months from the date of receipt of order in the prescribed form EA 3.
- (5) The Tribunal shall hear and decide every appeal within a period of 3 years.
- (6) If stay is granted by Tribunal for recovery, appeal shall be decided within 180 days.

W.e.f. 10-5-2013 CESTAT may further extend the period of stay, by not more than 185 days in the following cases:

- (i) on an application made in this behalf by a party and
- (ii) on being satisfied that the delay in disposing of the appeal is not attributable to such party

In case the appeal is not disposed of within the total period of 365 days from the date of the stay order, the stay order shall, on the expiry of 365, stand vacated.

- (7) Fee for filing an appeal

Amount, interest and penalty demanded	Fee for filing an appeal
≤ ₹5,00,000	₹1,000
> ₹5,00,000 ≤ ₹50,00,000	₹5,000
> ₹50,00,000	₹10,000

- (8) Monetary limit of the Single Bench of the Tribunal to hear and dispose of appeals enhanced from ₹10 lakh to ₹50 lakh [Section 35D(3)] (w.e.f. 10-5-2013)
- (9) Tribunal can condone the delay for any number of days.
- (10) Tribunal can refuse petty appeals below ₹2 lakhs.
- (11) CEB&C can extend time limit for sanctioning departmental appeal by 30 days in Customs (w.e.f. 6-8-2014):

The Committee of Principal Commissioner or Commissioners or Principal Chief Commissioner/Chief Commissioners is required to take decision regarding filing of departmental appeal within 3 months. this period can be extended upto 30 days by CBE&C, on sufficient case being shown (presumably by the Committee itself)- proviso to section 129D(3) of Customs Act 1962.

**Case Law 17:*****Amidev Agro Care Pvt. Ltd. v. Union of India 2012 (279) E.L.T. 353 (Bom):***

Assessee Claim: the copy of the order passed by the Commissioner of Central Excise (appeals) on was not served upon the assessee. It was only when the recovery proceedings were initiated, the assessee sought a copy of the order dated 31st mar 2008 and the same was made available to the assessee on 26th Feb 2010. Immediately thereupon the assessee filed an appeal before the CESTAT on 17th may 2010.

Department Contention: The appeal was not filed within the stipulated time of 3 months from 31st mar 2008.

Decision: As per sec 37C(1)(a) of the C.E.A. 1944, it was obligatory on the part of the revenue, either to tender a copy of the decision to the assessee or to send it by registered post with due acknowledgment to the assessee or its authorised agent. In the present case neither of the above had been complied with by the revenue. Therefore, assessee claim is justifiable.

Note: w.e.f. 10-5-2013 speed posts with proof of delivery or courier approved by the CBEC is also a valid communication.

Case Law 18:***Mihani Network v. Ccus. & Cex. 2012 (285) ELT 182 (MP):***

Statement of Facts: The assessee had filed an appeal along with an application for stay before the CESTAT. However, since there had been a delay in filing the appeal, the assessee also filed an application for condonation of delay.

The CESTAT ordered that the delay would be treated as condoned, if the assessee deposits 50% of the amount of tax.

Decision: There is no legal provision which provides for condoning the delay in filing the appeal on a condition of depositing 50% of tax amount.

Case Law 19:***Thakker Shipping P. Ltd. v. CC (General) 2012 (285) E.L.T. 321 (S.C.):***

Statement of facts: The proceedings were initiated against the assessee under the Customs Act, 1962. However, Commissioner of Customs (General), in his order-in-original, dropped the said proceedings.

The Committee of Chief Commissioners of the Customs constituted under Sec. 129A(1B) of the Customs Act, 1962 reviewed his order and directed him to apply to the Tribunal for determination of certain points.

Since, the application not made within the prescribed period and was delayed by 10 days.

Tribunal rejected the application for condonation of delay on the ground that Tribunal had no power to condone the delay caused in filing application under sec. 129A(4) by the Department beyond the prescribed period of 3 months.

Decision: Tribunal was competent to admit an appeal or permit the filing of a memorandum of cross-objections after expiry of the relevant period, if it is satisfied that there was sufficient cause for not presenting it within that period.

Order-in-original means: The Central Excise Officer after considering the submission made in reply to show cause notice as well as during personal hearing shall pass the order called Order-In-Original either confirming the demand or dropping the demand or partly confirming the demand and levy of penalty and interest.

The aggrieved person can file an appeal, against order-in-original.

Case Law 20:***Margara Industries Ltd. v. Commr. of C. Ex. & Cus. (Appeals) 2013 (293) E.L.T. 24 (All.)***



Statement of facts: The CESTAT rejected the appellant's application for condonation of delay in filing the appeal before CESTAT on the ground that the reasons given for filing the appeal beyond time were not convincing. The Counsel of the appellant filed his personal affidavit stating that the appeal had been filed with a delay due to his mistake.

Decision: The High Court held that the Tribunal ought to have taken a lenient view in this matter as the appellant was not going to gain anything by not filing the appeal and the reason for delay in filing appeal as given by the appellant was the mistake of its counsel who had also filed his personal affidavit.

Case Law 21:

Texcellence Overseas v. Union of India 2013 (293) ELT 496 (Guj.)

Facts of the case: The petitioner was granted a refund by way of order-in-original and the same was also upheld by the CESTAT.

However, a fresh show cause notice was issued on the ground that refund was erroneously granted. The show cause notice, this time was adjudicated in favour of the Department. The petitioner challenged this order before Commissioner (Appeals) five months after the said order was passed.

Therefore, the Commissioner (Appeals) and Tribunal (when the matter was brought before it) rejected the appeal on the grounds of limitation as the same was filed beyond three months from the date of the said order.

Decision: The High Court opined that since the total length of delay was very small and the case had extremely good ground on merits to sustain, its non-interference at that stage would cause gross injustice to the petitioner.

Thus, the High Court, by invoking its extraordinary jurisdiction, quashed the order which held that refund was erroneously granted. The High Court held that such powers are required to be exercised very sparingly and in extraordinary circumstances in appropriate cases, where otherwise the Court would fail in its duty if such powers are not invoked.

Case Law 22:

CCE v RDC Concrete (India) Pvt. Ltd. 2011 (270) ELT 625 (SC)

Question: Can re-appreciation of evidence by CESTAT be considered to be rectification of mistake apparent on record under section 35C(2) of the Central Excise Act, 1944?

Statements of Fact: the arguments not accepted at an earlier point of time were accepted by CESTAT while hearing the application for rectification of mistake and it arrived at a conclusion different from earlier one. (CA Final May 2014 RTP)

Decision: No. The Apex Court elucidated that re-appreciation of evidence on a debatable point cannot be said to be rectification of mistake apparent on record. The Supreme Court observed that arguments not accepted earlier during disposal of appeal cannot be accepted while hearing rectification of mistake application.

Note: As per section 35C(2) of the Central Excise Act, 1944, the Appellate Tribunal may amend the order passed by it earlier provided the parties to the appeal bring to the notice of the Tribunal for rectification of any mistakes apparent from the records within six months from the date of issuing such earlier order.

Case Law 23:

CCE v Gujchem Distillers 2011 (270) ELT 338 (Bom)

Is the CESTAT order disposing appeal on a totally new ground sustainable?

Decision: No. The High Court explained that had the CESTAT not been satisfied with the approach of the adjudicating authority, it should have remanded the matter back to the adjudicating authority. However, it could not have assumed to itself the jurisdiction to decide the appeal on a ground which had not been urged before the lower authorities.

**Case Law 24:**

Commissioner of Central Excise, Delhi v. Brew Force Machine Pvt. Ltd. 2015-TIOL-1873-HC-DEL-CX-LB,

Hon'ble Delhi High Court was held that CESTAT, while dealing with an application for stay, has the power and jurisdiction to grant stay beyond 365 days, when the assessee is not responsible for delay in disposing of the appeal, under Section 35C(2A) of the Central Excise Act.

Appeals to High Court

(Sec. 130 Customs Act, 1962.)

1. An Appeal can be made to High Court within 180 days from the date of order of Tribunal received. High Courts are empowered to condone the delay in filing of appeals.
2. Case involves substantial question of law (i.e. Point relating to interpretation of statute, applicability of law etc.) will be taken up by High Court.
3. Appeal accompanied by a Fee of ₹200.

Case Law 25:

CCE v. GEM PROPERTIES (P) LTD. 2010 (257) E.L.T. 222 (KAR):

Assessee claim: Excise duty was paid on exempted goods and hence, entitled to the refund of excise duty wrongly paid by it. Also stated that company is incurring heavy losses therefore, refund not amounts to unjust enrichment.

Department Contention: Since, all the material sold by the assessee had been inclusive of excise duty. It was evident from the Chartered Accountant's certificate that the cost of the duty was included while computing the cost of production of the material. Therefore, refund of duty not allowed.

Decision: Refund not allowed. It would amount to unjust enrichment because all the materials sold by the assessee had been inclusive of excise duty.

Case Law 26:

CCEx v. Superintending Engineer TNEB 2014 (300) E.L.T. 45 (Mad.)

Question: Does the principle of unjust enrichment apply to State Undertakings?

Facts of the case:

1. The assessee (Basin Bridge Gas Turbine Power Station of the Tamil Nadu Electricity Board) filed refund claim on the ground that they were eligible for exemption of duty on Naphtha used in the production of electricity at their power plant. Consequently, they claimed refund of the duty paid by them for naphtha received by them during the relevant period.
2. The claim of the respondent was rejected on the ground that the respondent (assessee) had not proved that they had not passed on the duty liability to the consumers and when the electricity rate had remained the same and the exemption notification was not in force, the continuance of the same electricity rates even after availing of the benefits of exemption, would indicate that the assessee had passed on the duty liability to the ultimate consumer.

Decision: The High Court relied on the decision of the Constitution Bench of the Apex Court rendered in the case of *Mafatlal Industries Ltd. v. Union of India* 1997 (89) E.L.T. 247 SC.

The Supreme Court in the said case held as under "the doctrine of unjust enrichment is, however, inapplicable to the State".

State represents the people of the country. No one can speak of the people being unjustly enriched."

The High Court held that the concept of unjust enrichment is not applicable as far as State Undertakings are concerned and to the State. Judgment has been given in favour of the assessee and against the department.



Case Law 27:

Astik Dyestuff Private Limited v. CCEx. & Cus. 2014 (34) S.T.R. 814 (Guj.)

1. Whether sales commission services are eligible input services for availment of CENVAT credit?
2. If there is any conflict between the decision of the jurisdictional High Court and the CBEC circular, then which decision would be binding on the Department?
3. Also, if there is a contradiction between the decisions passed by jurisdiction High Court and another High Court, which decision will prevail?

Decision:

1. It was elaborated by the High Court that in the case of *Cadila Healthcare Limited*, the jurisdictional High Court did not allow CENVAT credit on sales commission services after interpreting the relevant provisions of law.
2. The High Court clarified that the decision of the jurisdictional High Court is binding to the Department rather than the Circular issued by the C.B.E. & C.
3. When there are two contrary decisions, one of jurisdictional High Court and another of the other High Court, then the decision of the jurisdictional High Court would be binding to the Department and not the decision of another High Court.

Case Law 28:

Khanapur Taluka Co-op. Shipping Mills Ltd. v. CCEx. 2013 (292) E.L.T. 16 (Bom.):

Question: In a case where an appeal against order-in-original of the adjudicating authority has been dismissed by the appellate authorities as time-barred, can a writ petition be filed to High Court against the order-in-original?

Decision: The High Court referred to the case of *Raj Chemicals v. UOI 2013 (287) ELT 145 (Bom.)* wherein it held that where the appeal filed against the order-in-original was dismissed as time-barred, the High Court in exercise of writ jurisdiction could neither direct the appellate authority to condone the delay nor interfere with the order passed by the adjudicating authority. Consequently, it refused to entertain the writ petition in the instant case.

Case Law 29:

Habib Agro Industries v. CCEx. 2013 (291) E.L.T. 321 (Kar.):

Question: Can delay in filing appeal to CESTAT for the reason that the person dealing with the case went on a foreign trip and on his return his mother expired, be condoned?

Decision: The High Court observed that there did not appear to be any deliberate latches or neglect on the part of the authorised representative to file the appeal. It held that the reason for delay in filing appeal to CESTAT, that the person dealing with the case went on a foreign trip and on his return his mother expired, could not be considered as unreasonable for condonation of delay.

Therefore, delay can be condoned.

Case Law 30:

Rishiroop Polymers Pvt. Ltd. v. Designated Authority 2013 (294) E.L.T. 547 (Bom.)

Facts of the case: The CESTAT upheld a notification issued by the Central Government imposing anti-dumping duty on certain products originating from specified countries pursuant to the findings recorded by the Designated Authority in a review of anti-dumping duty.

The assessee filed a writ petition under Article 226 of the Constitution to challenge the said order passed by the CESTAT under section 9C of the Customs Tariff Act, 1975.

The Department contended that an appeal, and not a writ petition, would lie against the order passed by the CESTAT.

Decision: The High Court, therefore, held that it would not be appropriate for it to exercise the jurisdiction under Article 226 of the Constitution, since an alternate remedy by way of an appeal was available in accordance with law.

The High Court thus, dismissed the petition leaving it open to the assessee to take recourse to the appellate remedy.

**Case Law 31:*****Metal Weld Electrodes v. CESTAT 2014 (299) ELT 3 (Mad.)***

Question: Which remedy is available against a pre-deposit order (i.e. interim order) passed by CESTAT under section 35F of Central Excise Act, 1944/section 129E of Customs Act, 1962; is it an appeal to High Court under section 35G of Central Excise Act, 1944/section 130 of Customs Act, 1962 or a writ petition before High Court?

Decision: The Commissioner of Central Excise or the other party aggrieved may file an appeal to the High Court against "any order passed by the Appellate Tribunal" (other than valuation and rate of duty determination) Sec. 35G(2) of C.E.A. 1944.

Finally, the High Court held that the order passed by the CESTAT in terms of section 35F of the Central Excise Act, 1944 or section 129E of the Customs Act, 1962 is appealable in terms of section 35G of the Excise Act, 1944 or section 130 of the Customs Act, 1962.

Case Law 32:***CCE v. Nahar Industrial Enterprises Ltd. 2010 (19) STR 166 (P & H)***

Facts of the Case: The assessee was engaged in the manufacture of sugar. The Central Government directed him to maintain buffer stock of free sale sugar for the specified period. In order to compensate the assessee, the Government of India extended buffer subsidy towards storage, interest and insurance charges for the said buffer stock of sugar.

Revenue issued a show cause notice to the assessee raising the demand of service tax alleging that amount received by the assessee as buffer subsidy was for storage and warehousing services.

Decision: The High Court noted that apparently, service tax could be levied only if service of storage and warehousing was provided. Nobody can provide service to himself. In the instant case, the assessee stored the goods owned by him.

After the expiry of storage period, he was free to sell them to the buyers of its own choice. He had stored goods in compliance with the directions of the Government of India issued under the Sugar Development Fund Act, 1982. He had received subsidy not on account of services rendered to Government of India, but had received compensation on account of loss of interest, cost of insurance etc. incurred on account of maintenance of stock. Hence, the High Court held the act of assessee could not be called as rendering of services.

Appeals to Supreme Court of India (Section 130E Customs Act, 1962.)

1. Order of CESTAT where it relates to question relating to rate of excise duty or value for the purpose of duty can make an appeal directly to the Supreme Court of India.
2. If High Court certifies it to be a fit case for appeal to Supreme Court, the aggrieved person can apply to the Supreme Court.
3. Appeal to the Supreme Court should be presented within 60 days from the date the order is communicated.
4. Once National Tax Tribunal (NTT) is made operational, then appeal against order of CESTAT can be made only to NTT.
5. **w.e.f. 6-8-2014**, determination of disputes relating to taxability or excisability of goods is covered under the term "determination of any question having a relation to rate of duty" and hence, appeal against Tribunal orders in such matters would lie before the Supreme Court.

Case Law 33:***CCE v. Fact Paper Mills Private Limited 2014 (308) E.L.T. 442 (SC)***

Can an appeal be filed before the Supreme Court against an order of the CESTAT relating to clandestine removal of manufactured goods and clandestine manufacture of goods?

Decision: The Supreme Court held that the appeals relating to clandestine removal of manufactured goods and clandestine manufacture of goods are not maintainable before the Apex Court under section 35L of the Central Excise Act, 1944.



Case Law 34:

Principal Commissioner of Central Excise & Customs, Daman Commissionerate v. Omnitex Industries (India) Ltd. (2016) 67 taxmann.com 122 (Bombay)

Facts of the case: The appellant preferred appeal against the order of the CESTAT under section 35G of Central Excise Act within 180 days before the Gujarat HC. After admitting the appeal, it remained pending for 2192 days and after that the Gujarat HC held that since the manufacturing unit in the present case is located in Daman, the Gujarat HC does not have any territorial jurisdiction and hence dismissed the appeal.

Department contention: It was time barred appeal and condo-nation of delay is also be not filed.

Decision: the Bombay High court held that the entire period from the time of filing the appeal in Gujarat HC till its disposal can be fairly excluded for the computation of period of limitation.

Further, there is no requirement of filing condo-nation of delay, as the period from the date of receipt of order appealed against and the date of filing the appeal in Bombay HC after deducting the entire period (from the date of filing appeal in Gujarat HC to the date of its disposal), still does not exceed 180 days.

For computing the period of limitation- the time xperiod spent in pursuing remedy before wrong forum to be excluded.

Hence, only if the said period exceeds 180 days, the appellant will be required to file application-seeking condo-nation of delay.

Since, the assessee had wrongly filed appeal before Gujarat High Court instead of Bombay High Court, the period spent in pursuing remedy before Gujarat HC must be excluded while computation of time limit for filing appeal before Bombay HC.

Case Law 35:

Neeraj Jhanji v. CCE & Cus. 2014 (308) E.L.T. 3 (S.C.)

Facts of the Case: In this case, the assessee filed a writ petition before the Delhi High Court against the order in original passed by the Commissioner of Customs of Kanpur. However, the jurisdictional High Court for the petitioner would have been Allahabad High Court. When the Revenue raised objection over the territorial jurisdiction of the High Court, the assessee withdrew the appeal from the Delhi High Court and filed the appeal with the Allahabad High Court with the application for condonation of delay. The Allahabad High Court, however, dismissed the application for condonation of delay and also dismissed the appeal as time barred. Then, the assessee filed a special leave petition with the Supreme Court.

Decision: The Supreme Court observed that the very filing of writ petition by the petitioner in Delhi High Court against the order in original passed by the Commissioner of Customs, Kanpur indicated that the petitioner had taken chance in approaching the High Court at Delhi which had no territorial jurisdiction in the matter. The filing of the writ petition before Delhi High Court was not at all bona fide.

Appeals to the Settlement Commission (Section 127B Customs Act, 1962):

The Settlement Commission called as Customs, Central Excise and Service Tax Settlement Commission w.e.f. 6-8-2014:

1. The additional amount accepted by applicant as payable shall be more than ₹ 3 lakhs.
2. Application can be made only when a case is pending before central excise/customs officers.

w.e.f. 14.05.2015, All proceedings referred back to the adjudicating authority for a fresh adjudication and not just the proceedings referred back in any appeal or revision ineligible for settlement (amendment has been made in the Customs Act, 1962 in section 127A(b).

It means when any proceeding is referred back by any Court, Appellate Tribunal or any other authority, to the adjudicating authority for a fresh adjudication or decision, then such proceeding shall not be deemed to be a proceeding pending.

3. Cases pending in court or tribunal cannot be taken up.
4. Cases involving classification or valuation cannot be taken up by settlement commission



5. If goods or books of account or other documents have been seized, application can be made after expiry of 180 days from the date of seizure. Application for settlement can be made even if excisable goods or documents are seized, without waiting for 180 days (w.e.f. 6-8-2014).
6. Application to settlement commission should be filed in Form SC(C)-1 in case of Customs disputes.
7. The Settlement Commission can accept application for settlement, even if excise returns were not filed, if there were sufficient reasons for not filing the return [second proviso to section 32E of Central Excise Act, inserted vide Finance (No.2) Act, 2014 w.e.f. 6-8-2014].

Appeals to Settlement Commission (Section 127B Customs Act, 1962.)

Step 1: Applicant should file an application by disclosing true and full information in Form SC(E)-1 or Form SC(C)

Step 2: Application should be accompanied by a fee of ₹ 1,000 (by way of GAR-7 challan only)

Step 3: Settlement Commission will issue NOTICE to the applicant within 7 days from the date of receipt of application.

Step 4: Thereafter, based on the applicant's reply, pass orders of admission or rejection within 14 days of notice. Hence, prescribed period for issue of orders is 7 days + 14 days = 21 days.

Step 5: Copy of orders under section 32F will be sent to applicant and jurisdictional Commissioner Central Excise (127C in case of Customs).

Step 6: Within 7 days of admission orders, the Settlement Commission shall call for the report of the jurisdictional Commissioner.

Step 7: The Commissioner should send report within 30 days. Settlement Commission will proceed further, even in the absence of any report from the jurisdictional Commissioner.

Step 8: The Settlement Commission can order Commissioner (Investigation) to make further enquiries and submit his report within 90 days. Settlement Commission will proceed further, even in the absence of any report from the Commissioner (Investigation).

Step 9: The Settlement Commission after hearing must pass order within 9 months (further 3 months allowed) from last day of month in which application was made

Step 10: If final order not passed within 9 months or 12 months, as the case may be, the case will go back to adjudicating authority.

Powers of Settlement Commission to grant immunity from prosecution and penalty:

The Settlement Commission can grant immunity from prosecution for any offence under the Act and either wholly or in part from the imposition of penalty if it is satisfied that the applicant has made full and true disclosure and co-operated with the Commission.

If the payment is not made as per the settlement order or any particulars are concealed or any false evidence is given, the immunity can be withdrawn.

If prosecution has already been launched before submission of application for settlement, the immunity against such prosecution cannot be granted.

Case Law 36:

CCus.v. Ashok Kumar Jain 2013 (292) ELT 32 (Del.)

Department contended: The Settlement Commission lacks the jurisdiction to entertain the baggage cases.

Decision: The High Court opined that the provisions that conferred jurisdiction on the

Settlement Commission (Section 127B) cannot be construed as narrowly as it sought to be urged by the Revenue. A plain reading of the provisions of sections 127A and 127B reveals that there is no bar/express or implied on the Settlement Commission - in respect of entertaining applications by the passengers which brought in goods through their baggage.

Therefore, Settlement Commission has jurisdiction over baggage cases.



Case Law 37:

Saurashtra Cement Ltd. v. CCus. 2013 (292) E.L.T. 486 (Guj.)

Question: Is judicial review of the order of the Settlement Commission by the High Court or Supreme Court under writ petition/special leave petition, permissible?

Decision: The High Court noted that although the decision of Settlement Commission is final, finality clause would not exclude the jurisdiction of the High Court under Article 226 of the Constitution (writ petition to a High Court) or that of the Supreme Court under Articles 32 or 136 of the Constitution (writ petition or special leave petition to Supreme Court).

The Court would ordinarily interfere if the Settlement Commission has acted without jurisdiction vested in it or its decision is wholly arbitrary or perverse or mala fide or is against the principles of natural justice or when such decision is ultra vires the Act or the same is based on irrelevant considerations.

The Court, however, pronounced that the scope of court's inquiry against the decision of the Settlement Commission is very narrow, i.e. judicial review is concerned with the decision-making process and not with the decision of the Settlement Commission.

Case Law 38:

Additional Commissioner of Customs v. Shri Ram Niwas Verma [W.P. (C) No. 7363/2014 & CM 17221/ 20 L4]:

Decision: Hon'ble Delhi High court held that Settlement Commission has no jurisdiction to decide cases in relation to smuggling of the goods specified under section 123 of the Customs Act, 1962.

In view of the said order of the Delhi High Court, it has been clarified that Settlement Commission has no jurisdiction to entertain the matters in relation to the goods specified under section 123 of the Customs Act, 1962 which include gold [**F. No. 275/46/2015 CX. 8A dated 01.10.2015**].

12.7 AUTHORITY FOR ADVANCE RULING

Sec. 28E Customs Act, 1962

It means knowing the law in advance.

Application for Advance Ruling can be made in respect of following Questions:

1. Classification of goods or services
2. Applicable of any exemption notification
3. Determination of Assessable value
4. Determination of origin of goods in case of Customs
5. Determination of liability to pay duties of excise on any goods

Application can be rejected in the following cases:

- (a) If the question rose is already pending before an officer of Excise or Tribunal or any Court.
- (b) If the matter has already been decided by CESTAT or any Court.
 - Application can be withdrawn within 30 days from the date of filing the application.
 - Authority for Advance Ruling once accepted the application can decide the case within 90 days from receipt of application.


On whom, is the advance ruling pronounced by the Advance Ruling Authority under service tax binding?

Answer: Section 96E of the Finance Act, 1994, an advance ruling pronounced by the Authority under section 96D shall be binding only-

- (a) on the applicant who had sought it; in respect of any matter referred to in sub-section (2) of section 96C;
- (b) on the Commissioner, and the Central Excise authorities subordinate to him, in respect of the applicant.

Such advance ruling shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

Example 8:

Basant, a non-resident intends to provide a taxable service under a joint venture in collaboration with a non-resident, but has entertained some doubts about its valuation.

Aarohi, Basant's friend, has obtained an 'Advance Ruling' from the Authority for Advance Rulings on an identical point. Basant proposes to follow the same ruling in his case. Basant has sought your advice as his consultant whether he could follow the ruling given in the case of Aarohi. Explain with reasons.

Answer:

An advance ruling is binding only on the applicant who has sought it. In the given problem, in view of the aforesaid provision, Basant cannot make use of the advance ruling pronounced in the identical case of his friend, Aarohi. Basant should obtain a ruling from the Authority of Advance Ruling by making an application along with a fee of ₹ 2,500.

An application for advance ruling can be made by any of the following if they propose to undertake any business activity in India.

1. A Non-resident setting up a joint venture in India in collaboration with a non-resident or a resident.
2. A wholly owned subsidiary Indian company, of which the holding company is a foreign company, such holding company proposes to undertake any business activity in India.
3. A joint venture in India in which at least one of the participants, partners, or equity share holders is a non-resident having substantial interest in the joint venture.
4. Public Sector Undertakings (PSUs)
5. A PUBLIC LIMITED (N.T.67/2011 DT 22.9.2011)
6. Any existing producer or manufacturer may also seek advance ruling in relation to any new business of production or manufacture proposed to be undertaken by him (w.e.f. 10-5-2013)
7. Any existing importer or exporter may also seek advance ruling in relation to any new business of import or export proposed to be undertaken by him (w.e.f. 10-5-2013)
8. A resident private limited company can make application for Advance w.e.f. 11-7-2014.
9. w.e.f. 1-3-2015, A resident firm (includes LLP; LLP which has no company as its partner; Sole Proprietorship or One Person Company).
10. As may be specified by the Central Government of India by issuing a notification.

Note: w.e.f. 10-5-2013, the admissibility of the credit of service tax paid or deemed to have been paid on input services used in the manufacture of excisable goods as well.[Section 23C(2)(e)]



Example 9:

Mr. Q owns a sole proprietorship firm, 'Safe and Super Importers'. Mr. Q has never been to any place outside India. The firm proposes to import a product. Mr. Q is not sure of the correct classification of the product under Customs Tariff. His Tax Consultant has informed him that the said classification issue has been decided by the CESTAT in a different case. However, Mr. Q does not want to take any chances and is desirous of obtaining a ruling from the Authority for Advance Ruling under section 28H of the Customs Act, 1962 with respect to the classification of the product to be imported by it.

In the light of recent amendments, state whether Safe and Super Importers can seek advance ruling in the present case under the Customs Act, 1962?

Answer:

With effect from 01.03.2015, a resident firm can also apply for AAR. The sole proprietorship will have to satisfy the test of residency as per section 2(42) of the Income Tax Act, 1961 to be eligible to apply for an advance ruling.

Therefore, Safe and Super Importers, being a resident proprietorship firm, is an eligible applicant for advance ruling.

Since in the given case, question intended to be raised by Safe and Super Importers is already decided by the CESTAT, advance ruling cannot be sought by it.



FOREIGN TRADE POLICY



Study Note - 1

FOREIGN TRADE POLICY 2015-2020



This Study Note includes

- 1.1 Penalties
- 1.2 Definitions
- 1.3 Administration of Foreign Trade Policy
- 1.4 Features of Foreign Trade Policy
- 1.5 Guiding Principles of FTP 2015-2020
- 1.6 Scope of FTP
- 1.7 Authorization
- 1.8 Merchant Exporter
- 1.9 Third Party Exports
- 1.10 Letter of Credit
- 1.11 Indian Trade Classification (Harmonized System) [ITC (HS)]
- 1.12 Board of Trade (BOT)
- 1.13 Import of Gifts
- 1.14 Export of Gifts
- 1.15 Import of Samples
- 1.16 Export of Samples
- 1.17 Export of Items Reserved for MSME Sector
- 1.18 Duty Exemption Schemes
- 1.19 Duty Remission Scheme
- 1.20 Reward Schemes (i.e. Duty Credit Schemes)
- 1.21 Status Holders
- 1.22 Export Promotion Capital Goods (EPCG) Scheme
- 1.23 EOU, EHTP, STP & BTP
- 1.24 Deemed Exports
- 1.25 Special Economic Zone
- 1.26 FTP and GST
- 1.27 GSTIN or PAN in Place of Importer Exporter Code (IEC)
- 1.28 Penalties

1.1 PENALTIES

Foreign Trade Policy (FTP) 2015-2020 (Valid from 1st April 2015 to 31st March, 2020)

Section 3 of Foreign Trade (Development and Regulation) Act, 1992 [FT(D&R) Act, 1992]	Empowers Central Government to make provisions for development and regulation of foreign trade
Section 5 of FT (D&R) Act, 1992	Empowers Central Government to formulate and announce by notification in Official gazette, the export and import policy and also amend the same by issuing a notification. In India, the Union Ministry of Commerce and Industry governs the affairs relating to the promotion and regulation of foreign trade.

**1.2 DEFINITIONS**

For purpose of FTP, unless context otherwise requires, the following words and expressions shall have the following meanings attached to them:-	
1.	"Accessory" or "Attachment" means a part, sub-assembly or assembly that contributes to efficiency or effectiveness of a piece of equipment without changing its basic functions.
2.	"Act" means Foreign Trade (Development and Regulation) Act, 1992 (No.22 of 1992) [FT (D&R) Act] as amended from time to time.
3.	"Actual User" is a person (either natural or legal) who is authorized to use imported goods in his/its own premise which has a definitive postal address.
	"Actual User (Industrial)" is a person (either natural & legal) who utilizes imported goods for manufacturing in his own industrial unit or manufacturing for his own use in another unit including a jobbing unit which has a definitive postal address.
	"Actual User (Non-Industrial)" is a person (either natural & legal) who utilizes the imported goods for his own use in: (i) any commercial establishment, carrying on any business, trade or profession, which has a definitive postal address; or (ii) any laboratory, Scientific or Research and Development (R&D) institution, university or other educational institution or hospital which has a definitive postal address; or (iii) any service industry which has a definitive postal address.
4.	"AEZ" means Agricultural Export Zones notified by DGFT in Appendix 2V of Appendices and Aayat Niryat Forms.
5.	"Appeal" is an application filed under section 15 of the Act and includes such applications preferred by DGFT officials in government interest against decision by designated adjudicating/appellate authorities.
6.	"Applicant" means person on whose behalf an application is made and shall, wherever context so requires, includes person signing the application.
7.	"Authorization" means permission as included in Section 2 (g) of the Act to import or export as per provisions of FTP.
8.	"Capital Goods" means any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods or for rendering services, including those required for replacement, modernisation, technological up-gradation or expansion. It includes packaging machinery and equipment, refrigeration equipment, power generating sets, machine tools, equipment and instruments for testing, research and development, quality and pollution control. Capital goods may be for use in manufacturing, mining, agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture and viticulture as well as for use in services sector.
9.	"Competent Authority" means an authority competent to exercise any power or to discharge any duty or function under the Act or the Rules and Orders made there under or under FTP.
10.	"Component" means one of the parts of a sub-assembly or assembly of which a manufactured product is made up and into which it may be resolved. A component includes an accessory or attachment to another component.
11.	"Consumables" means any item, which participates in or is required for a manufacturing process, but does not necessarily form part of end-product. Items, which are substantially or totally consumed during a manufacturing process, will be deemed to be consumables.
12.	"Consumer Goods" means any consumption goods, which can directly satisfy human needs without further processing and includes consumer durables and accessories thereof.



13.	"Counter Trade" means any arrangement under which exports/imports from /to India are balanced either by direct imports/exports from importing/exporting country or through a third country under a Trade Agreement or otherwise. Exports/ Imports under Counter Trade may be carried out through Escrow Account, Buy Back arrangements, Barter trade or any similar arrangement. Balancing of exports and imports could wholly or partly be in cash, goods and/or services.
14.	"Developer" means a person or body of persons, company, firm and such other private or government undertaking, who develops, builds, designs, organises, promotes, finances, operates, maintains or manages a part or whole of infrastructure and other facilities in SEZ as approved by Central Government and also includes a co- developer.
15.	"Development Commissioner" means Development Commissioner of SEZ
16.	"Domestic Tariff Area (DTA)" means area within India which is outside SEZs and EOU/ EHTP/ STP/BTP.
17.	"Drawback on deemed export" in relation to any goods manufactured in India and supplied as deemed exports, means the rebate of duty or tax, as the case may be, chargeable on any imported materials or excisable materials used or taxable services used as input services in the manufacture of such goods.
18.	"EOU" means Export Oriented Unit for which a letter of permit has been issued by Development Commissioner.
19.	"Excisable goods" means any goods produced or manufactured in India and subject to duty of excise under Central Excise and Salt Act 1944 (1 of 1944).
20.	"Export" is as defined in FT (D&R) Act, 1992, as amended from time to time.
21.	"Exporter" means a person who exports or intends to export and holds an IEC number, unless otherwise specifically exempted.
22.	"Export Obligation" means obligation to export product or products covered by Authorisation or permission in terms of quantity, value or both, as may be prescribed or specified by Regional or competent authority.
23.	"Free" as appearing in context of import/export policy for items means goods which do not need any 'Authorisation' / License or permission for being imported into the country or exported out.
24.	"FTP" means the Foreign Trade Policy which specifies policy for exports and imports under Section 5 of the Act.
25.	"Import" is as defined in FT (D&R) Act, 1992 as amended from time to time.
26.	"Importer" means a person who imports or intends to import and holds an IEC number, unless otherwise specifically exempted.
27.	ITC (HS) refers to Indian Trade Classification (Harmonized System) at 8 digits.
28.	"Jobbing" means processing or working upon of raw materials or semi-finished goods supplied to job worker, so as to complete a part of process resulting in manufacture or finishing of an article or any operation which is essential for aforesaid process.
29.	"Licensing Year" means period beginning on the 1st April of a year and ending on the 31st March of the following year.
30.	"Managed Hotel" means hotels managed by a three star or above hotel/ hotel chain under an operating management contract for a duration of at least three years between operating hotel/ hotel chain and hotel being managed. Management contract must necessarily cover the entire gamut of operations/ management of managed hotel.
31.	"Manufacture" means to make, produce, fabricate, assemble, process or bring into existence, by hand or by machine, a new product having a distinctive name, character or use and shall include processes such as refrigeration, re-packing, polishing, labeling, Re-conditioning repair, remaking, refurbishing, testing, calibration, re-engineering. Manufacture, for the purpose of FTP, shall also include agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture, viticulture and mining.



32.	"Manufacturer Exporter" means a person who exports goods manufactured by him or intends to export such goods.
33.	"Merchant Exporter" means a person engaged in trading activity and exporting or intending to export goods.
34.	"NC" means the Norms Committee in the Directorate General of Foreign Trade for approval of adhoc input-output norms in cases where SION does not exist and recommend SION to be notified in DGFT.
35.	"Notification" means a notification published in Official Gazette.
36.	"Order" means an Order made by Central Government under the Act.
37.	"Part" means an element of a sub-assembly or assembly not normally useful by itself, and not amenable to further disassembly for maintenance purposes. A part may be a component, spare or an accessory.
38.	"Person" means both natural and legal and includes an individual, firm, society, company, corporation or any other legal person including the DGFT officials.
39.	"Policy" means Foreign Trade Policy (2015-2020) as amended from time to time.
40.	"Prescribed" means prescribed under the Act or the Rules or Orders made there under or under FTP.
41.	"Prohibited" indicates the import/export policy of an item, as appearing in ITC (HS) or elsewhere, whose import or export is not permitted.
42.	"Public Notice" means a notice published under provisions of paragraph 2.04 of FTP.
43.	"Quota" means the quantity of goods of a specific kind that is permitted to be imported without restriction or imposition of additional Duties.
44.	"Raw material" means input(s) needed for manufacturing of goods. These inputs may either be in a raw/ natural/ unrefined/ unmanufactured or manufactured state.
45.	"Regional Authority" means authority competent to grant an Authorisation under the Act / Order.
46.	"Registration-Cum-Membership Certificate" (RCMC) means certificate of registration and membership granted by an Export Promotion Council / Commodity Board / Development Authority or other competent authority as prescribed in FTP or Handbook of Procedures.
47.	"Restricted" is a term indicating the import or export policy of an item, which can be imported into the country or exported outside, only after obtaining an authorization from the offices of DGFT.
48.	"Rules" means Rules made by Central Government under Section 19 of the FT (D&R) Act.
49.	"SCOMET" is the nomenclature for dual use items of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET). Export of dual-use items and technologies under India's Foreign Trade Policy is regulated. It is either prohibited or is permitted under an authorization.
50.	"Services" include all tradable services covered under General Agreement on Trade in Services (GATS) and earning free foreign exchange.
51.	"Service Provider" means a person providing: Supply of a 'service' from India to any other country; (Mode1- Cross border trade) Supply of a 'service' from India to service consumer(s) of any other country; (Mode 2- Consumption abroad) Supply of a 'service' from India through commercial presence in any other country. (Mode 3- Commercial Presence.) Supply of a 'service' from India through the presence of natural persons in any other country (Mode 4- Presence of natural persons.)
52.	"Ships" mean all types of vessels used for sea borne trade or coastal trade, and shall include second hand vessels.
53.	"SION" means Standard Input Output Norms notified by DGFT.
54.	"Spares" means a part or a sub-assembly or assembly for substitution that is ready to replace an identical or similar part or sub- assembly or assembly. Spares include a component or an accessory.



55.	"Specified" means specified by or under the provisions of this Policy through Notification / Public Notice.
56.	"Status holder" means an exporter recognized as One Star Export House/ Two Star Export House / Three Star Export House / Four Star Export House/ Five Star Export House by DGFT/ Development Commissioner.
57.	"Stores" means goods for use in a vessel or aircraft and includes fuel and spares and other articles of equipment, whether or not for immediate fitting.
58.	"Supporting Manufacturer" is one who manufactures goods/products or any part/accessories/ components of a good/product for a merchant exporter or a manufacturer exporter under a specific authorization. "Supporting Manufacturer" for the EPCG Scheme shall be one in whose premises/factory Capital Goods imported/ procured under EPCG authorization is installed.
59.	State Trading Enterprises (STEs), for the purpose of this FTP, are those entities which are granted exclusive right / privileges export and / or import as per para 2.20 (a) of FTP.
60.	"Third-party exports" means exports made by an exporter or manufacturer on behalf of another exporter(s). In such cases, export documents such as shipping bills shall indicate name of both manufacturing exporter /manufacturer and third party exporter(s). Bank Realisation Certificate, Self Declaration Form (SDF), export order and invoice should be in the name of third party exporter.
61.	"Transaction Value" is as defined in Customs Valuation Rules of Department of Revenue.
62.	"Wild Animal" means any wild animal as defined in Section 2(36) of Wildlife (Protection) Act, 1972.

1.3 ADMINISTRATION OF FOREIGN TRADE POLICY

The Director General of Foreign Trade (DGFT) advises Central Government in formulating policy and exercise specified powers under the Foreign Trade (Development and Regulation) Act, 1992. DGFT issues public notices, policy circulars, notifications or decisions from time to time.

DGFT is to work in close coordination with other agencies like CBEC, RBI.

1.4 FEATURES OF FOREIGN TRADE POLICY

1. Export-Import is free unless specifically regulated by the provisions of the FTP.
2. Export and Import goods are broadly categorized as
 - a. Free (i.e. general goods freely import or export without any authorization).
 - b. Restricted (i.e. goods allowed to import or export only with authorization).
 - c. Prohibited (i.e. goods are not allowed to import or export)
3. There are restrictions on exports and imports for various strategic, health, and other reasons.
4. Exports are promoted through various promotional schemes.
5. There should be no taxes on exports.
6. Capital goods can be imported at NIL duty for the purpose of exports under the scheme of Export Promotion Capital Goods (EPCG) Scheme.
7. EOU'S and SEZ units are exempted from payment of taxes.
8. Deemed exports concept introduced.
9. Duty credit scrip's schemes are designed to promote exports of some specified goods to specified markets and to promote export of specified services.

**1.5 GUIDING PRINCIPLES OF FTP 2015-2020**

1. "Make in India" vision.
2. Ease of doing business and trade facilitation by simplifying procedures and extensive use of e-governance (i.e. paper less working).
3. Encourage e-commerce exports of specified products.
4. Encourage manufacture and export by SEZ, EOU, STP, EHTP and BTP.
5. Offering duty credit scrips to encourage goods and services.
6. Special efforts to resolve quality complaints and trade disputes.

The following measures taken in said direction:

- a. Mandatory documents for export and import have been reduced to 3 each.

Export of goods from India	Import of goods into India
1. Bill of Lading/Airway Bill/Lorry Receipt/Railway Receipt/Postal Receipt.	1. Bill of Lading/Airway Bill/Lorry Receipt/Railway Receipt/Postal Receipt.
2. Commercial Invoice and Packing List.	2. Commercial Invoice and Packing List.
3. Shipping Bill/Bill of Export.	3. Bill of Entry

- b. The facility of 24 x 7 Customs clearance of specified imports has been made available at seaports and airports.
- c. Single window scheme has been introduced to enable importer and exporter to lodge their clearance documents at a single point thereby providing a common platform to trade to meet requirements of all regulatory agencies involved in EXIM trade.
- d. To facilitate processing of shipping bills before actual shipment, prior online filing facility for shipping bills has been provided by Customs:
 - (i) 7 days for air shipments
 - (ii) 14 days for shipments by sea
- e. Facility to file application (i.e. ANF 2A) through online for Importer Exporter Code (IEC). It is a unique 10 digits code. PAN is pre-requisite for grant of an IEC.

1.6 SCOPE OF FTP

1. Policy for regulating import and export of goods and services.
2. Export Promotional Measures.
3. Duty Remission and Duty Exemption Scheme for promotion of exports.
4. Export Promotion Capital Goods (EPCG) Scheme.
5. Export Oriented Undertakings (EOU/EHTP/STP & BTP) Schemes.
6. Deemed Exports.
7. Quality complaints and Trade Disputes.

Note: Special Economic Zones (covered under separate Act namely Special Economic Zones Act, 2015 and are not part of FTP).

1.7 AUTHORIZATION

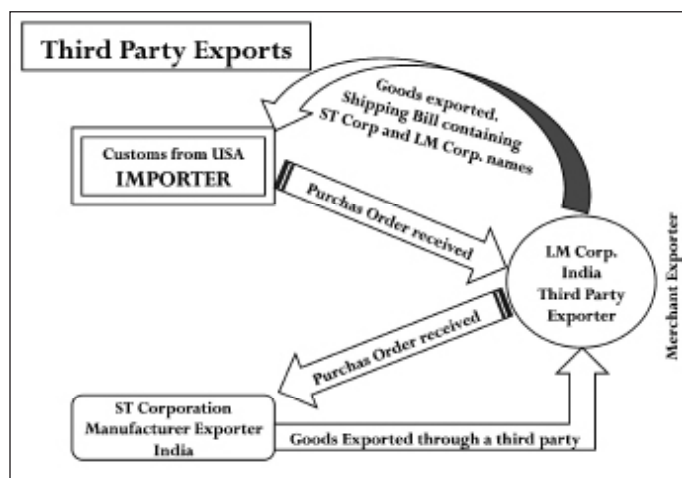
It means "permission for import or export of goods and services" in terms of FT (D&R) Act, 1992. DGFT issues authorization for import or export. Decision of DGFT is final and binding in respect of any authorization issued under the FTP.

1.8 MERCHANT EXPORTER

Merchant exporter does not have own manufacturing unit or processing factory.

1.9 THIRD PARTY EXPORTS

Third-party exports means exports made by an exporter or manufacturer on behalf of another exporter(s). In such cases, export documents such as shipping bills shall indicate name of both manufacturing exporter/manufacturer and third party exporter(s). BRC, GR declaration, export order and invoice should be in the name of third party exporter. Such third party exports shall be allowed under FTP.



Example 1:

LM Corporation, a merchant exporter, procured order of goods from a customer in USA. It approached ST Corporation, a manufacturer, for execution of the said order. The shipping bills relating to the consignment bear the name of LM Corporation. Bank Realization Certificate, GR declaration, export order and invoice are also in the name of LM Corporation. Comment whether ST Corporation would be deemed as the exporter under FTP. (CA Final Mock Test May 2015).

Answer:

The given scenario is a case of third-party exports.

Third-party exports means exports made by an exporter or manufacturer on behalf of another exporter(s). The conditions for being allowed as third-party exports under FTP are:

- (i) Export documents such as shipping bills shall indicate name of both manufacturing exporter/manufacturer and third party exporter(s).*
- (ii) BRC, GR declaration, export order and invoice should be in the name of third party exporter.*

In the above case, though BRC, GR declaration, export order and invoice are in the name of LM Corporation (third party exporter), the shipping bill does not have the name of ST Corporation (manufacturer). Therefore, ST Corporation will not be treated as the exporter in this case.

1.10 LETTER OF CREDIT

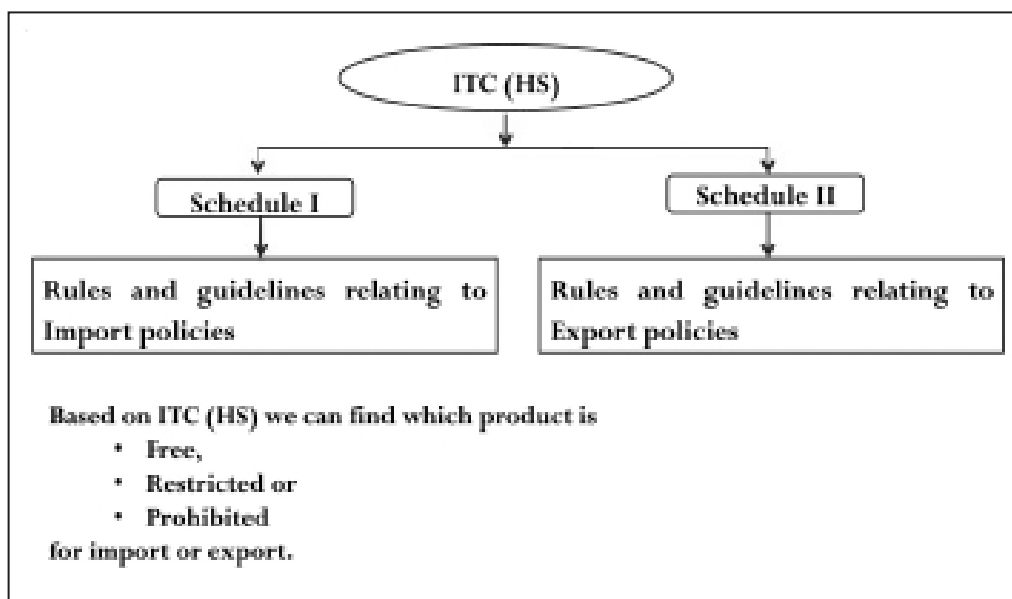
A Letter of credit is a bank's written promise that it will make a customer's (the holder) payment to a vendor (the beneficiary).

Back-to-back letters of credit:

It occurs when a buyer gives a letter of credit to a seller, who then obtains a letter of credit for a supplier.

1.11 INDIAN TRADE CLASSIFICATION (HARMONIZED SYSTEM) [ITC (HS)]

The export or import policy regarding import or export of a specific item is given in the Indian Trade Classification Code based on the Harmonized System of Coding. It consists of 8 digit coding.



Schedule I of the ITC-HS code is divided into 21 sections and each section is further divided into chapters. The total number of chapters in the schedule I is 98. The chapters are further divided into sub-heading under which different HS codes are mentioned.

Export Policy Schedule II of the ITC-HS code contain 97 chapters giving all the details about the guidelines related to the export policies.

Based on ITC (HS) we can find which product is Free, Restricted or Prohibited for import or export.

1.12 BOARD OF TRADE (BOT)

Board of Trade has been constituted to advise Government on Policy measures like:

- Improve exports,
- Review export performance,
- Review policy and procedures for import and exports and
- Examine issues relevant for promotion of India's foreign trade.

Commerce and Industry Minister will be the Chairman of the BOT. Government shall also be nominated up to 25 persons. Board of Trade will meet at least once every quarter.

1.13 IMPORT OF GIFTS

Import of gifts shall be permitted where such goods are otherwise freely importable under Indian Trade Classification (Harmonized System) [ITC (HS)]. In other cases, a Customs Clearance Permit (CCP) shall be required from DGFT.

1.14 EXPORT OF GIFTS

Goods, including edible items, of value not exceeding ₹ 5,00,000 in a licensing year, may be exported as a gift. However, items mentioned as restricted for exports in ITC (HS) shall not be exported as a gift, without an Authorization.

1.15 IMPORT OF SAMPLES

Authorization for import of samples is required only in case of vegetable seeds, bees and new drugs.

Samples of tea up to ₹ 2,000 (CIF) per consignment will be allowed without authorization.

All exporters without duty can import samples up to ₹ 3,00,000.

1.16 EXPORT OF SAMPLES

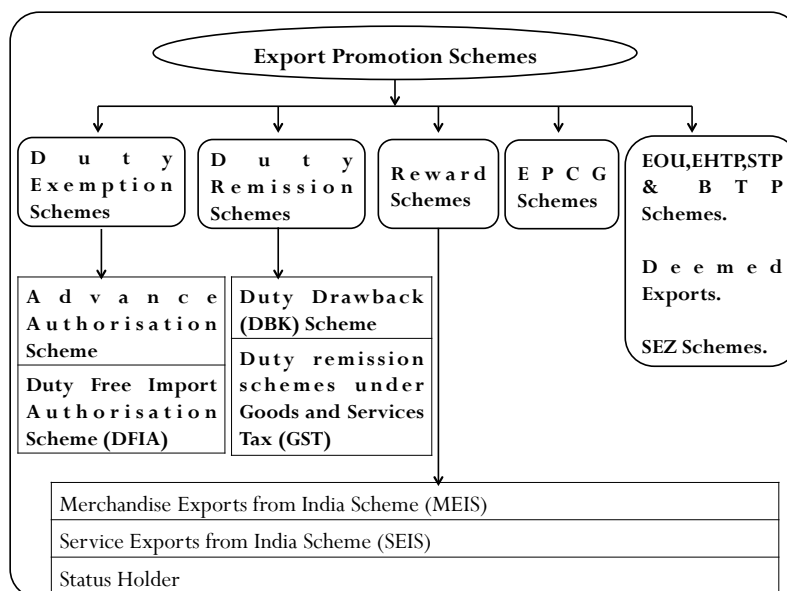
Export of bona fide trade and technical samples of freely exportable items shall be allowed without any limit. In case of restricted items, application should be made to DGFT.

1.17 EXPORT OF ITEMS RESERVED FOR MSME SECTOR

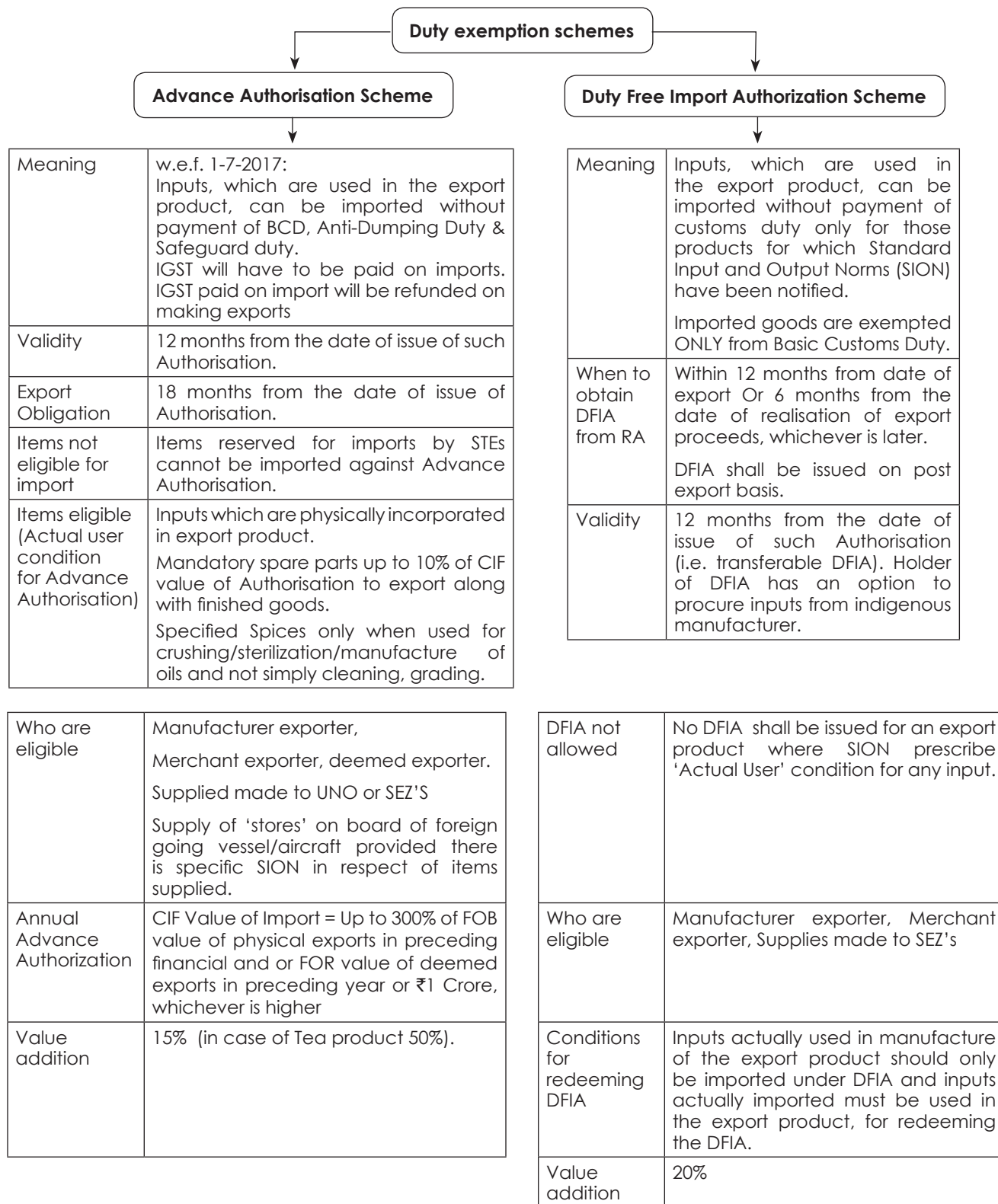
Units other than small scale units (i.e. Micro, Small & Medium Enterprises) are permitted to expand or create new capacities in respect of items reserved for small scale sector, subject to condition that they obtain an Industrial licence under the Industries (Development and Regulation) Act, 1951, with export obligation as may be specified. Such licensee is required to furnish a LUT to RA and DGFT in this regard. DGFT / RA concerned shall monitor export obligation.

Note: EOU/EHTP/STP/BTP units are exempted from obtaining such industrial licence.

Over all view of the FTP:



1.18 DUTY EXEMPTION SCHEMES





As per Notification No. 13/2015-2020 dated 20.06.2018 - Paragraph 4.29 (vi) and Para 4.29(vii) of Foreign Trade Policy 2015-20 is replaced enabling exporters to file single DFIA application for exports made from any EDI port and separate applications for export made from each non-EDI port.

Advance Authorization:

- (i) Exporters having past export performance (in at least preceding two financial years) shall be entitled for Advance Authorization for Annual Requirement.
- (ii) Materials imported under Advance Authorization will 'Actual User Condition'. These imported goods will not be transferable even after completion of export obligation. However, holder of Advance Authorization will have an option to dispose off product manufactured out of duty free inputs once export obligation is completed.
- (iii) Advance Authorization is issued for inputs in relation to the resultant product on the basis of SION. If SION for a particular item is not fixed, Regional Authority (RA) based on self-declaration by applicant, except certain specified products, can issue Advance Authorization.
- (iv) It is necessary to establish that inputs actually used in manufacture of the export product should only be imported under Advance Authorization and inputs actually imported must be used in the export product, for redeeming the Authorization.

As per Notification No. 35/2015-2020, dated 26.09.2018 - Extension of Integrated Goods and Service Tax (IGST) and Compensation Cess exemption under Advance Authorisation, EPCG and EOU scheme upto 31.03.2019.

Standard Input Output Norms:

Standard Input Output Norms or SION in short is standard norms which define the amount of input/inputs required to manufacture unit of output for export purpose. Input output norms are applicable for the products such as electronics, engineering, chemical, food products including fish and marine products, handicraft, plastic and leather products etc. SION is notified by DGFT in the Handbook, and is approved by its Boards of Directors.

An application for modification of existing Standard Input-Output norms may be filed by manufacturer exporter and merchant-exporter. The Directorate General of Foreign Trade (DGFT) from time to time issue notifications for fixation or addition of SION for different export products. Fixation of Standard Input Output Norms facilitates issues of Advance License to the exporters of the items without any need for referring the same to the Headquarter office of DGFT on repeat basis.

Basics Requirements of Standard Input Output Norms

For fixation / modification of Standard Input Output Norms (SION) following details are required:

- Technical Details of the export product as per the details given in Appendix 33.
- Chartered Engineer certificate certifying the import requirements of raw materials in the format given in Appendix 32B.
- Production and Consumption data of the manufacturer/supporting manufacturer of the preceding three licensing years as given in serial no 3 of sub section XII, duly certified by the Chartered accountant / Cost Accountant / Jurisdictional Excise Authority.

Example 2:

Answer the following questions with reference to the provisions of Foreign Trade Policy:

Bestron Ltd. manufactures goods by using imported inputs and supplies the same under Aid Programme of the United Nations. The payment for such supply is received in free foreign exchange. Can Bestron Manufacturers seek Advance Authorization in relation to the supplies made by it?

Answer:

Advance Authorization can be issued for supplies made to United Nations Organisations or under Aid Programme of the United Nations or other multilateral agencies and such supplies need to be paid for in free foreign exchange.

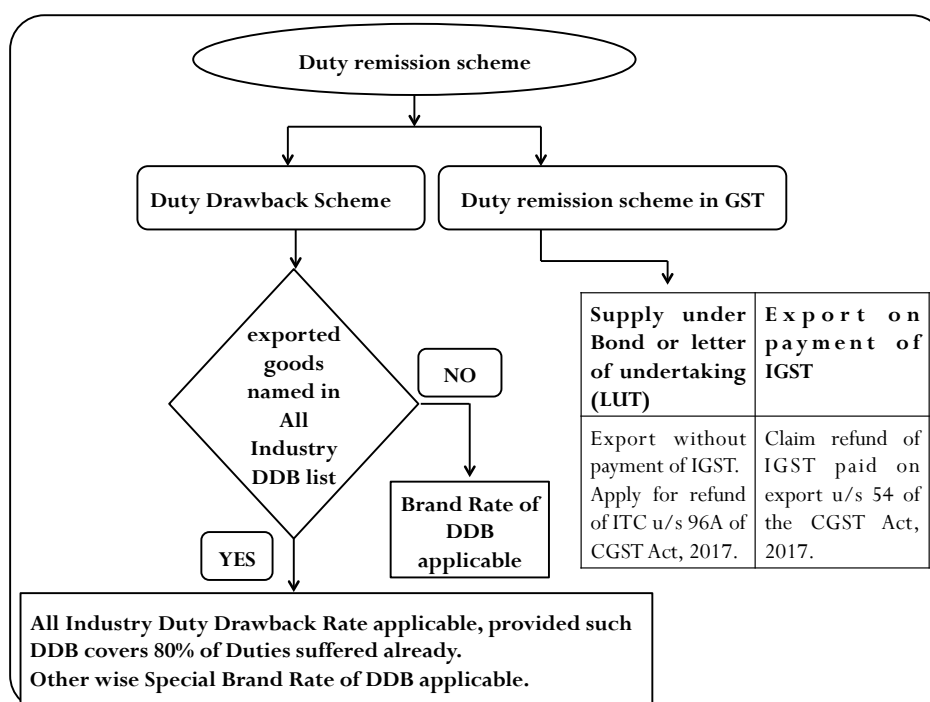
Example 3:

LMN Ltd. has imported inputs without payment of duty under Advance Authorization. The CIF value of such inputs is ₹ 20,00,000. The inputs are processed and the final product is exported. The exports made by LMN Ltd. are subject to general rate of value addition prescribed under Advance Authorization Scheme. No other input is being used by LMN Ltd. in the processing. What should be the minimum FOB value of the exports made by the LMN Ltd. as per the provisions of Advance Authorization?

Answer:

Advance Authorization necessitates exports with a minimum of 15% value addition (VA).

Therefore, the minimum FOB value of the exports made by LMN Ltd. should be ₹ 23,00,000 (i.e. ₹ 20 L × 115/100).

1.19 DUTY REMISSION SCHEME

Duty remission scheme under GST:

Discussed under Customs Law.

Export rebate not allowable when Indian market price of goods exported is less than the rebate claimed w.e.f. 1-3-2016:

For claiming rebate under rule 18 of Central Excise Rules, 2002, vide Notification No. 18/2016 CE (NT) dated 01.03.2016, one of the conditions is that the Indian market price (prior to 1-3-2016 market price only was mentioned) of the excisable goods at the time of exportation should not be less than the amount of rebate of duty claimed.

Chartered Engineer certificate:

w.e.f. 1-3-2016, the procedure required filing of a declaration by the manufacturer, will also have to file a Chartered Engineer's Certificate for correctness of ratio of input and output where SION is notified for claiming rebate of inputs used in goods exported.

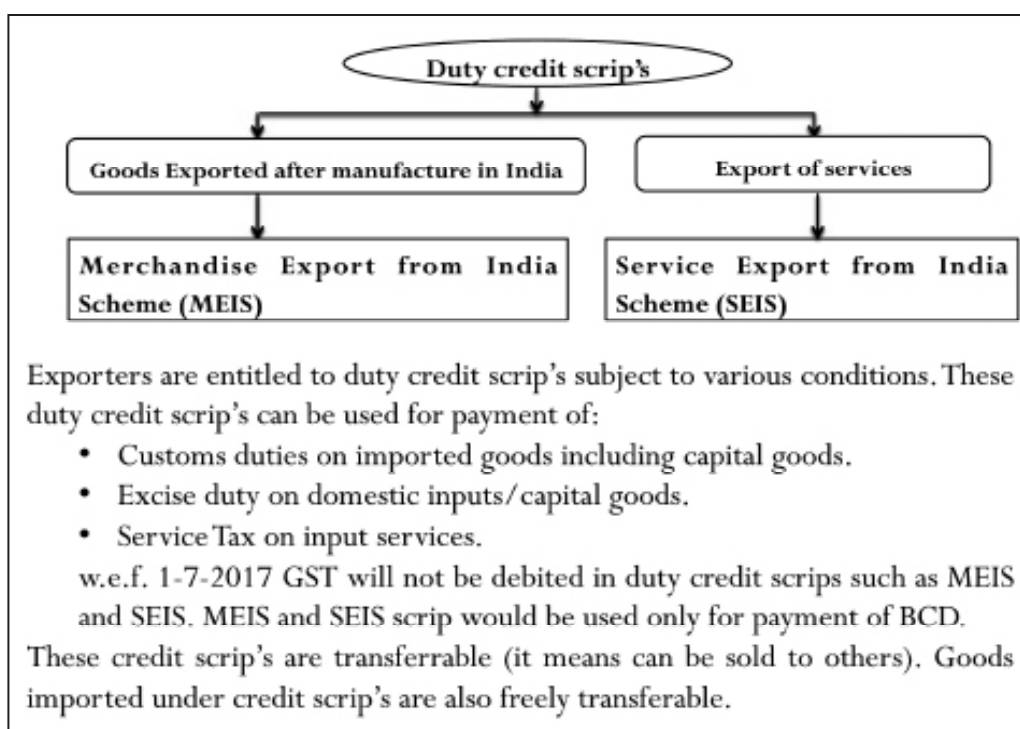
The permission for manufacture and export of finished goods before commencement of export will be given on the basis of such certificate.

Conditions and procedure relating to export

The export consignments from the factory/ warehouse/ any other approved premises, goods needs to be sealed- either by Central Tax Officer after examination of such goods or by the exporter himself under self-sealing and self certification.

Exception: In case of bulk cargo, iron-ore, alumina concentrates, heavy machinery etc. are difficult to seal in packages or container. Hence, it provides that where the nature of goods is such that the goods cannot be sealed in a package or a container such as coal or ore, etc., exemption from sealing of package or container may be granted by the Principal Chief Commissioner/ Chief Commissioner of Central Tax subject to safeguard as may be specified by him in the permission.

1.20 REWARD SCHEMES (i.e. Duty Credit Schemes)



(1) Merchandise Export from India Scheme (MEIS):

The objective of MEIS is to compensate infrastructural inefficiencies and associated cost involved in export of goods/products, which are produced/manufactured in India, especially goods having high export intensity, employment potential and thereby enhancing India's export competitiveness.

MEIS Reward Rates:

Reward rates are prescribed under Appendix 3B-MEIS Schedule Table 2. ITC (HS) code wise list of products with rewards rates are incorporated under Appendix 3B. There are three types of reward rates are prescribed namely 2%, 3% and 5%. Applicability of these rates depends up on the country group and description of goods.

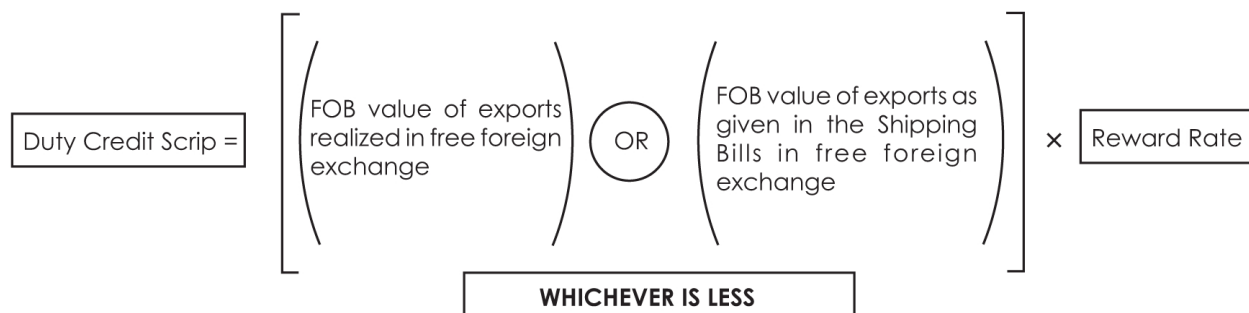
On request, split certificates of Duty Credit Scrip subject to a minimum of ₹ 5 Lakh each and multiples thereof may also be issued, at the time of application.

Once Duty Credit Scrip has been issued, request for splits can be permitted with same port of registration as appearing on the original Scrip.

The above procedure shall be applicable only in respect of EDI enabled ports.

In case of export through non-EDI ports, the facility of splits shall not be allowed after issue of Scrip.

Basis of calculation of MEIS reward or Duty Credit Scrip:



Example 4:

During F.Y. 2017-18 S Pvt Ltd has made Exports of "Safety Valves" coming under Chapter Heading 8481.

Country of Export – USA & UK.

Realised FOB value of exports in free foreign exchange : ₹ 50 Crore

FOB value of exports as given in the Shipping Bills in free foreign exchange (Covered in ₹): ₹ 55 Crore. As per Appendix 3B of Foreign Trade Policy 2015-20, reward for Export of Safety Valves to USA & UK is 3%.

Find the Duty Credit Scrip or MEIS reward available to S Ltd.

Answer:

Realised FOB value of exports = ₹ 50 crore or

FOB value of exports = ₹ 55 crore (as given in the Shipping Bills)

Whichever is LESS.

Therefore MEIS Reward available to S Pvt Ltd for F.Y. 2015-16 would be ₹ 1.5 Crores (i.e. ₹ 50 Cr x 3%).

MEIS duty credit scrip's are not allowed in the following cases:

- (1) EOUs / EHTPs / BTPs/ STPs who are availing direct tax benefits / exemption
- (2) Supplies made from DTA units to SEZ units
- (3) Exports through trans-shipment, i.e., exports that are originating in third country but trans-shipped through India
- (4) Deemed Exports
- (5) SEZ/EOU/EHTP/BTP/FTWZ products exported through DTA units
- (6) Export products which are subject to Minimum export price or export duty
- (7) Ores and concentrates of all types and in all formations
- (8) Cereals of all types
- (9) Sugar of all types and all forms unless specifically notified.
- (10) Crude / petroleum oil and crude / primary and base products of all types and all formulations
- (11) Export of milk and milk products and meat and meat products unless specifically notified.

Export of goods through courier/foreign post offices using e-commerce:

The following products are eligible for rewards under MEIS:

- Exports of handicraft items,
- Export of handloom products,



- Export of books/periodicals,
- Export of leather footwear,
- Export of toys and
- Export of tailor made fashion garments

through courier or foreign post office using e-commerce of FOB value up to ₹25,000 per consignment shall be entitled for rewards under MEIS.

In case the value exceeds INR 25000, MEIS reward would be limited to FOB value of INR 25000 only.

As per NOTIFICATION No. 22/2015-2020 dated 26.07.2018 –

Para of the FTP 2015-20	Current para
2.47	2.47 Export through Courier Service/Post Exports through a registered courier service is permitted as per Notification issued by DoR. However, exportability of such items shall be regulated in accordance with FTP/ITC(HS),2017.
3.05	3.05 Export of goods through courier or foreign post offices using e-Commerce i. Exports of goods through courier or foreign post office using e-commerce, as notified in Appendix 3C. of FOB value upto ₹ 25000 per consignment shall be entitled for rewards under MEIS. ii. If the value of exports using e-commerce platform is more than ₹ 25000 per consignment then MEIS reward would be limited to FOB value of ₹ 25000 only. iii. Such goods can be exported in manual mode through Foreign Post Offices at New Delhi, Mumbai and Chennai. iv. Export of such goods under Courier Regulations shall be allowed manually on pilot basis through Airports at Delhi, Mumbai and Chennai as per appropriate amendments in regulations to be made by Department of Revenue. Department of Revenue shall fast track the implementation of EDI mode at courier terminals.

The value limit for exports through Courier service/ Post has been placed at ₹ 5,00,000 and the eligibility criteria for entitlement under MEIS for courier/ post exports have been increased to ₹ 5,00,000 per consignment from the earlier ₹ 25,000 per consignment. The limitation on the port of exports for courier exports for the purpose of incentivisation under MEIS has been done away.

As per Notification No. 36/2015-2020, dated 27.09.2018 - The value limit stipulated on exports through Post in Para 2.47 of the FTP has been done away with. The value limit of ₹ 5,00,000/- will be applicable only in case of courier exports.

Example 5:

Classmate Printers Pvt. Ltd., manufactured register account books & letter pads and exported the same by courier at FOB value of 400 USD per consignment to USA and 350 UK Pounds per consignment to UK. During the year 2015-16, 40 consignments sent to USA. Exchange rate is ₹ 60 per USD. 20 consignments sent to UK. Exchange rate is ₹ 80 per Pound. Classmate Printers Pvt. Ltd., entitled 2% reward rate. Find the reward amount under MEIS for Classmate Printers Pvt. Ltd.

Answer:

Export to USA:

Reward amount in ₹ 19,200 [i.e. (400 USD x ₹ 60) x 2% x 40]

Export to UK:

Reward amount in ₹ 10,000 [i.e. (350 UK Pounds x ₹ 80 = ₹ 28,000)

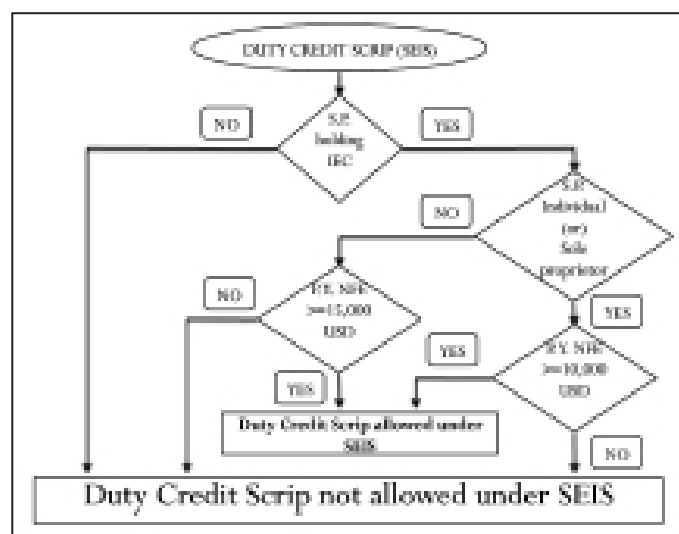
however, maximum is ₹ 25,000 per consignment. [i.e. ₹ (25,000 x 20) x 2% = 10,000.

Last date for filing application for obtaining Duty Credit Scrip under MEIS shall be Later of:

- (1) Twelve months from the Let Export Order date OR
- (2) Three months from the date of:
 - Uploading of EDI shipping bills into the DGFT server by Customs
 - Printing/ release of shipping bills for Non EDI shipping bills.

(2) Service Export from India Scheme (SEIS):

Objective of Service Exports from India Scheme (SEIS) is to encourage export of notified Services from India.



S.P. = Service provider, P.Y. = Previous Year

NFE = Net Foreign Exchange

Net Foreign Exchange Earnings:

Particulars	Value in USD
Gross Earnings of Foreign Exchange	XXXX
Less: Payments made by IEC holder relating to service sector in the financial year	(xxxx)
Net Foreign Exchange Earnings (NFE)	Xxxx

Note:

- (a) If exporter is a manufacturer of goods as well as service provider, then the foreign exchange earnings and Total expenses / payment shall be taken into account for service sector only.
- (b) Foreign exchange earned through credit cards is counted for the pupose of computing the limit of minimum net foreign exchange required for being eligible to SEIS Scheme.

Ineligible categories under SEIS:

1. Foreign exchange earnings from
 - a. Equity or debt participation
 - b. Donations
 - c. Receipts of repayment of loans
2. Raising of all types of foreign currency Loans



3. Export proceeds realization of clients
4. Issuance of Foreign Equity through AD ₹/ GD ₹ or other similar instruments
5. Issuance of foreign currency Bonds
6. Sale of securities and other financial instruments
7. Other receivables not connected with services rendered by financial institutions.
8. Earned through contract/ regular employment abroad (e.g. labour remittances)
9. Payments for services received from EEFC Account
10. Foreign exchange turnover by Healthcare Institutions like equity participation, donations etc.
11. Foreign exchange turnover by Educational Institutions like equity participation, donations etc. Under education services, SEIS shall not be available on Capitation fee.
12. Export turnover relating to services of units operating under EOU/ EHTP/ STPI/ BTP Schemes or supplies of services made to such units.
13. Clubbing of turnover of services rendered by SEZ/EOU/ EHTP/ STPI/ BTP units with turnover of DTA Service Providers
14. Exports of Goods
15. Foreign Exchange earnings for services provided by Airlines, Shipping lines service providers plying from any foreign country X to any foreign country Y routes not touching India at all.
16. Service providers in Telecom Sector.

Rate of SEIS Reward:

Appendix 3D of Foreign Trade Policy 2015-20 gives list of Notified Services & rate of reward on such services. There are two types of rates namely 3% and 5%. Many services are entitled for 5% duty credit scrip.

Calculation of Reward:

The reward under SEIS will be calculated at rate notified in Appendix 3D of Foreign Trade Policy 2015-20 and on Net Foreign Exchange Earned.

Payment in INR:

Payment in Indian Rupees for service charges earned on specified services shall be treated as receipt in deemed foreign exchange as per guidelines of Reserve Bank of India. The list of such services is indicated in Appendix 3E

Procedure for getting SEIS:

- Online Application is to be filed in Form ANF 3B
- Application should be enclosed with CA/CS/CMA Certificate in the form specified.

Last date of filing of application for Duty Credit Scrips under SEIS shall be 12 months from the end of relevant financial year of claim period.

Example 6:

M Pvt Ltd is provides services of Technical Testing & Analysis Services.

During F.Y. 2015-16, Gross earning in foreign exchange from providing of services is \$ 2 Million. (INR ₹ 12 Crore) from USA and \$ 1.5 Million. (INR ₹ 9 Crore) from Nepal & Bhutan. Payment made in foreign Currency on services received from abroad is \$ 50,000 (INR 30 lakhs) and purchase of Capital Equipment of \$ 1 million (INR 6 Crore).

Calculate eligibility of SEIS Scheme to M Pvt Ltd.

During F.Y. 14-15, Net Foreign Exchange Earning was \$ 2.5 Million.

Note: Reward for export of Technical Testing & Analysis Services is 3%

Answer:

SEIS Reward available to M Pvt. Ltd., for F.Y. 15-16 would be ₹ 44.10 lakhs [i.e. (12+9) – (0.3+6) *3%].



Common Provisions applicable for both the schemes (MEIS & SEIS):

- (i) The following duties and taxes are allowed as CENVAT Credit, if paid by utilizing Duty Credit Scrip:
 - i. Additional Customs duties (CVD & Spl. CVD).
 - ii. Excise duty.
 - iii. Service Tax

Note: Basic Customs duty paid by utilizing duty credit scrip shall be adjusted for Duty Drawback.

- (ii) Transfer of export performance from one IEC hold to another IEC holder shall not be permitted. Thus, a shipping bill containing name of applicant shall be counted in export performance / turnover of applicant only if export proceeds from overseas are realized in applicant's bank account and this shall be evidenced from e - BRC / FIRC.

however, MEIS rewards can be claimed either by the supporting manufacturer (along with disclaimer from the company / firm who has realized the foreign exchange directly from overseas) or by the company/ firm who has realized the foreign exchange directly from overseas.

- (iii) Utilization of Duty Credit Scrip shall be permitted for payment of duty in case of import of capital goods under lease financing.
- (iv) Duty Credit Scrip can be utilised / debited for payment of Custom Duties in case of EO defaults for Authorizations. However, penalty / interest shall be required to be paid in cash.
- (v) Duty Credit Scrip under MEIS & SEIS will be valid for 18 months from the date of issue and must be valid on the date on which actual Debit of duty is made.
- (vi) Incentives of MEIS & SEIS are available to units located in SEZs also.

Example 7:

Examine whether benefit of Service Exports from India Scheme (SEIS) can be availed with respect to notified services provided by service providers located in India in the current financial year in the following independent cases:

- (a) **Net Foreign Exchange (NFE) earned by Mr. Raj, a service provider, in the preceding financial year is USD 4,500.**
- (b) **X & Co., is a partnership firm, supplier of taxable services, has earned net foreign exchange to the tune of USD 17,500 in the preceding financial year.**
- (c) **Mr. Roshan, a service provider, has earned net foreign exchange of USD 13,000 in the preceding financial year. Out of this, USD 4,000 has been paid to Mr. Roshan through the credit card of the foreign client.**

Note: all the above services providers have an active IEC at the time of rendering services.

Answer:

- (a) **Mr. Raj is not eligible for SEIS Scheme as his net foreign exchange earnings are less than USD 10,000 (minimum limit for individuals).**
- (b) **X & Co., being a partnership firm eligible for SEIS Scheme as their net foreign exchange exceeds the limit of USD 15,000 (minimum limit for firms).**
- (c) **Foreign exchange earned through credit cards is counted for the purpose of computing the limit of minimum net foreign exchange required for being eligible to SEIS Scheme. Thus, Mr. Roshan is eligible for SEIS Scheme.**

**Example 8:**

George Inc., a US based company, sought architectural services from ABC India Pvt. Ltd. with regard to its newly established business in New York in April, 2015. ABC India Pvt. Ltd. charged US \$50,000 as a consideration for the architectural services provided to George Inc. In addition, ABC India Pvt. Ltd., also exported goods worth US \$15,000 to George Inc. and received the entire consideration of US \$65,000 on 28-04-2015.

Discuss the eligibility of ABC India Pvt. Ltd., for duty credit scrip entitlement under the Service Exports from India Scheme (SEIS).

Notes:

- (i) ABC India Pvt. Ltd., has an active Importer Exporter Code (IEC) at the time of rendering such services.*
- (ii) Net Foreign Exchange earnings of ABC India Pvt. Ltd., in the financial year 2014-15 is US \$16,000.*
- (iii) Notified rate of reward for architectural services is 5%*

Will your answer be different if ABC India Pvt. Ltd., had provided telecom services to George Inc.?

Answer:

Duty credit scrip entitlement of ABC India Pvt. Ltd. is 5% of US \$ 50,000 i.e., US \$ 2,500.

Further, if ABC India Pvt. Ltd. had provided telecom services to George Inc., it would not have been eligible for the duty credit scrip entitlement under the SEIS.

Example 9:

XYZ Co. Ltd., Delhi, with an active IEC, has provided research and development services on natural sciences to a US based company in the current financial year. It has earned net foreign exchange to the tune of USD 14,000 in the preceding financial year. Can XYZ Co. Ltd. avail the benefit of Service Exports from India Scheme (SEIS) with respect to services provided by it?*

**notified for availing benefit under Service Exports from India Scheme (SEIS)*

Answer:

For availing SEIS by a person (other than individual or sole proprietor) need to fulfil minimum NFE is 15,000 USD.

In the given case XYZ & Co. Ltd. Delhi is not entitled to avail the SEIS, since, their NFE in the preceding previous year is 14,000 USD only.

1.21 STATUS HOLDERS

Business leaders who have excelled in international trade and have successfully contributed to country's foreign trade are proposed to be recognized, as Status Holders and given special treatment and privileges to facilitate their trade transactions, in order to reduce their transaction costs and time.

All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder

An applicant shall be categorized as status holder upon achieving export performance during current and previous two financial years, as indicated below:

Status category	Export Performance FOB / FOR (as converted) Value (in US \$ Million) during current year and two previous years
One Star Export House	3
Two Star Export House	25
Three Star Export House	100
Four Star Export House	500
Five Star Export House	2000



Note: One million = 10 lakh

Important points:

- (a) FOR Value (i.e. deemed export) of exports in India Rupees shall be converted in US\$ at the exchange rate notified by CEBC, as on 1st April of each Financial Year.
- (b) For granting status, export performance is necessary in at least 2 out of 3 years.
- (c) Grant of double weightage while calculating export performance is given to exporters who seeks One Star Export House status under the following categories:
 - (i) Micro, Small & Medium Enterprises (MSME)
 - (ii) Manufacturing units having ISO/BIS
 - (iii) Units located in North Eastern States and Jammu & Kashmir
 - (iv) Units located in Agri Export Zones.

A shipment can get double weightage only once in any one of above categories. It means a shipment can be included in one of categories indicated above only once.
- (d) Exports made on re-export basis shall not be counted for recognition.
- (e) Export of items under authorization, including Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) items, would be included for calculation of export performance.
- (f) Status Certificates issued under this FTP shall be valid for a period of 5 years from the date on which application for recognition was filed.

As per Notification No. 28/2015-2020, dated 27.08.2018 - Amendment in Para 3.24 (j) of Chapter-3 of FTP 2015-2020.- The limit of Rs One Crore per year for exports on free of cost exports basis for export promotion for Status Holders is removed and is made 2% of average annual export realization during preceding three licensing years with immediate effect

Benefits to Status holders:

- a. Authorisation and Customs Clearances for both imports and exports may be granted on self- declaration basis;
- b. Fixation of Input Output Norms (SION) on priority by the Norms Committee i.e. within 60 days.
- c. Exemption from compulsory negotiation of documents through banks. The remittance receipts, however, would continue to be received through banking channels by way of e-BRC by DGFT.
- d. Exemption from furnishing of Bank Guarantee in Schemes under FTP.
- e. Two Star Export Houses and above are permitted to establish export warehouses.
- f. Three Star and above Export House shall be entitled to get benefit of Accredited Clients Programme (ACP) as per the guidelines of CBEC.
- g. Status holders shall be entitled to export freely exportable items on free of cost basis for export promotion subject to an annual limit of ₹10 lakh or 2% of average annual export realization during preceding 3 licensing years, whichever is higher.
- h. Manufacturer exporters who are also Status Holders shall be eligible to self-certify their goods as originating from India.

**Example 10:**

From the following identify correct category for grant of status certificate to X Ltd:

Type of Exports in US \$	Current Year in (From April - Oct)	Previous Year 1	Previous Year 2
1. Exports of goods without Weightage US\$	1,25,000	11,00,000	5,80,000
2. Exports of services without Weightage US\$	1,55,000	4,20,000	3,95,000
3. FOR value for Deemed Exports (₹)	50,00,000	1,25,00,000	1,20,00,000

Exchange rate notified by the CBEC as on 1st April 2013, 1st April 2014 and 1st April 2015 is ₹ 55/USD, ₹ 58/USD and ₹ 60/USD respectively.

Answer:

Statement showing exports for shipments during last two years and current year up to 31st Oct 2015:

Type of Exports in US\$	Current Year in US\$ (From April - Oct)	Previous Year 1 in US\$	Previous Year 2 in US\$
1. Exports of goods without Weightage	1,25,000	11,00,000	5,80,000
2. Exports of services without Weightage	1,55,000	4,20,000	3,95,000
3. FOR value for Deemed Exports US\$	83,333.33	2,15,517.24	2,18,181.82
TOTAL	3,63,333.33	17,35,517.24	11,93,181.82

X Ltd. export performance as on the date of application made to RA / Development Commissioner (DC) is US\$ 3.292 Millions (i.e. 32,92,032.39 US\$ /10,00,000). Therefore, X Ltd is eligible for One Star Export House status.

Example 11:

X Pvt. Ltd., being a by Micro, small & medium enterprises (MSME) manufactured and exported packing material to USA. Other information is as follows:

S. No.	Category of exports	FOB value US\$ in the current year (April to June)	FOB value US\$ in the Previous Year 1	FOB value US\$ in the Previous Year 2
1.	Export of goods as MSME	50,000	20,00,000	Nil
2.	Manufacturing units having ISO/ BIS	Nil	Nil	5,00,000

Find whether X Pvt. Ltd., is eligible for double weightage? If yes identify its export status?

Answer:

S. No.	Category of exports	FOB value US\$ in the current year (April to June)	FOB value US\$ in the Previous Year 1	FOB value US\$ in the Previous Year 2
1.	Export of goods as MSME	50,000	20,00,000	Nil
2.	Manufacturing units having ISO/ BIS	Nil	Nil	5,00,000
	Total FOB	50,000	20,00,000	5,00,000
	FOB Value of Exports with Double Weightage (US\$) = [2 × Total FOB Value]	1,00,000	40,00,000	10,00,000

X Pvt. Ltd., achieved export turnover of US\$ 5.10 Millions by applying double weightage. Therefore, X Pvt. Ltd., can apply for One Star Export House status.

**Example 12:**

X Pvt. Ltd., (One Star Export House) wanted to export general goods (i.e. export freely without any restriction or prohibition) worth ₹25 lakh on free of cost basis for export promotion to USA.

Particulars	Current Year in (From April - Oct)	Previous Year 1	Previous Year 2	Previous Year 3
Annual Export realization (INR)	9,11,25,000	1,11,00,000	10,80,00,000	8,15,80,000

Whether X Pvt. Ltd., can export goods on free of cost basis, if so what amount. Advise.

Answer:

X Pvt. Ltd. being a status holder can export freely exportable items on free of cost basis for export promotion maximum of:

₹ 10,00,000 or ₹ 13,37,867.

Therefore, maximum value of export at free of cost is ₹ 13,37,867.

Working note:

$[(1,11,00,000 + 10,80,00,000 + 8,15,80,000) / 3] \times 2\% = ₹ 13,37,867$

1.22 EXPORT PROMOTION CAPITAL GOODS (EPCG) SCHEME

This scheme permits exporter to procure capital goods at concessional rate of customs duty / zero customs duty in return exporter is under an obligation to fulfill the export obligation.

Authorization shall be valid for 18 months from the date of issue of Authorization.

Import of capital goods shall be subject to 'Actual User' condition till export obligation is completed. After export obligation is completed, capital goods can be sold or transferred.

Export Obligation:

Export obligation means obligation to export product(s) covered by Authorisation/ permission in terms of quantity or value or both, as may be prescribed/specified by Regional or competent authority. Export obligation consists of average export obligation and specific export obligation.

Specific Export Obligation (Specific EO) for such EPCG Authorizations would be 6 times of duty saved on capital goods to be fulfilled in 6 years reckoned from the date of issue of authorization.

Duty Saved Amount:	₹
Effective duty under Project Imports	xxx
Less: Concessional duty under the EPCG Scheme	(xx)
Duty Saved amount	xxx

In case of indigenous sourcing of capital goods, specific EO shall be 25% less than the EO mentioned above, i.e. EO will be 4.5 times (75% of 6 times) of duty saved on such goods procured.

Average Export Obligation (Average EO) means is the average level of exports made by the applicant in the preceding 3 licensing years for the same and similar product. It has to be achieved within the overall EO period (i.e. within 6 years reckoned from the date of issue of authorization).

In cases where Authorization holder has fulfilled 75% or more of specific export obligation and 100% of Average Export Obligation till date, if any, in half or less than half the original export obligation period specified, remaining export obligation shall be condoned and the Authorization redeemed.

Shipments under Advance Authorisation, DFIA, Drawback scheme, or reward schemes; would also be counted for



fulfillment of EO under EPCG Scheme.

EO can also be fulfilled by the supply of Information Technology Agreement (ITA-1) items to DTA, provided realization is in free foreign exchange.

Both physical exports as well as specified deemed exports shall also be counted towards fulfillment of export obligation.

In case the Authorization Holder wants to export through a third party, export documents viz., shipping bills / Bill of exports etc. shall indicate name of both authorization holder and supporting manufacturer, if any, along with EPCG authorization number. BRC, GR declaration, export order and invoice should be in the name of third party exporter. The goods exported through third party should be manufactured by the EPCG Authorisation Holder or the supporting manufacturer where the capital goods imported under the authorisation have been installed.

Post Export EPCG Duty Credit Scrip(s):

Under this scheme, capital goods are imported on full payment of applicable duties in cash. Later, basic customs duty paid on Capital Goods is remitted in the form of freely transferable duty credit scrip(s) and it can be utilized in the similar manner as the scrip's issued under reward schemes.

Specific EO shall be 85% of the applicable specific EO stipulated under EPCG scheme. Average EO remains unchanged.

Duty Drawback can be claimed for the duties paid like CVD & Spl. CVD paid on import of capital goods provided CENVAT Credit not availed.

The following are eligible for EPCG Scheme:

1. Manufacturer exporters with or without supporting manufacturer(s),
2. Merchant exporters tied to supporting manufacturer(s), and
3. Service providers including service providers designated as Common Service Provider (CSP) subject to prescribed conditions.

Note: "Common Service Provider" (CSP) means a service provider who is designated or certified as a Common Service Provider by the DGFT, Department of Commerce or State Industrial Infrastructural Corporation in a Town of Export Excellence;

Eligible capital goods for import under EPCG Scheme:

1. Capital Goods including capital goods in CKD/SKD condition
2. Computer software systems
3. Spares, moulds, dies, jigs, fixtures, tools & refractories for initial lining and spare refractories
4. Capital goods for Project Imports notified by CBEC.

Ineligible capital goods for import under EPCG Scheme:

1. Second hand capital goods
2. Power Generator Sets

As per Notification No. 35/2015-2020, dated 26.09.2018 - Extension of Integrated Goods and Service Tax (IGST) and Compensation Cess exemption under Advance Authorisation, EPCG and EOU scheme upto 31.03.2019.

**Example 13:**

Tarun Pvt. Ltd., a manufacturer, wants to import capital goods in CKD condition from a foreign country and assemble the same in India. The import of the capital goods will be under Project Imports. The capital goods will be used for pre-production processes. The final products of Tarun Pvt. Ltd. would be supplied in SEZ. Tarun Pvt. Ltd. wishes to sell the capital goods imported by it as soon as the production process starts.

Tarun Pvt. Ltd. seeks your advice whether it can avail the benefit of EPCG Scheme for importing the intended capital goods.

Note: Assume that all other conditions required for being eligible to the EPCG Scheme are fulfilled in the above case.

Answer:

Export Promotion Capital Goods Scheme (EPCG) permits exporters to procure capital goods at concessional rate of customs duty/zero customs duty. In return, exporter is under an obligation to fulfill the export obligation. Export obligation means obligation to export product(s) covered by Authorization/permission in terms of quantity or value or both, as may be prescribed/specified by Regional or competent authority.

Exports to SEZ unit/developer/co-developer will be considered for discharge of export obligation of EPCG Authorization, irrespective of currency.

The license holder can either procure the capital goods (whether used for pre-production, production or post-production) from global market or domestic market. The capital goods can also be imported in CKD/ SKD to be assembled in India.

An EPCG Authorization can also be issued for import of capital goods under Scheme for Project Imports'.

Export obligation for such EPCG Authorizations would be 6 times of duty saved.

Duty Saved Amount:	₹
Effective duty under Project Imports	xxxx
Less: Concessional duty under the EPCG Scheme	(xxx)
Duty Saved amount	xxxx

However, import of capital goods is subject to 'Actual User' condition till export obligation is completed.

Therefore, based on the above discussion, Tarun Pvt. Ltd. can import the capital goods under EPCG Scheme.

However, it has to make sure that it does not sell the capital goods till the export obligation is completed.

Example 14:

X Ltd., imported a machine from USA under EPGC Scheme with zero customs duty in the financial year 2015-16 for production of product 'P'.

Customs duty otherwise payable is ₹ 20 lakh. Find the specific export obligation and average export obligation.

Exports of finished goods 'P' in the preceding 5 licensing years are as follows:

Particulars	2014-15	2013-14	2012-2013	2011-12	2010-11
FOB value of exports in INR	80 lakh	72 lakh	45 lakh	50	25

Answer:

Specific Export Obligation is ₹ 120 lakh. It means capital goods imported under EPCG scheme should produce finished goods worth ₹ 120 lakh for export over a period of 6 years reckoned from the date of issue of Authorization.

Average Export Obligation is ₹ 65.67 lakh. It has to be achieved within the overall EO period (i.e. within 6 years reckoned from the date of issue of authorization).

Export obligation consists of average export obligation and specific export obligation. Hence, to redeem export obligation both specific and average export obligation should be fulfilled.



1.23 EOU, EHTP, STP & BTP

These units may import or procure from DTA without payment of duty provided they are not prohibited items.

w.e.f. 1-7-2017 100% EOU will not get *ab initio* exemption of IGST for imports. In GST regime, EOUs will have to pay IGST on imports. Refund of Input Tax Credit (ITC) can be taken after exports as per ITC/Refund Rules.

EOU scheme is administered by Ministry of Commerce and Industry, while EHTP, STP & BTP schemes are administered by their respective administrative ministries. STP / EHTP Scheme is administered by Ministry of Information Technology. Bio Technology Park (BTP) is established on the recommendation of Department of Biotechnology.

Trading units are not covered under these schemes.

Only projects having a minimum investment of ₹ 1 crore in plant & machinery shall be considered for establishment as EOUs. However, Board of Approvals (BoA) may allow establishment of EOUs with a lower investment criteria also.

Approval for setting up of units under EOU scheme shall be granted by the Units Approval Committee within 15 days as per prescribed criteria. In other cases, approval may be granted by Board of Approval (BoA) set up for this purpose.

On approval, concerned authority will issue a Letter of Permission (LoP)/ Letter of Intent (LoI) which will have initial validity of 2 years (extendable by 2 years and further extension, if necessary, by BoA), by which time unit should have commenced production.

Positive Net Foreign Exchange (NFE) earnings:

EOU/ EHTP/ STP/ BTP unit must be a positive net foreign exchange earner.

NFE Earnings shall be calculated cumulatively in blocks of 5 years, starting from commencement of production.

Items of manufacture for export specified in LoP / LoI alone shall be taken into account for calculation of NFE.

$$\text{Positive NFE} = A - B > 0$$

'A' is FOB value of exports;

'B' is CIF value of imported inputs, Capital goods and value of all payments made in foreign exchange by way of commission / royalty etc. plus goods are obtained from another EOU/SEZ/international exhibition held in India or bonded warehouses

In case units not able achieve NFE due to any reason 5 years block period, may be extended suitably by BoA. In case of adverse market conditions 5 years period can be extendable up to 1 year.

Units Approval Committee shall monitor performance of EOU's with regard to NFE earnings.

The following sales to DTA can be counted for positive NFE:

- Supplies in DTA to holders of Advance Authorization / Advance Authorization for annual requirement/ DFIA under duty exemption/ remission scheme/ EPCG scheme subject to certain exceptions.
- Supplies affected in DTA against foreign exchange remittance received from overseas.
- Supplies to other EOU/ EHTP/ STP/ BTP/ SEZ units.
- Supplies made to bonded warehouses set up under FTP and/ or under section 65 of Customs Act and Free Trade and Warehousing Zones (FTWZ), where payment is received in foreign exchange.
- Supplies of goods and services to such organizations which are entitled for duty free import of such items in terms of general exemption notification issued by MoF.
- Supplies of Information Technology Agreement (ITA-1) items and notified zero duty telecom/ electronics items.
- Supplies of items like tags, labels, printed bags, stickers, belts, buttons or hangers to DTA unit for export.



Benefits to EOU/EHTP/STP/BTP units:

- (i) Exemption from industrial licensing for manufacture of items reserved for SSI sector.
- (ii) Export proceeds will be realized within 9 months.
- (iii) Units will be allowed to retain 100% of its export earnings in the EEFC account.
- (iv) Unit will not be required to furnish bank guarantee at the time of import or going for job work in DTA, subject to fulfillment of required conditions.
- (v) 100% FDI investment permitted through automatic route similar to SEZ units.

Sales to DTA units: Up to 50% of FOB value of exports (including sales made to SEZ unit from Foreign Exchange Account of such unit), subject to fulfillment of positive NFE, on payment of concessional duties.

In case of units manufacturing and exporting more than one product, sale of any of these products into DTA, up to 90% of FOB value of export of the specific products is permitted, provided total DTA sales does not exceed the overall entitlement of 50% of FOB value of exports for the unit.

In case of new EOUs, advance DTA sale will be allowed not exceeding 50% of its estimated exports for first year (2 years for pharmaceutical units).

As per Notification No. 35/2015-2020, dated 26.09.2018 - Extension of Integrated Goods and Service Tax (IGST) and Compensation Cess exemption under Advance Authorisation, EPCG and EOU scheme upto 31.03.2019.

Example 15:

With reference to the provisions relating to Export Oriented Unit (EOU) Scheme as contained in Foreign Trade Policy, answer the following questions:

- (i) **An EOU has started production after 4 years 10 months from the date of grant of Letter of Permission (LoP). Is it correct?**
- (ii) **A unit intending to trade in handicrafts wants to set up an EOU. Is it allowed?**

1.24 DEEMED EXPORTS

Goods manufactured in India and supplies from DTA to EOU, EHTP, STP & BTP units will be regarded as deemed exports and DTA supplier shall be eligible for export incentives.

The following supplies considered as deemed exports:

Goods supplied by a manufacturer:

- 1. Supply of goods against Advance Authorisation/ Advance Authorisation for Annual Requirement/ DFIA.
- 2. Supply of goods to units located in EOU/ STP/BTP/EHTP.
- 3. Supply of capital goods against EPCG authorization.
- 4. Supply of marine freight containers by 100% EOU provided said containers are exported within 6 months by another 100% EOU.

Goods supplied by a Main contractor / sub-contractor:

- 1. Supply of goods to projects or turnkey contracts financed by multilateral or bilateral agencies/Funds notified by Department of Economic Affairs (DEA), under International Competitive Bidding.
- 2. Supply of goods to any project where import is permitted at zero customs duty.
- 3. Supply of goods to mega power projects against International Competitive Bidding.
- 4. Supply of goods to UN or international organisations.
- 5. Supply of goods to nuclear projects through competitive bidding (need not be international competitive bidding).



Benefits for Deemed Exports

Deemed exports shall be eligible for any / all of following benefits:

1. Advance Authorisation/ Advance Authorisation for Annual requirement/ DFIA
2. Deemed Export Drawback

As per Notification No 43/2015-2020, dated 05.11.2018 - Para 4.32(i) and Para 6.01 (a) of Foreign Trade Policy 2015-20 are amended to allow export of findings like posts, push backs, locks which help in collating the jewellery pieces together, containing gold of 3 carats and above up to a maximum limit of 22 carats only from domestic tariff area and EOU/ EHTP/STP/BTP Units.

As per Notification No 44/2015-2020, dated 30.11.2018 - Para 4.32(i) of Chapter 4 of the Foreign Trade Policy 2015-20 is amended to allow export of Gold idols (only gods and goddess) of 8 carats and above (upto 24 carats) from domestic tariff area.

1.25 SPECIAL ECONOMIC ZONE

The provisions relating to SEZ are contained in Special Economic Zone Act, 2005 and SEZ Rules, 2006.

- SEZs are like a separate island within territory of India.
- SEZs are projected as duty free area for the purpose of trade, operation, duty and tariffs.
- Goods and services coming to SEZ units from domestic tariff area are treated as exports from India and goods and services rendered from SEZ to the DTA are treated as import into India.

Any proposal for setting up of SEZ unit in the Private/ Joint/ State Sector is routed through the concerned State government who in turn forwards the same to the Department of Commerce with its recommendations for consideration.

The following incentives offered to the units in SEZ:

- (a) Duty free import/ domestic procurement of goods for development, operation and maintenance of SEZ units.
- (b) Single window clearance for Central and State level approvals.
- (c) Exemption from State sales tax and other levies as extended by the respective State Governments.
- (d) "In order to give a boost to exports from SEZs, government has now decided to extend benefits of both the reward schemes (MEIS and SEIS) to units located in SEZs.
- (e) SEZs have been exempted from payment of IGST on imports. Supplies to SEZs by DTA units also exempted from IGST (i.e. zero rated supply).

The SEZ Rules provide for –

1. Simplified procedures for development, operation, maintenance of the SEZ and for setting up units and conducting business in SEZs.
2. Single window clearance for setting up of an SEZs;
3. Single window for clearance for setting up a unit in a SEZ.
Simplified compliance procedures.
4. Maintenance of documents with self certification
5. Simplified compliance procedures and documentation with an emphasis on self certification.



Example 16:

With reference to the provisions of Foreign Trade Policy 2009-14, discuss, giving reasons, whether the following statements are true or false:

- (i) If any doubt arises in respect of interpretation of any provision of FTP, the said doubt should be forwarded to CBEC. Decision of CBEC thereon would be final and binding.**
- (ii) Waste generated during manufacture in an SEZ Unit can be freely disposed in DTA on payment of applicable customs duty, without any authorization.**

Answer:

- (i) False. If any question or doubt arises in respect of interpretation of any provision of the FTP, said question or doubt ought to be referred to DGFT whose decision thereon would be final and binding.**
- (ii) True. Any waste or scrap or remnant including any form of metallic waste & scrap generated during manufacturing or processing activities of an SEZ Unit/ Developer/ Co-developer are allowed to be disposed in DTA freely, without any authorization, subject to payment of applicable customs duty.**

1.26 FTP AND GST

As per DGFT Trade Notice No. 9/2017 dated 12-6-2017 the provisions are as follows:

The Foreign Trade (Development & Regulation) Act, 1992 provides that no person shall make any import or export except under an Importer Exporter Code (IEC) number, granted by the Director General of Foreign Trade or the officer authorized by the Director General in this behalf.

It means, a 10 digit IEC number, is mandatory for undertaking any import export activities.

With the implementation of the Goods and Services Tax (GST) w.e.f. 1st July 2017, GSTIN would be used for purpose of

- (i) credit flow of IGST on import of goods and**
- (ii) refund or rebate of IGST related to export of goods.**

1.27 GSTIN OR PAN IN PLACE OF IMPORTER EXPORTER CODE (IEC)

As GSTIN will be used for the purposes mentioned above, it thereby assumes importance as identifier at the transaction level. In view of this, it has been decided that importer/exporter would need to declare only GSTIN (wherever registered with GSTIN) at the time of import and export of goods. The PAN level aggregation of data would automatically happen in the system.

Since obtaining GSTIN is not compulsory for all importers/exporters below a threshold limit of turnover, all exporters/importers may not be registered with GSTIN, barring compulsory registration in certain cases, it has been further decided, with the implementation of GST, to use PAN of an entity for the purpose of IEC (not individual transactions).

As a measure of ease of doing business, it has been decided to keep the identity of an entity uniform across the Ministries/Departments. Henceforth, (i.e. after introduction of GST w.e.f. 01-07-2017) PAN of an entity will be used for the purpose of IEC, i.e. IEC will be issued by DGFT with the difference that it will be alpha numeric (instead of 10 digit numeric at present) and will be same as PAN of an entity. For new applicants, w.e.f. 1-7-2017 the application for IEC will be made to DGFT and applicant's PAN will be authorized as IEC. For residuary categories, the IEC will be either Unique Identity Number issued by GSTIN and authorized by DGFT or any common number to be notified by DGFT.

Further, The legacy data, which is based on IEC, would be converted into PAN based in due course of time.

1.28 PENALTIES

In case any exporter or importer in the country violates any provision of the Foreign Trade Policy, the office of DGFT can cancel his IEC number and thereupon that exporter or importer would not be able to transact any business in export or import. The premises where any violation of the provisions of FTP has taken place or is expected to take place can be searched and the suspicious material seized.

Violations would cover situations when import or export has been made by unauthorized persons who are not legally allowed to carry out import or export or when any person carries out or admits to carry out any import or export in contravention of the basic FTP.