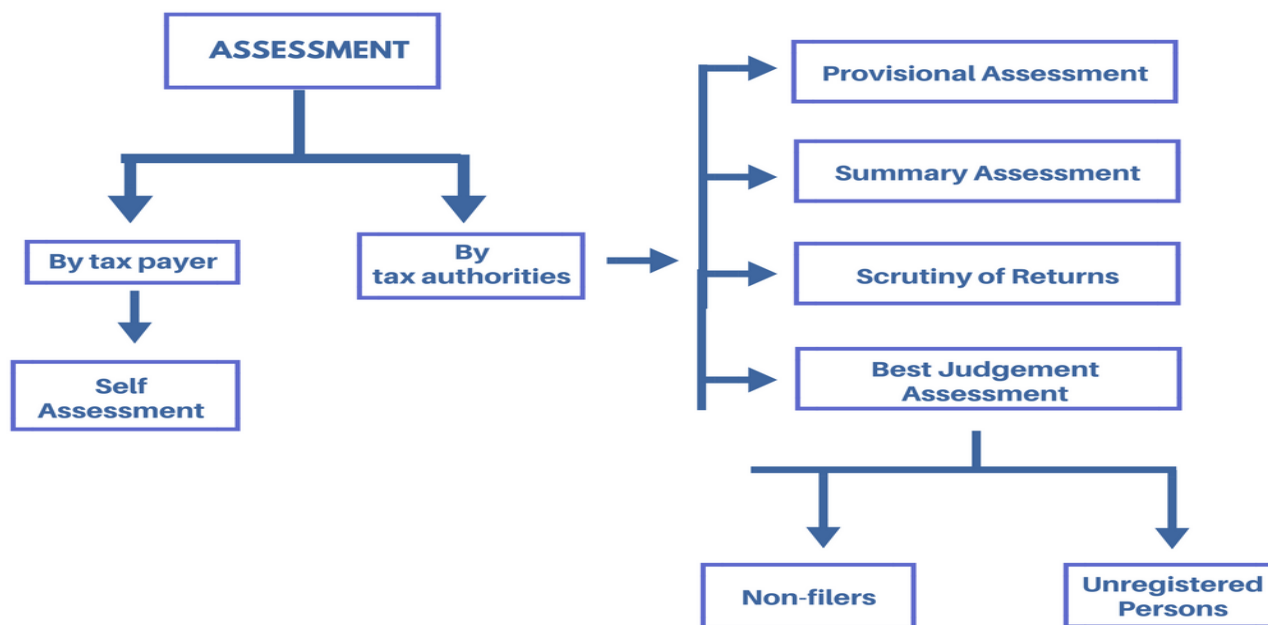


THE CGST ACT/RULES, 2017

PART-II

(1) ASSESSMENT PROCEDURES



SYNOPSIS

Types of Assessment	Particulars
(1) Self-Assessment [Sec. 59]	<ul style="list-style-type: none"> Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period
(2) Provisional Assessment [Sec. 60]	<ul style="list-style-type: none"> Taxable person unable to determine the value of supply Pay tax on provisional basis on request made by him with execution of bond Proper officer shall pass final assessment order within 6 months/ ADC or JC can further extended by 6 months/Commission can extend by 4 years if short paid – interest @18% pa. payable if excess paid – claim refund u/s. 56
(3) Scrutiny Assessment [Sec. 61]	<ul style="list-style-type: none"> Proper officer may examine return and seek explanations in order to verify correctness of return. If explanation is adequate – no further action required. Otherwise, provisions of Audit, inspection, search, seizure, arrest and recovery proceedings initiated.
(4) Best Judgement Assessment	<ul style="list-style-type: none"> For assessment of non-fillers [Sec. 62] For assessment of unresisted persons [sec. 63]

(5) Summary Assessment [Sec. 64]

- Evidence showing tax liability of a person coming to the notice of proper officer.
- He may proceed to assess the tax liability to protect the interest of revenue and issue an assessment order.

ASSESSMENT

Section 2(11) "assessment" means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment.

SELF-ASSESSMENT [Section 59]

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.

PROVISIONAL ASSESSMENT [Section 60]



- ✍ Request for provisional asst where unable to determine the value/rate of tax.
- ✍ Proper officer pass order for payment of tax on provisional basis within 90 days from the date of receipt of request.
- ✍ Bond to be executed for differential duty. Also, bank guarantee of 25% of bond value to be furnished.
- ✍ Final order to be passed within 6 month from the date of order of provisional assessment. Time limit extended by further 6 months by Joint/Additional Commissioner/ upto 4 years by Commissioner.
- ✍ Interest payable @ 18% p.a on differential amount

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

(2) The payment of tax on provisional basis may be allowed, if the taxable person executes a bond and with such surety or security as the proper officer may deem fit, binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.

The proper officer shall issue an order allowing the payment of tax on a provisional basis indicating the value or the rate or both on the basis of which the assessment is to be allowed on a provisional basis and the amount for which the bond is to be executed and security (in the form of bank guarantee) to be furnished not exceeding 25% of the amount covered under the bond. [Rule 98]

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

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

(4) The registered person shall be liable to pay interest on any tax payable on the supply of goods or services or both under provisional assessment but not paid on the due date specified u/s. 39(7) or the rules made thereunder, @18% p.a, from the first day after the due date of payment of tax in respect of the said supply of goods or services or both till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

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

(6) The applicant may file an application for the release of the security after issue of the order. The proper officer shall release the security, after ensuring that the applicant has paid the amount and issue an order within a period of 7 working days from the date of the receipt of the application. [Rule 98]

SCRUTINY OF RETURNS

[Section 61]

(1) The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed. Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same with reference to the information available with him,

Further, in case of any discrepancy, he shall issue a notice to the said person, informing him of such discrepancy and seeking his explanation thereto within such time, not exceeding **30 days** from the date of service of the notice or such further period as may be permitted by him and also, where possible, quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy.

The registered person may accept the discrepancy mentioned in the notice and pay the tax, interest and any other amount arising from such discrepancy and inform the same or furnish an explanation for the discrepancy to the proper officer.

(3) In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.

(4) In case no satisfactory explanation is furnished within a period of 30 days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.

ASSESSMENT OF NON-FILERS OF RETURNS

[Section 62]

(1) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

(2) Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.

ASSESSMENT OF UNREGISTERED PERSONS

[Section 63]

Notwithstanding anything to the contrary contained in section 73 or section 74, where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled u/s. 29(2) but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates:

Provided that no such assessment order shall be passed without giving the person an opportunity of being heard.

Note: The proper officer shall issue a notice to a taxable person containing the grounds on which the assessment is proposed to be made on best judgment basis and after allowing a time of fifteen days to such person to furnish his reply, if any, pass an order.

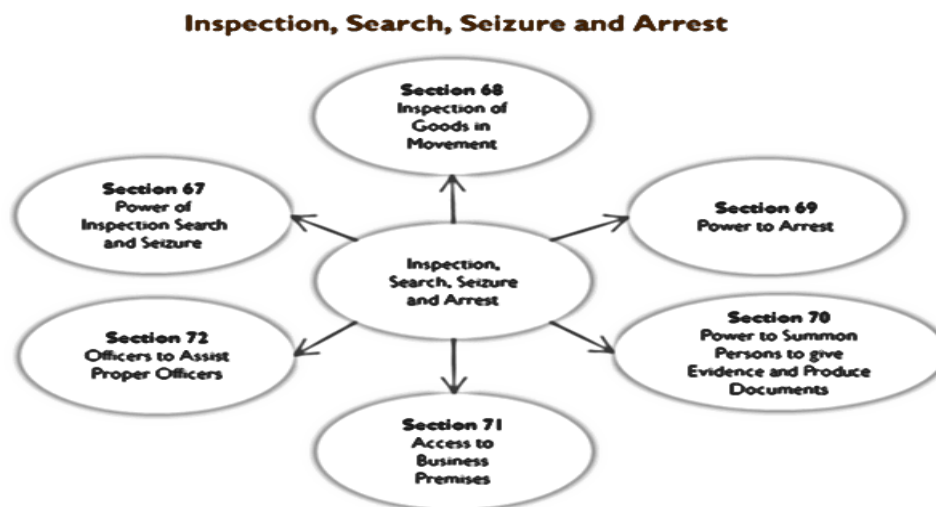
SUMMARY ASSESSMENT IN CERTAIN SPECIAL CASES

[Section 64]

(1) The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional Commissioner or Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue: Provided that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

(2) On an application made by the taxable person within thirty days from the date of receipt of order passed under sub-section (1) or on his own motion, if the Additional Commissioner or Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in section 73 or section 74 or rejection of the application by issuing an order.

(2) INSPECTION, SEARCH, SEIZURE AND ARREST



POWER OF INSPECTION, SEARCH AND SEIZURE

[Section 67]

(1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that—

(a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act, he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other

officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

(4) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any *almirah*, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, *almirah*, electronic devices, box or receptacle is denied.

(5) The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

(6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

(7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

(8) The Government may, having regard to the perishable or hazardous nature of any goods (such as *Newspapers and periodicals, Menthol, Camphor, Saffron, Re-fills for ball-point pens, Lighter fuel, including lighters with gas, not having arrangement for refilling, Cells, batteries and rechargeable batteries, Petroleum Products etc.*), depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.

(9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

(10) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that section 165(5) of the said Code shall have effect as if for the word “Magistrate”, wherever it occurs, the word “Commissioner” were substituted.

(11) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

(12) The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.

INSPECTION OF GOODS IN MOVEMENT

[Section 68]

(1) The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

- The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.

- Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.

POWER TO ARREST

[Section 69]

(1) Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.

(2) Where a person is arrested under sub-section (1) for an offence specified under subsection (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.

(3) Subject to the provisions of the Code of Criminal Procedure, 1973, —

(a) where a person is arrested under sub-section (1) for any offence specified under section 132(4), he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;

(b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

The salient points of these provisions are [CBIC guidelines]:

(a) Provisions for arrests are used in exceptional circumstance and only with prior authorisation from the Commissioner.

(b) The law lays down a stringent criteria and procedure to be followed for arresting a person. A person can be arrested only if the criteria stipulated under the law for this purpose is satisfied i.e. if he has committed specified offences (not any offence) and the tax amount is exceeding rupees 200 lakhs. However, the monetary limit shall not be applicable if the offences are committed again even after being convicted earlier i.e. repeat offender of the specified offences can be arrested irrespective of the tax amount involved in the case.

(c) Further, even though a person can be arrested for specified offences involving tax amount exceeding Rs. 200 lakhs, however, where the tax involved is less than Rs. 500 lakhs, the offences are classified as non-cognizable and bailable and all such arrested persons shall be released on Bail by Deputy/Assistant Commissioner.

But in case of arrests for specified offences where the tax amount involved is more than Rs. 500 lakhs, the offence is classified as cognizable and non-bailable and in such cases the bail can be considered by a Judicial Magistrate only.

POWER TO SUMMON PERSONS TO GIVE EVIDENCE AND PRODUCE DOCUMENTS [Section 70]

(1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.

(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a “judicial proceedings” within the meaning of section 193 and section 228 of the Indian Penal Code.

ACCESS TO BUSINESS PREMISES

[Section 71]

(1) Any officer under this Act, authorised by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

(2) Every person in charge of place referred to in sub-section (1) shall, on demand, make available to the officer authorised under sub-section (1) or the audit party deputed by the proper officer or a cost accountant or chartered accountant nominated under section 66—

(i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;

(ii) trial balance or its equivalent;

(iii) statements of annual financial accounts, duly audited, wherever required;

(iv) cost audit report, if any, under section 148 of the Companies Act, 2013;

(v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961; and

(vi) any other relevant record, for the scrutiny by the officer or audit party or the chartered accountant or cost accountant within a period not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant.

OFFICERS TO ASSIST PROPER OFFICERS

[Section 72]

(1) All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of State tax and officers of Union territory tax shall assist the proper officers in the implementation of this Act.

(2) The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner.

(3) TAX DEDUCTION AT SOURCE



- ✂ TDS @ 2% [1% CGST + 1% SGST] on payment made to supplier of taxable goods or services or both.
- ✂ NO TDS If total value of taxable supply under a contract does not exceeds ₹2.5 lakhs
- ✂ Value does not include GST indicated in the invoice
- ✂ Tax shall be deducted at the time of payment or credit, whichever is earlier.
- ✂ Tax deducted shall be paid to Govt. within 10th of the following month
- ✂ Interest @ 18% p.a for delay payment of tax.
- ✂ Tax can only be deducted by the following person(deductor) –
 - ❖ Govt. departments/establishment/agencies
 - ❖ Local authority
 - ❖ PSU
 - ❖ Establishment where 51% or more equity is held by Govt.
 - ❖ Society established by Govt/ local authority
 - ❖ Body set up by an Act of Parliament/State Legislature.
- ✂ NO TDS where supply is made between one person with another referred above.
- ✂ Procedures for deductor -
 - ❖ apply for registration on the basis of income tax PAN/TAN.
 - ❖ File return in form GSTR-7 within 10th of the following month
 - ❖ Issue TDS certificate to deductee within 5 days of crediting the amount to Govt.
- ✂ Late fee of ₹ 100 per day or ₹ 5000/ for delay filing of return/issue of TDS certificate.
- ✂ TDS so deducted is reflected in the e-cash ledger of the deductee. Deductee can utilised it for payment of tax, interest etc.
- ✂ NO TDS where Supplier and Place of supply in the same state but recipient is located in different state.
- ✂ Provision not applicable on payment made by certain authorities under Ministry of defence.

Nature of Transaction and TDS

(1) Supplier- Place of Supply – recipient – are in the Same State - Intra State Supply	TDS -CGST @1% TDS- SGST @1%
(2) Supplier- Place of Supply –are in different Same State - Inter State Supply	TDS- IGST @2%
(3) Supplier- Place of supply – same state but recipient located in different state. – Intra State Supply	NO TDS

TAX DEDUCTION AT SOURCE [SECTION 51]

1. Who is liable deduct TDS?

Following persons are known as deductor –

Section 51(a) - a department or establishment of the Central Government or State Government; or	
Section 51(1)(b)- local authority; or	
Section 51(1)(c) -Governmental agencies; or	
Section 51(1)(d)- such persons or category of persons as may be notified by the Government on the recommendations of the Council	<u>Notified persons [Notification No. 50/2018, dated 13.09.2018]</u> (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 51% 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; (c) public sector undertakings.

Note: The provisions of section 51 of the CGST Act are applicable only to such authority or a board or any other body set up by an Act of parliament or a State legislature or established by any Government in which fifty-one per cent. or more participation by way of equity or control is with the Government [CBIC circulars]

2. What is the threshold limit for TDS?

Where the total value of taxable supply of goods or services or both, under a contract, exceeds ₹ 2,50,000 (excluding the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice).

3. The Rate of TDS:

The tax would be deducted @ - for Intra state (CGST- 1%/ SGST-1%) and for Inter-state (IGST-2%), of the payment made to the supplier (the deductee) of taxable goods or services or both.

4. Method of Accounting:

TDS shall be deducted at the time of payment or credited to the deductee.

5. NO TDS: In the following cases no deduction shall be made -

(1) 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.

(2) where the supply of goods or services or both from a public sector undertaking to another public sector undertaking, whether or not a distinct person. [Notification No. 61/2018, dated 5.11.2018]

(3) Where the supply of goods or services or both which takes place between one person to another person specified under clauses (a), (b), (c) and (d) of sub-section (1) of section 51 of the said Act [Notification No. 73/2018, 31.12.2018]

(4) In relation to deductor u/s. 51(1)(a), no tax shall be deducted at source for payment made by authorities under the Ministry of Defence, [except certain prescribed authorities of Ministry of Defence].

6. Compliance procedures for deductor

(1) **Compulsory registration u/s. 24 through Income Tax PAN/ TAN.**

(2) **Due date of deposit** - The amount deducted shall be paid to the Government by the deductor within 10 days after the end of the month in which such deduction is made, in such manner as may be prescribed.

(3) **TDS return**: The deductor is also required to file a return in Form GSTR-7 within 10 days from the end of the month. If the deductee is unregistered, name of the supplier rather than GSTIN shall be mentioned in the return.

The deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return furnished by the deductor. The deductee can utilise for payment of tax, interest, fee and any other amount.

(4) **TDS Certificate** - The deductor shall furnish to the deductee a certificate within 5 days of crediting the amount to the Government, mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the Government. [System generated certificate in form GSTR-7A]

7. Consequences of non-compliances:

Nature of default	Consequences
1. TDS not deducted	Interest @18% p.a to be paid along with the TDS amount; else the amount shall be determined and recovered as per section 73/74.
2. TDS deducted but not paid to the government or paid later than 10th of the succeeding month	
3. TDS certificate not issued or delayed beyond the prescribed period of five days	Late fee of ₹ 100/- per day from the day after the expiry of such five days period until the failure is rectified, subject to a maximum of ₹ 5000/-
4. Late filing of TDS returns	Late fee of ₹ 100/- for every day during which such failure continues subject to a maximum amount of five thousand rupees.

8. Consequences of excess TDS deposited:

The deductor or deductee can claim refund for any excess or erroneous amount deducted and paid to the government account as per the provisions of refund u/s. 54 of the CGST Act, 2017. However, if the deducted amount is already credited to the electronic cash ledger of the supplier, the same shall not be refunded.

Provisions of the Act

Section 51

(1) Notwithstanding anything to the contrary contained in this Act, the Government may mandate, —

- (a) a department or establishment of the Central Government or State Government; or
- (b) local authority; or
- (c) Governmental agencies; or
- (d) such persons or category of persons as may be notified by the Government on the recommendations of the Council, (hereafter in this section referred to as “the deductor”),

to deduct tax at the rate of one per cent. from the payment made or credited to the supplier (hereafter in this section referred to as “the deductee”) of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees:

Provided that the said persons shall be liable to deduct tax from the payment made or credited to the supplier of taxable goods or services or both with effect from a date to be notified subsequently, on the recommendations of the Council, by the Central Government.

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

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

(2) The amount deducted as tax under this section shall be paid to the Government by the deductor within ten days after the end of the month in which such deduction is made, in such manner as may be prescribed.

(3) The deductor shall furnish to the deductee a certificate mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the Government and such other particulars in such manner as may be prescribed.

(4) If any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within five days of crediting the amount so deducted to the Government, the deductor shall pay, by way of a late fee, a sum of one hundred rupees per day from the day after the expiry of such five days period until the failure is rectified, subject to a maximum amount of five thousand rupees.

(5) The deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor furnished under sub-section (3) of section 39, in such manner as may be prescribed.

(6) If any deductor fails to pay to the Government the amount deducted as tax under sub-section (1), he shall pay interest in accordance with the provisions of sub-section (1) of section 50, in addition to the amount of tax deducted.

(7) The determination of the amount in default under this section shall be made in the manner specified in section 73 or section 74.

(8) The refund to the deductor or the deductee arising on account of excess or erroneous deduction shall be dealt with in accordance with the provisions of section 54:

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

(4) GST ON E-COMMERCE OPERATOR



E-COMMERCE OPERATOR [ECO]

UNDER GST REGIME

“**electronic commerce operator**” means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce [Section 2(45)]

“**electronic commerce**” means the supply of goods or services or both, including digital products over digital or electronic network; [Sec. 2(44)]



For Services notified under section 9(5)
Such ECO shall liable to pay GST as if he is the Supplier.

For supply of goods and other services
Such ECO shall liable to collect tax at source from the consideration collected on behalf of supplier [Sec. 52]

COLLECTION OF TAX AT SOURCE [SECTION 52]

Every e-commerce operator (not being an agent) like Amazon, Flipkart, Jabong, etc. shall require to collect tax at source at notified rate (but not exceeding 1% under CGST and 1% under SGST) on the net value of taxable supplies made by other suppliers through it, **where consideration with respect to such supplies is to be collected by the operator.**

[The Rate of TCS –*notified is 0.5% under CGST and 0.5% under SGST*]

Net value of taxable supplies

Aggregate value of taxable supplies of goods or services or both [except notified services u/s. sec. 9(5)] made during any month by all registered person through operator.	xxx
Less: Aggregate Value of taxable supplies returned to the supplier during the said month	xxx

✂ **Compliance Procedures for E-commerce Operator:**

- Tax so collected must deposited within 10 days after the end of the month in which such collection is made.
- Furnish a monthly statement in Form GSTR-8 by the 10th of the following month.
- File an Annual statement in Form GSTR-9B by the 31st of December following the end of every financial year.
- The ecommerce operator as well as the supplier of goods through an operator need to compulsorily register under GST.

✂ **Rectification of Statement:**

- The Operator can rectify errors in statements filed, if any, latest by the return to be filed for the month of September, following the end of every financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.

✂ **Credit of TCS and matching thereof:**

- The details furnished by the operator in GSTR-8 shall be made available electronically to each of the suppliers in Part C of FORM GSTR-2A on the Common Portal after the due date of filing of FORM GSTR-8.
- The tax collected by the operator shall be credited to the cash ledger of the supplier who has supplied the goods/services through the Operator. The supplier can claim credit of tax collected and reflected in the return by the Operator in his e- cash ledger.
- The details of the supplies, including the value of supplies, submitted by every operator in the statements will be matched with the details of supplies submitted by all such suppliers in their returns.
- If there is any discrepancy in the value of supplies, the same would be communicated to both of them. If such discrepancy in value is not rectified within the given time, then such amount would be added to the output tax liability of such supplier. The supplier will have to pay the differential amount of output tax along with interest @ 18% p.a.

✂ **Notice to e-commerce operator:**

- An officer not below the rank of Deputy Commissioner can issue notice to an Operator asking him to furnish details relating to volume of goods/ services supplied, stock of goods lying in warehouses/ godowns, etc.
- The Operator is required to furnish such details within 15 working days.
- In case an Operator fails to furnish the information, besides being liable for penal action under section 122 shall also be liable for penalty up to ₹ 25,000/-

✂ **Penalty:**

- For non-compliance of TCS provisions – The ECO shall liable to pay penalty of ₹ 10,000 or TCS amount, whichever is higher. [Sec. 122]

SOME RELEVANT CIRCULARS

1. Whether Tea Board 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?

✎ For the purpose of uniformity in the implementation of the Act, it is hereby 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).

[Circular No. 74, 5.11.2018]

Provisions of the Act: SECTION 52

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

Explanation.—For the purposes of this sub-section, the expression “net value of taxable supplies” shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of section 9, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

(2) The power to collect the amount specified in sub-section (1) shall be without prejudice to any other mode of recovery from the operator.

(3) The amount collected under sub-section (1) shall be paid to the Government by the operator within ten days after the end of the month in which such collection is made, in such manner as may be prescribed.

(4) Every operator who collects the amount specified in sub-section (1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under sub-section (1) during a month, in **FORM GSTR-8** and manner as may be prescribed, within ten days after the end of such month.

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

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner. [w.e.f 1.1.2020]

(5) Every operator who collects the amount specified in sub-section (1) shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under the said sub-section during the financial year, in **FORM GSTR-9B** and manner as may be prescribed, before the thirty first day of December following the end of such financial year.

Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual statement for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner. [w.e.f 1.1.2020]

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

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

(7) The supplier who has supplied the goods or services or both through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under sub-section (4), in such manner as may be prescribed.

(8) The details of supplies furnished by every operator under sub-section (4) shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under this Act in such manner and within such time as may be prescribed.

(9) Where the details of outward supplies furnished by the operator under sub-section (4) do not match with the corresponding details furnished by the supplier under **section 37 or section 39**, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.

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

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

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

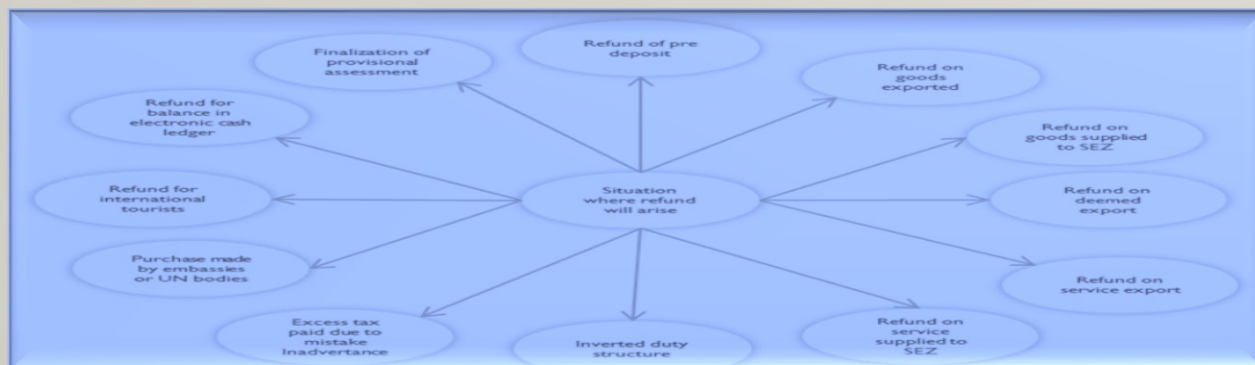
- (a) supplies of goods or services or both effected through such operator during any period; or
- (b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.

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

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

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

(5) REFUNDS UNDER GST



Section synopsis

SITUATIONS LEADING TO REFUND CLAIMS	Relevant provisions of the Act
1. Export of Goods or services	Section 16 of the IGST Act READ WITH SECTION 54(3)
2. Supplies to SEZs units and developers	Section 16 of the IGST Act READ WITH SECTION 54(3)
3. Deemed Export supplies (such as supply to EOU)	Section 147 read with section 54 of the CGST Act.
4. Refund of taxes on purchase made by UN or embassies etc	Section 55 read with section 54(2) of the CGST Act
5. Refund of tax or pre-deposit arising on account of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court	Section 54
6. Refund of accumulated Input Tax Credit on account of inverted duty structure	Section 54(3)
7. Finalisation of provisional assessment	Section 60 read with section 54
8. Excess payment due to mistake i.e, unutilised amount in e-cash ledger	Section 49(6) read with section 54
9. Refunds to International tourists of GST paid on goods in India and carried abroad at the time of their departure from India	Section 15 of the IGST Act.
10. Refund on account of issuance of refund vouchers for taxes paid on advances against which goods or services have not been supplied	Section 31(3)(e) of the CGST Act
11. Refund of CGST & SGST paid by treating the supply as intra-State supply which is subsequently held as inter-State supply and vice versa.	Section 77 of the CGST Act and section 19 of the IGST Act

[Note- Detail provisions as referred above are discussed in respective chapters]

Summary

Nature of Refund	Form	Time limit
1. Unutilised ITC	GST RFD -01 / 01A	Within 2 year from relevant date. NO refund if amount is less than ₹1000.
2. Balance in e-cash ledger	In monthly return or GST RFD-01/01A	Within 2 year from relevant date. No minimum threshold limit.
3. Advance tax paid by Casual Taxable Person/non-resident taxable person	GST RFD-01/01A or in the last return	Within 2 year from relevant date. No minimum threshold limit.
4. Refund of tax on inward supplies to UNO Agencies, embassy etc.	GST RFD 10	Quarterly - within 6 months from the quarter end of receipt of supply. NO refund if amount is less than ₹1000.

REFUND OF UNUTILIZED ITC

Eligible	Non-eligible	Other provisions
Exporter of goods/ services	If supplier avails drawback in respect of CGST/ claim refund of IGST	90% amount allowed on provisional basis
Supply to SEZ unit/developer	Goods exported out of India are subjected to export duty.	90% amount allowed on provisional basis
Inverted duty structure [rate of tax on inputs > rate of tax on outputs (other than nil rated/fully exempt)]	Notified goods like woven fabrics of silk/wool/cotton etc.	-



✂ If refund claim < ₹ 2 Lakh - No documentary evidence – Only declaration that tax incidence is not passed on.

✂ If refund claim is > ₹ 2 lakh - Documents to be enclosed along with certificate of CA that burden is not passed where doctrine of unjust enrichment applicable.

❖ Documents to be attached-

- ❖ For Export of goods – Statement containing details of bills of export, export invoices, etc.
- ❖ For Export of services – Statement containing details of invoices, Bank Realization Certificates or Foreign Inward Remittance Certificates.
- ❖ For Supply of goods/services to SEZ – Statement containing details of invoices, evidence regarding endorsement by specified officer regarding receipt of goods/services for authorized operations.

✂ Refund claim is withheld if tax due/ default in filing any return.

✂ Interest on refund @ 6% p.a if refund not given within 60 days. Rate shall be 9% where refund order is by virtue of appellate proceedings.

Consumer welfare Fund

Refund amount transferred to consumer welfare fund instead of payment to applicant, if the applicant is not able to satisfy the conditions of doctrine of unjust-enrichment. However, the same is not applicable in the following cases-

- ✂ tax paid on Export of goods or services
- ✂ Refund of unutilized ITC
- ✂ Refund of tax on supply which is not provided and (invoice not been issued/refund voucher issued)
- ✂ Refund of tax wrongfully collected and paid.

Explanation to Section 54: “refund” includes –

- (i) refund of tax paid on zero-rated supplies of goods or services or both or
- (ii) on inputs or input services used in making such zero-rated supplies, or
- (iii) refund of tax on the supply of goods regarded as deemed exports, or
- (iv) refund of unutilised input tax credit as provided u/s. 54(3).

RELEVANT PROVISIONS OF SECTION 54

<u>Situations of Refund</u>	<u>Other relevant Provisions</u>
(1) <u>Balance in e-cash ledger after payment of tax, interest, penalty, fee or any other amount due [Section 49(6) read with section 54(1)]</u>	<p>(i) Refund can be claimed in the return furnished u/s. 39 (GSTR-3/4/7) for relevant tax period.</p> <p>(ii) For casual/non-resident taxable person, refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him u/s. 27 at the time of registration, shall be claimed in the last return required to be furnished by him. However, as per section 54(13), no refund shall be granted unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39.</p> <p>(iii) no separate application for refund required. No limit for minimum refund amount [<i>Presently, it can also be filed in Form GST RFD-01A</i>]</p>
<p>(2) <u>Refund of Unutilised Input tax credit [Section 54(3): A registered person may claim refund of any unutilised input tax credit at the end of any tax period* in the following two cases-</u></p> <p>(i) zero rated supplies made without payment of tax;</p> <p>(ii) <u>Inverted tax structure: 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).</u></p>	<p>(i) Application to claim refund in Form GST RFD -01 shall be filed before expiry of 2 years from relevant date.</p> <p>(ii) No refund shall be allowed where the goods exported out of India are subjected to export duty</p> <p>(iii) 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.</p> <p>[Note- Supplier can claim drawback of only basic customs duty. Further, where drawback is claimed</p>

Note: - supplier who supplies goods to merchant exporter at concessional rate of 0.1% (0.05% CGST+0.05% SGST) under Notification No. 40 and 41/2017, are also eligible for refund on account of inverted tax structure. [Circular No. 37/2018]

***A tax period is the period for which return is required to be furnished**

for central taxes, then refund can be claimed for State tax only.]

(iv) No refund on account of inverted duty structure shall be allowed in case of –

(a) Notified services – (i) supply of construction of complex services specified in sub-item (b) of item 5 of Schedule II.

(b) Notified goods like woven fabrics of silk/wool/cotton, knitted or crocheted fabrics, rail locomotives powered from an external source of electricity or by electric accumulators.

[restriction in Point (iv) is not applicable in case of zero-rated supplies, hence manufacturer of fabrics is eligible to claim refund of ITC on GST paid on inputs used in manufacture and export of fabrics. Circular No. 18/2017]

(v) No refund if the amount is less ₹ 1000.

COMPUTATION OF REFUND AMOUNT

(I) In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking [Rule 89(4)]

(1) Refund Amount =

$$\frac{(\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services}) \times \text{Net ITC}}{\text{Adjusted Total Turnover}}$$

Where, -

- (A) "Refund amount" means the maximum refund that is admissible;
- (B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed u/r 89(4A)/(4B);
- (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 LUT, other than the turnover of supplies in respect of which refund is claimed u/r 89(4A)/(4B);
- (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 LUT, calculated as under –

Payments received during the relevant period for zero-rated supply of services	xxx
Add: 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	xxx
Less: Advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;	xxx
Value of Zero-rated supply of services	xxx

(E) "Adjusted total turnover" =

The turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; if any, during the relevant period	xxx
Add: the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services, if any, during the relevant period	xxx
Less: the value of exempt supplies other than zero-rated supplies; if any, during the relevant period	xxx
Less: 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.	xxx

(F) "Relevant period" means the period for which the claim has been filed.

The relevant period has been defined in the context of the refund claim and is not linked to a tax period. The exporter, at his option, may file refund claim for one calendar month / quarter or by clubbing successive calendar months / quarters but not across different financial years.

(2) **Rule 89(4A) of the CGST Rules:** For supplies received on which the supplier has availed the benefit of deemed export under *Notification No. 48/2017*, 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.

(3) Rule 89(4B) of the CGST Rules

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 Notification No. 40/2017 (CGST)- or Notification No. 41/2017(IGST) [concessional rate of tax @ 0.1% for supply of goods to merchant exporter]

(b) availed the benefit of notification No. 78/2017-Customs, or notification No. 79/2017-Customs [imports of goods by EOUs/ Advance Authorisation / EPCG schemes]

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.

Question 1: Compute the refund of Input Tax Credit from the following information –

(1) Input Tax Credit	₹ in lakhs	(2) Turnover of supply goods	₹ in lakhs
on inputs (including ₹1 lakhs for finished goods is stolen)	5.00	Export without payment of tax	23.00
on input service	2.00	Export with payment of tax	11.00
on capital goods	1.50	Exempted Supply within State	12.00
(3) Turnover of supply services	₹ in lakhs	Taxable supply within State	16.00
Export of services without payment of tax (including advance received for services not yet provided ₹1.00 lacs)	28.00	Supply within the State to SEZ Unit (without payment of tax)	2.00
Services provided within the State	10.00		

Solution:

(A) Turnover of zero-rated supply of goods - ₹23 lakhs + 2 lakhs = ₹25 lakhs

(B) Turnover of zero-rated supply of services – 28 lakhs – 1 lakhs = 27 lakhs

(C) Adjusted Total Turnover = 23 lakhs + 11 lakhs + 16 lakhs + 2 lakhs + 27 lakhs + 10 lakhs = 89 lakhs

(D) Net ITC = 5 -1 + 2 = 6 lakhs

Maximum refund rule 89 -

= $\frac{\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services}}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$

Adjusted Total Turnover

= $\frac{(25 \text{ Lakhs} + 27 \text{ lakhs})}{89 \text{ lakhs}} \times 6 \text{ lakhs}$

89 lakhs

= **3.5 lakhs**

(II) In the case of refund on account of inverted duty structure

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 = $\{(\text{Turnover of inverted rated supply of goods and services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}\}$ - 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 u/r 89(4A)/(4B); and

(b) “Adjusted Total turnover” shall have the same meaning as assigned to it in rule 89(4)

Question 2: Following are the details of outward supply and Input tax credit of M/s. Reddy &CO, a registered dealer of Andhra Pradesh. You are required to determine the maximum amount of refund allowed u/s. 54(3)(ii).

Items	Input tax credit availed & Rate of GST	Value (excluding GST) of outward supply and GST Rate
X	36,000 (12%)	2,00,000 (5%)
Y	18,000 (18%)	50,000 (5%)
Z	12,000(12%)	1,00,000(12%)

Note- Item x is a notified product on which refund shall not be allowed in respect to unutilised ITC.

Solution: Write the provisions of section 54(3)(ii)- allowability of refund in case of inverted duty structure (i.e rate of input is higher than rate of output).

In the given case, only Item Y is eligible to refund as item X is notified product on which refund in case of inverted duty structure shall not be applicable. Further, item X is not qualified under this category.

As per Rule 89(5) of the CGST Rules, 2017 in the case of refund on account of inverted duty structure, refund of ITC shall be granted as per the following formula -

Maximum Refund Amount =

Turnover of inverted rated supply of goods & services × Net ITC	xxx
---	-----

Adjusted Total Turnover

Less: Tax payable on such inverted rated supply of goods and services	xxx
---	-----

XXX

where, -

Accordingly, in the given case the maximum amount of refund shall be –

$$\frac{50,000 \times 66,000}{3,50,000} \text{ i.e. } 94,286 (-) 2500 = ₹91,786$$

Circular No. 79/2018, dated 31.12.2018: Refund of ITC in case of Inverted duty structure

Refund of unutilized ITC in case of inverted tax structure, as provided in section 54(3) of the CGST Act, is available where ITC remains unutilized even after setting off of available ITC for the payment of output tax liability. Where there are multiple inputs attracting different rates of tax, in the formula provided in rule 89(5) of the CGST Rules, the term “Net ITC” covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax.

Example: Suppose a manufacturing process involves the use of an input A (attracting 5 per cent GST) and input B (attracting 18 per cent GST) to manufacture output Y (attracting 12 per cent GST).

Further assume that the claimant supplies the output Y having value of Rs. 3,000/- during the relevant period for which the refund is being claimed. Therefore, the turnover of inverted rated supply of goods and services will be Rs. 3,000/-. Since the claimant has no other outward supplies, his adjusted total turnover will also be Rs. 3,000/-.

If we assume that Input A, having value of Rs. 500/- and Input B, having value of Rs. 2,000/-, have been purchased in the relevant period for the manufacture of Y, then Net ITC shall be equal to Rs. 385/- (Rs. 25/- and Rs. 360/- on Input A and Input B respectively).

Therefore, multiplying Net ITC by the ratio of turnover of inverted rated supply of goods and services to the adjusted total turnover will give the figure of Rs. 385/-.

From this, if we deduct the tax payable on such inverted rated supply of goods or services, which is Rs. 360/-, we get the maximum refund amount, as per rule 89(5) of the CGST Rules which is Rs. 25/-.

The meaning of the term “inputs”: Circular No. 79/2018, dated 31.12.2018

Issue	Clarifications
On certain occasions, departmental officers do not consider ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items, as part of Net ITC on the grounds that these are not directly consumed in the manufacturing process and therefore, do not qualify as input.	<p>The input tax credit of the GST paid on inputs shall be available to a registered person as long as he/she uses or intends to use such inputs for the purposes of his/her business and there is no specific restriction on the availment of such ITC anywhere else in the GST Act.</p> <p>The GST paid on inward supplies of stores and spares, packing materials etc. shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under section 17(5) of the CGST Act.</p>
There are also instances where stores and spares charged to revenue are considered as capital goods and therefore the ITC availed on them is not included in Net ITC, even though the value of these goods has not been capitalized in his books of account by the claimant.	capital goods have been clearly defined in section 2(19) of the CGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods.

Circular NO. 79/2018: Refund of unutilised ITC on account of inverted duty structure shall be available only for inputs and not for input services and capital goods.

By virtue of section 54(3) read with section 2(59) and rule 89(5), it is clarified that both the law and the related rules clearly prevent the refund of tax paid on input services and capital goods as part of refund of input tax credit accumulated on account of inverted duty structure.

REFUND PROCEDURES

(1) APPLICATION FOR REFUND

Section 54(1) read with Rule 89(1)

(i) Application for claim of refund shall be filed before the expiry of 2 years from the **relevant date** in **FORM GST RFD-01**.

(ii) **Who is eligible to file the application?**

(A) In case of supplies to a SEZ unit/ SEZ developer: The application for refund shall be filed by the –

(a) supplier of goods after such goods have been admitted in full in the SEZ for authorised operations, as endorsed by the specified officer of the Zone;

(b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone

(B) In case of supplies regarded as deemed exports: The application may be filed by,

(a) the recipient of deemed export supplies; or

(b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund

(iii) Explanation to Section 54: “relevant date” means—

Situations	Relevant Date
(1) 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, and	
(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
(ii) if the goods are exported by land	the date on which such goods pass the frontier
(iii) if the goods are exported by post	the date of despatch of goods by the Post Office concerned to a place outside India
(2) 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;
(3) 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, and -	
(i) where the supply of services had been completed prior to the receipt of such payment	the date of receipt of payment in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India
(ii) where payment for the services had been received in advance prior to the date of issue of the invoice	The date of issue of invoice
(4) in case where the tax becomes refundable as a consequence of judgment, decree, order or	the date of communication of such judgment, decree, order or direction;

direction of the Appellate Authority, Appellate Tribunal or any court	
(5) In the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3).	the due date for furnishing of return under section 39 for the period in which such claim for refund arises.
(6) 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;
(7) in the case of a person, other than the supplier,	the date of receipt of goods or services or both by such person
(8) in any other case	the date of payment of tax.

(2) DOCTRINE OF UNJUST ENRICHMENT AND DOCUMENTS TO BE FILED [SECTION 54(4)/(8) READ WITH RULE 89(2)]

Section 54(4): Documentary evidence -

(4) The application shall be accompanied by—

(a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and

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

Provided that where the amount claimed as refund is less than ₹2,00,000, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.

Rule 89(4): Prescribed Documents –

Refund on account of -	Documents to be filed
(i) export of goods	a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices.
(ii) export of Services	<p>a statement containing the number and date of invoices and the relevant Bank Realisation Certificates (BRC)/Foreign Inward Remittance Certificates (FIRC).</p> <p>[Since realisation of convertible forex is not a pre-condition for export of goods therefore BRC and FIRC is not required for refund claim under export of goods]^{Circular No. 37/2018}</p>

(iii) supply of goods made to a SEZ unit/developer	a statement containing the number and date of invoices along with the evidence regarding the specified endorsement of goods. Declaration that ITC has not been availed by SEZ unit/developer.
(iv) supply of services made to a SEZ unit/ developer	a statement containing the number and date of invoices, the evidence regarding the specified endorsement and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations. a declaration to the effect that tax has not been collected from the SEZ/SEZ developer.
(v) Deemed Export (EOU etc.)	(i) a statement containing the number and date of invoices. (ii) Acknowledgment by the jurisdictional Tax officer that the said deemed export supplies have been received by AA/ EPCG holder, or (iii) a copy of the tax invoice by the supplier to the recipient EOU that the said supplies have been received by it. (iv) An undertaking by the recipient of deemed export supplies that no input tax credit on such supplies has been availed of by him. (v) An undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund.
(vi) Unutilised input tax credit due to Inverted tax structure	a statement containing the number and the date of the invoices received and issued during a tax period.
(vii) Finalisation of Provisional assessment	the reference number of the final assessment order and a copy of the said order.
(viii) wrong payment of CGST instead of IGST	a statement showing the details of transactions considered as intra-State supply, but which is subsequently held to be inter-State supply.
(ix) Excess Payment of Tax	a statement showing the details of the amount of claim on account of excess payment of tax;

Note:

(1) **Reference Number** of order and copy of order passes by proper office/ appellate authority/Tribunal/court resulting in such refund, or Reference number of the payment of pre-deposit claimed as refund shall be filed in all cases.

(2) **Refund on self-declaration where doctrine of unjust enrichment is applicable**

a declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed does not exceed

₹2,00,000. [However, where the amount exceeds ₹2,00,000, a certificate of CA/CMA shall be required in this effect that burden has not been passed]

Deemed to be burden passed: where the amount of tax has been recovered from the recipient, it shall be deemed that the incidence of tax has been passed on to the ultimate consumer.

(3) Doctrine of unjust enrichment is not applicable: Hence, point (2) is not relevant in the following cases –

- (a) refund of tax paid on export of goods or services or both or on inputs or input services used in making such export;
- (b) refund of unutilised input tax credit u/s. 54(3);
- (c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
- (d) refund of tax in pursuance of section 77;
- (e) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify. [Section 54(8)]

(4) Refund amount shall be granted to the applicant in case of point (2) and (3) above and for all other cases it is credited to Consumer welfare Fund.

(5) Where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by an amount equal to the refund so claimed.

(6) Refund process (application, order etc.) can also be completed manually instead of electronically [Rule 97A]

(3) ORDER OF REFUND [SECTION 54(5)/(6)/(7)]

[Read with Rule 90,91, 92]

(1) **Acknowledgement**: In case of refund from the electronic cash ledger, an acknowledgement shall be made indicating the date of filing of the claim and the time period for issue of order shall be counted from such date of filing.

In other cases, the proper officer shall within 15 days of filing of said application, scrutinize the application for its completeness and where it is found to be complete an acknowledgement shall be made available electronically through the common portal. [Rule 90]

(2) If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Consumer Welfare Fund referred to in section 57. [Sec. 54(5)].

However, where refund is due and payable to the applicant, he shall make an order of sanctioning the refund to which the applicant is entitled. The order of refund must include –

- (i) amount of refund on provisional basis (if any),
- (ii) amount adjusted against outstanding demand (if any) [where entire refund is adjusted against outstanding demand, an order giving details of such adjustment shall be issued]
- (iii) the balance amount refundable.

(3) **Provisional Refund in case of zero-rated supply:**

Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant. [Sec. 54(6)]

Rule 91: The provisional refund shall be granted within 7 days from the date of the acknowledgement, if during any period of 5 years immediately preceding the tax period to which the claim for refund relates, the applicant has not been prosecuted for any offence under the Act or under an existing law where the amount of tax evaded exceeds ₹250 lakhs.

(4) The proper officer shall issue an **order** u/s. 54(5) within 60 days from the date of receipt of application complete in all respects. [Sec. 54(7)]. The time limit shall be calculated from the date of filing claim for refund as mentioned in the acknowledgement.

(5) Notwithstanding anything contained in this section, no refund u/s. 54(5)/(6) shall be paid to an applicant, if the amount is less than ₹1000. [Sec. 54(14)]

This limit is not applicable for refund claim on account of unutilised amount in e-cash ledger. [Circular No. 59/2018]

(4) WITHHOLD OF REFUND/ ADJUSTMENT OF REFUND WITH TAX DUE

[Section 54(10)/(11) read with Rule 92]

(1) Where any refund is due u/s. 54(3) to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may—

- (a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;
- (b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

Explanation. —For the purposes of this sub-section, the expression “specified date” shall mean the last date for filing an appeal under this Act. [Sec. 54(10)]

(2) Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine. [Section 54(11)]

(3) Where a refund is withheld under sub-section (11), the taxable person shall, notwithstanding anything contained in section 56, be entitled to interest at such rate not exceeding **6% p.a.**, if as a result of the appeal or further proceedings he becomes entitled to refund. [Sec. 54(12)]

Cross-empowerment of State Tax officers for processing and grant of refund: The officers appointed under the respective SGST Acts/UTGST Act who are authorized to be the proper officers for the purposes of section 54/section 55 of the said Acts by the Commissioner of the said Acts, shall act as proper officers for the purpose of sanction of refund under section 54 or section 55 of the CGST Act read with the rules made thereunder except rule 96 in respect of a registered person located in the territorial jurisdiction of the said officers who applies for the sanction of refund to the said officers

**(5) DEFICIENCIES IN REFUND CLAIM,
REJECTION OF REFUND CLAIM AND ISSUE OF SCN**

[RULE 90(3), 92 & 93]

(1) Communication of deficiencies: Where any deficiencies in refund application are noticed, the proper officer shall communicate the deficiencies to the applicant through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies. [Rule 90(3)]

(2) Issue of SCN and order of rejection [Rule 92]:

(i) Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice to the applicant,

(ii) requiring him to furnish a reply within a period of 15 days of the receipt of such notice and

(iii) after considering the reply, make an order sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and

(iv) no application for refund shall be rejected without giving the applicant an opportunity of being heard

(3) Credit of the amount of rejected refund claim [Rule 93]:

(i) Where any deficiencies have been communicated, the amount debited shall be re-credited to the electronic credit ledger.

(ii) Where any amount claimed as refund is rejected, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order.

(iii) For the purposes of this rule, a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal.

(6) INTEREST ON DELAYED REFUNDS [SECTION 56]

(i) Refund due to order u/s. 54(5): If any tax ordered to be refunded to any applicant U/S. 54(5) is not refunded within **60 days from the date of receipt of application** u/S. 54(1), **interest @ 6% p.a** shall be payable in respect of such refund from the date immediately after the expiry of 60 days from the date of receipt of application u/s. 54(1) till the date of refund of such tax:

(ii) Refund due to appellate proceedings: where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within 60 days from the date of receipt of application filed consequent to such order, **interest @ 9% p.a** shall be payable in respect of such refund from the date immediately after the expiry of **60 days** from the date of receipt of application till the date of refund.

Explanation. — For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer u/s. 54(5), the order

passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed u/s. 54(5).

Rule 94 Order sanctioning interest on delayed refunds

Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a **payment order**, specifying therein **the amount of refund**¹ which is delayed, **the period of delay**² for which interest is payable and **the amount of interest payable**³, and such amount of interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

Note- w.e.f 24.9.2019 Proper officer shall issue payment order instead of payment advice for refund under GST [Rule 91,92,94 amended accordingly]

(7) CONSUMER WELFARE FUND

[SECTION 57, 58 read with rule 97]

(1) The Government shall constitute a Fund, to be called the Consumer Welfare Fund and there shall be credited to the Fund, —

- the amount referred to in section 54(5);
 - any income from investment of the amount credited to the Fund; and
 - such other monies received by it,
- in such manner as may be prescribed in rule 97.

(2) All amounts of duty/CGST/ IGST/ UTGST/ cess and income from investment along with other monies specified in section 12C(2) of the Central Excise Act, 1944, section 57 of the CGST Act, 2017 read with section 20 of the IGST Act, 2017, section 21 of the UTGST Act, 2017 and section 12 of the GST (Compensation to States) Act, 2017 shall be credited to the Fund.

(3) An amount equivalent to 50% of the amount of IGST/ Compensation Cess determined u/s. 54(5) of the CGST Act, 2017, shall be deposited in the Fund.

(4) Where any amount, having been credited to the Fund, is ordered or directed to be paid to any claimant by the proper officer, appellate authority or court, the same shall be paid from the Fund.

(5) All sums credited to the Fund shall be utilised by the Government for the welfare of the consumers in such manner as may be prescribed.

(6) The Government or the authority specified by it shall maintain proper and separate account and other relevant records in relation to the Fund and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

(7) Accounts of the Fund maintained by the Central Government shall be subject to audit by the Comptroller and Auditor General of India.

(8) The Government shall, by an order, constitute a Standing Committee with a Chairman, a Vice-Chairman, a Member Secretary and such other members as it may deem fit and the Committee shall make recommendations for proper utilisation of the money credited to the Fund for welfare of the consumers.

(3) REFUND TO AGENCIES OF UNO, EMBASIES ETC.

(1) **Section 54(2):** A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Consulate or Embassy of foreign countries or any other person or class of persons, **as notified under section 55**, entitled to a refund of tax paid by it on inward supplies of goods or services or both.

(2) **Section 55:** The Government may, on the recommendations of the Council, by notification, specify any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries and any other person or class of persons as may be specified in this behalf, who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them.

Category	Notified Persons u/s 55
(A) <u>Notified persons/class of persons</u>	<p>(i) The Canteen Stores Department (CSD), under the Ministry of Defence, as a person who shall be entitled to claim a refund of 50% of the applicable central/integrated tax paid by it on all inward supplies of goods received by it for the purposes of subsequent supply of such goods to the Unit Run Canteens of the CSD or to the authorized customers of the CSD.</p> <p>(ii) retail outlets established in the departure area of an international airport, beyond the immigration counters, making tax free supply of goods to an outgoing international tourist, as class of persons who shall be entitled to claim refund of applicable central tax paid on inward supply of such goods, subject to the conditions specified in rule 95A of the Central Goods and Services Tax Rules, 2017.</p> <p>Explanation. - For the purposes of this notification, the expression “outgoing international tourist” shall mean a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes [w.e.f 1.7.2019]</p>
B. <u>Notified Agency of UNO etc.</u>	<p>(1) <u>United Nations or a specified international organisation:</u> United Nations or a specified international organisation shall be entitled to claim refund of central tax paid on the supplies of goods or services or both received by them.</p> <p><u>“specified international organisation”</u> means an international organisation declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities Act) 1947, to which the provisions of the Schedule to the said Act apply.</p> <p>Such as – (1) International Civil Aviation Organisation. (2) World Health Organisation (WHO). (3) International Labour Organisation. (4) Food and Agriculture Organisation of the United Nations. (5) United Nations Educational, Scientific and Cultural Organisation (UNESCO). (6) International Monetary Fund (IMF). (7) International Bank of Reconstruction and Development. (8) Universal Postal Union. (9) International Telecommunication Union. (10) World Meteorological Organisation. (11) Permanent Central Opium Board (12) World Bank Group.</p>

(2) Foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein shall be entitled to claim refund of central tax paid on the supplies of goods or services or both received by them.

Note- These agencies are eligible to get refund of IGST paid on imported goods also. [Circular NO. 23/2019, dated 1.8.2019]

REFUND PROCEDURE [SECTION 54(2) READ WITH RULE 95]

(1) Shall apply for refund in Form GST RFD-10- once in **every quarter**, electronically or otherwise on the common portal, along with a statement of the inward supplies of goods and/or services in Form GSTR-11.

(2) Application must be filed before the expiry of **6 months (extended to 18 months in exercise of power granted u/s. 148) from the last day of the quarter in which such supply was received.**

(3) Refund of tax paid by the applicant would be available if the inward supplies of goods and/or services were received from a registered person against a tax invoice. Such tax invoice must contain name and GSTIN/UIN of the applicant.

(4) **Treaty will prevail in case of inconsistency:** Where an express provision in a treaty or other international agreement, to which the President or the Government of India is a party, is inconsistent with the provisions of this Chapter, such treaty or international agreement shall prevail

(5) Other procedures are same as discussed in rule 92.

Refund of taxes paid on inward supply of indigenous goods by retail outlets established at departure area of the international airport beyond immigration counters when supplied to outgoing international tourist against foreign exchange [Rule 95A read with Circular No.106, dated 25.6.2019]

(1) **Exemption on outward supply:** Any supply of goods by a retail outlet established in the departure area of an international airport, beyond the immigration counters, to an outgoing international tourist i.e. to a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes against foreign exchange (hereinafter referred to as the “eligible passengers”), is exempt from IGST w.e.f 1.7.2019 vide Notification No. 11/2019, IGST (Rate).

(2) **Refund of tax paid on inward supply:** Such Retail outlet are eligible to claim refund of tax paid on inward supply of indigenous goods which are supplied to such eligible passengers without charging any tax.

(3) Who is eligible for refund?

(i) The retail outlets applying for refund must be registered person and must have valid GSTIN.

(ii) Such retail outlets shall be established at departure area of the international airport beyond immigration counters and shall be entitled to claim a refund of all applicable Central tax, State tax, Integrated tax, Union territory tax and Compensation cess paid by them on all inward supplies of indigenous goods received for the purposes of subsequent supply of such goods to the eligible passengers.

(4) Application for refund - Application in prescribed form shall be furnished on a monthly or quarterly basis along with a self-certified compiled information of invoices issued for the supply made during the month or the quarter, as the case may be, along with concerned purchase invoice.

(5) Condition for refund: The refund of tax paid by the said retail outlet shall be available if-

- (a) the inward supplies of goods were received by the said retail outlet from a registered person against a tax invoice;
- (b) the said goods were supplied by the said retail outlet to an outgoing international tourist against foreign exchange without charging any tax;
- (c) name and Goods and Services Tax Identification Number of the retail outlet is mentioned in the tax invoice for the inward supply; and
- (d) such other restrictions or conditions, as may be specified, are satisfied.

The provisions of rule 92 shall, mutatis mutandis, apply for the sanction and payment of refund under this rule.

For your information: International airports, are following types of retail outlet -

- (i) Duty Free Shops (DFS) are point of sale for goods sourced from a warehoused licensed under Section 58A of the Customs Act, 1962, and duty paid indigenous goods
- (ii) Duty Paid Shops (DPS) retailing duty paid indigenous goods.

All indigenous goods would have to be procured by DFS or DPS on payment of applicable tax when procured from the domestic market. The sale of indigenous goods procured from domestic market by retail outlets to an eligible passenger is a “supply” under GST law and is subject to levy of Integrated tax but the same has been exempted. Therefore, retail outlets will supply such indigenous goods without collecting any taxes from the eligible passenger and may apply for refund.

It is clarified that the refund to be granted to retail outlets is not on account of the accumulated input tax credit but is refund based on the invoices of the inward supplies of indigenous goods received by them. Since the supply made by such retail outlets to eligible passengers has been exempted and therefore such retail outlets will not be eligible for input tax credit of taxes paid on such inward supplies and the same will have to be reversed in accordance the provisions. **It is also clarified that no refund of tax paid on input services, if any, will be granted to the retail outlets.**

(6) EXPORT/SUPPLY TO SEZ/EOU UNDER GST

Nature of transaction	Treatment
A. Export of goods	
(i) <u>Physical Export</u> - [Section 2(5) of the IGST Act]	Zero rated supply. (a) Can export without payment of IGST under a Bond/LUT and claim refund of unutilised ITC as per section 16 of IGST read with Section 54 of CGST and rule 96A. (b) Can export by paying net IGST (Gross IGST -ITC) and claim refund of gross IGST as per section 16 of IGST read section 54 and rule 96.
(ii) <u>Deemed Export</u> – Deemed export means such supplies of goods as may be notified u/s. 147.	Not Zero-rated supply. Treated as normal supply but refund of tax paid on such supplies can be claimed either by the recipient or supplier of such supplies as per section 54 read with rule 89.

Section 147: 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.

The supplies of following goods shall be treated as deemed exports: -

1. Supply of goods by a registered person against Advance Authorisation

Provided that goods so supplied, when exports have already been made after availing input tax credit on inputs used in manufacture of such exports, shall be used in manufacture and supply of taxable goods (other than nil rated or fully exempted goods) and a certificate to this effect from a chartered accountant is submitted to the jurisdictional commissioner of GST or any other officer authorised by him within 6 months of such supply,;

Provided further that no such certificate shall be required if input tax credit has not been availed on inputs used in manufacture of export goods

Explanation- “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 for physical exports.

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.

(iii) Merchant Export –They are not manufacturer exporter. They are trader.	<p>Cannot be treated as zero rated supply. Normal GST applicable. However, a concession in rate is provided. The exporter receiving goods are liable to pay concessional rate of tax under Notification No. 40&41/2017 @ 0.1% (0.05% CGST + 0.05% SGST & 0.1% IGST) and also eligible to take credit of the concessional tax so paid by him.</p> <p>The supplier who supplies goods at the concessional rate will be eligible for refund on account of inverted tax structure as per the provisions of section 54(3)(ii) of the CGST Act.</p> <p>Circular No. 37/11/2018 GST dated 15.03.2018</p>
B. Export of services [Section 2(6) of the IGST Act]	Treated as zero rated supply, Same treatment as mentioned in point A(i).
C. Supply of goods or services or both to SEZ unit or SEZ developer	Same treatment as mentioned in point A(i).
D. Supply of goods or services or both to EOUs.	Zero rating is not applicable to supplies to EOUs. EOUs, to the extent of exports, are eligible for zero rating like any other exporter. [Circular No. 8/2017] Supply of goods to EOUs are treated as Deemed Export.
E. Export of goods to Nepal/Bhutan	Treated as zero rated supply. As in case of export of goods there is no condition to receive payment in convertible foreign exchange unlike export of services. Same as Point A(i)
F. Export of services to Nepal/Bhutan	Definition of export of services has been amended to include this transaction, where consideration can be received in Indian rupees as permitted by RBI. Therefore, treated as zero rated supply.

PROCEDURES FOR ZERO RATED SUPPLY WITHOUT PAYMENT OF IGST UNDER BOND OR LETTER OF UNDERTAKING [RULE 96A]

A. In case of Export:

(1) Furnishing of Bond/LUT in Form GST RFD -11, prior to export, a bond or a Letter of Undertaking to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest@18% p.a within a period of —

(a) 15 days after the expiry of 3 months or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export, if the goods are not exported out of India [Export of goods]

(b) 15 days after the expiry of 1 year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange **or in Indian rupees, wherever permitted by RBI** [Export of services]

(2) Furnishing of LUT in place of Bond: All registered persons who intend to supply goods or services for export without payment of IGST shall be eligible to furnish a LUT in place of a bond except those who have been prosecuted for any offence under the CGST Act or the IGST Act or any of the existing laws in force in a case where the amount of tax evaded exceeds ₹250 lakhs.

(3) where the registered person fails to pay the tax due along with interest within the specified period the facility of export without payment of IGST will be deemed to have been withdrawn and the said amount shall be recovered from the registered person in accordance with the provisions of section 79. However, if the said amount is paid, the facility of export without payment of IGST shall be restored

(4) 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.

B. In case of Supply to SEZ unit/ developer: same provisions as applicable in case of Export.

Clarification on issues related to furnishing of Bond/LOU for export without IGST [Circular No. 8/2017 as amended by Circular No. 40/2018]

i) 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 prescribed time limit and the registered person fails to pay the amount specified, the facility of export under LUT will be deemed to have been withdrawn and shall be again restored on payment of such amount subsequently. During the period of withdrawal, exports, shall be either on payment of the applicable integrated tax or under bond with bank guarantee.

ii) Form for LUT: The registered person (exporters) shall fill and submit FORM GST RFD-11 on the common portal. An LUT shall be deemed to be accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online.

iii) Documents for LUT: No document needs to be physically submitted to the jurisdictional office for acceptance of LUT.

iv) Acceptance of LUT/bond: An LUT shall be deemed to have been accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online. If it is discovered that an exporter whose LUT has been so accepted, was ineligible to furnish an LUT in place of bond, then the exporter's LUT will be liable for rejection. In case of rejection, the LUT shall be deemed to have been rejected ab initio.

v) Bank guarantee: Since the facility of export under LUT has been extended to all registered persons, bond will be required to be furnished by those persons who have been prosecuted for cases involving an amount exceeding ₹250 lakhs. **A bond, in all cases, shall be accompanied by a bank guarantee of 15% of the bond amount.**

vi) Clarification regarding running bond: The exporters shall furnish a running bond where the bond amount would cover the amount of self-assessed estimated tax liability on the export. The exporter shall ensure that the outstanding integrated tax liability on exports is within the bond amount. In case the bond amount is insufficient to cover the said liability in yet to be completed exports, the exporter shall furnish a fresh bond to cover such liability. The onus of maintaining the debit / credit entries of integrated tax in the running bond will lie with the exporter. The record of such entries shall be furnished to the Central tax officer as and when required.

vii) Sealing by officers: Till mandatory self-sealing is operationalized, sealing of containers, wherever required to be carried out under the supervision of the officer, shall be done under the supervision of the central excise officer having jurisdiction over the place of business where the sealing is required to be done. A copy of the sealing report would be forwarded to the Deputy/Assistant Commissioner having jurisdiction over the principal place of business.

viii) Purchases from manufacturer and Form CT-1: It is clarified that there is no provision for issuance of CT-1 form which enables merchant exporters to purchase goods from a manufacturer without payment of tax under the GST regime. The transaction between a manufacturer and a merchant exporter is in the nature of supply and the same would be subject to GST.

ix) Transactions with EOUs: Zero rating is not applicable to supplies to EOUs and there is no special dispensation for them under GST regime. Therefore, supplies to EOUs are taxable like any other taxable supplies. EOUs, to the extent of exports, are eligible for zero rating like any other exporter

x) Realization of export proceeds in Indian Rupee: There is no restriction on invoicing of export contracts in Indian Rupees under FEMA. Further, in terms FTP 2015-20, all export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency.

However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan”.

Accordingly, it is clarified that the acceptance of LUT for supplies of goods to Nepal or Bhutan or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines.

xi) Jurisdictional officer: the LUT/Bond shall be accepted by the jurisdictional Deputy/Assistant Commissioner having jurisdiction over the principal place of business of the exporter. The exporter is at liberty to furnish the LUT/bond before either the Central Tax Authority or the State Tax Authority till the administrative mechanism for assigning of taxpayers to the respective authority is implemented.

PROCEDURES OF REFUND IN CASE OF EXPORT OF GOODS OR SERVICES WITH PAYMENT OF IGST (RULE 96)

For Export of Goods

(1) The shipping bill filed by an exporter of goods shall be deemed to be an application for refund. 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 a **departure manifest** or, 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-3/3B

(2) 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 a departure manifest or 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-3/3B

(2) 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, 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) Upon the receipt of the information regarding the furnishing of a valid return the system designated by the Customs/the proper officer of Customs, 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) The claim for refund shall be withheld where, -

(a) in case of provisions of section 54(10)/(11). [intimation shall be given to the applicant and GST commissioner by the proper officer at customs station regarding such withheld]

(b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.

(5) 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.

For Export 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

Common Conditions:

The persons claiming refund of IGST paid on exports of goods or services should not have received supplies on which the supplier has availed the benefit of

(i) *Notification No. 48/2017 CT dated 18.10.2017* [deemed exports] or

(ii) *Notification No. 40,41/2017* [concessional rate of tax @ 0.1% (0.05% CGST + 0.05% SGST & 0.1% IGST) for supply of goods made to merchant exporters for export] or

(iii) *Notification No. 78/2017 Cus dated 13.10.2017/ Notification No. 79/2017 Cus dated 13.10.2017* [imports of goods by EOUs/ Advance Authorisation / EPCG schemes].

CONDITIONS TO BE SATISFIED to CHARGE GST AT CONCESSIONAL RATE (0.1%) ON SUPPLY MADE BY MANUFACTURE TO MERCHANT EXPORTER [Notification No. 40/41 of 2017]

The following are the conditions:

(i) the registered supplier (manufacturer) shall supply the goods to the registered recipient (merchant exporter) on a tax invoice;

(ii) the registered recipient shall export the said goods within a period of 90 days from the date of issue of a tax invoice by the registered supplier;

(iii) the registered recipient shall indicate the GSTIN of the registered supplier and the tax invoice number issued by the registered supplier in respect of the said goods in the shipping bill or bill of export, as the case may be;

(iv) the registered recipient shall be registered with an Export Promotion Council or a Commodity Board recognised by the Department of Commerce;

(v) the registered recipient shall place an order on registered supplier for procuring goods at concessional rate and a copy of the same shall also be provided to the jurisdictional tax officer of the registered supplier;

(vi) the registered recipient shall move the said goods from place of registered supplier –

- (a) directly to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported; or
- (b) directly to a registered warehouse from where the said goods shall be move to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported;
- (vii) if the registered recipient intends to aggregate supplies from multiple registered suppliers and then export, the goods from each registered supplier shall move to a registered warehouse and after aggregation, the registered recipient shall move goods to the Port, Inland Container Depot, Airport or Land Customs Station from where they shall be exported;
- (viii) in case of situation referred to in condition (vii), the registered recipient shall endorse receipt of goods on the tax invoice and also obtain acknowledgement of receipt of goods in the registered warehouse from the warehouse operator and the endorsed tax invoice and the acknowledgment of the warehouse operator shall be provided to the registered supplier as well as to the jurisdictional tax officer of such supplier; and
- (ix) when goods have been exported, the registered recipient shall provide copy of shipping bill or bill of export containing details of Goods and Services Tax Identification Number (GSTIN) and tax invoice of the registered supplier along with proof of export general manifest or export report having been filed to the registered supplier as well as jurisdictional tax officer of such supplier.

THE QUESTION BANK

Question 1: 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)?

Answer: 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.

It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision.

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.

It is therefore, 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. [Circular 48/2018, 14.6.2018]

Question 2: 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?

Answer- 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, 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.]

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.

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. [Circular 48/2018, 14.6.2018]

Question 3: 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?

Answer- Notification No. 5/2017-Central Tax (Rate) dated 28.06.2017 specifies the goods in respect of which refund of unutilized input tax credit (ITC) on account of inverted duty structure under section 54(3) of the CGST Act shall not be allowed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies of such goods.

However, in case of fabric processors, the output supply is the supply of job work services and not of goods (fabrics).

Hence, 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. [Circular 48/2018, 14.6.2018]

Question 4: ABC Ltd. India has received an order for supply of services amounting to \$ 5,00,000/- to a US based client. ABC Ltd. India is unable to supply the entire services from India and asks XYZ Ltd. Mexico (who is not merely an establishment of a distinct person viz. ABC Ltd. India, in accordance with the Explanation 1 in Section 8 of the IGST Act) to supply a part of the services (say 40% of the total contract value). what would be the tax treatment of the said portion of the contract at the hands of the exporter

Answer: Circular No. 78/2018, 31.12.2018

ABC Ltd. India shall be the exporter of services for the entire value if the invoice for the entire amount is raised by ABC Ltd. India.

The services provided by XYZ Ltd. Mexico to the US based client shall be import of services by ABC Ltd. India and it would be liable to pay integrated tax on the same under reverse charge and also be eligible to take input tax credit of the integrated tax so paid.

Further, if the provisions contained in section 2(6) of the IGST Act are not fulfilled with respect to the realization of convertible foreign exchange, say only 60% of the consideration is received in India and the remaining amount is directly paid by the US based client to XYZ Ltd. Mexico, even in such a scenario, 100% of the total contract value shall be taken as consideration for the export of services by ABC Ltd. India provided integrated tax on import of services has been paid on the part of the services provided by XYZ Ltd Mexico directly to the US based client and RBI (by general instruction or by specific approval) has allowed that a part of the consideration for such exports can be retained outside India.

In other words, in such cases, the export benefit will be available for the total realization of convertible foreign exchange by ABC Ltd. India and XYZ Ltd. Mexico.

Question 5: Whether goods sent/taken out of India for exhibition or on consignment basis for export promotion amounted to “zero rated supply”?

Circular No. 108, dated 18.07.2019:

The activity of sending / taking the goods out of India for exhibition or on consignment basis for export promotion, except when such activity satisfy the tests laid down in Schedule I of the CGST Act, do not constitute supply as the said activity does not fall within the scope of section 7 of the CGST Act as there is no consideration at that point in time. Since such activity is not a supply, the same cannot be considered as “Zero rated supply” as per the provisions contained in section 16 of the IGST Act. Therefore, execution of a bond or LUT, as required under section 16 of the IGST Act, is not required.

Example 1: M/s ABC sends 100 units of specified goods out of India. The activity of merely sending / taking such specified goods out of India is not a supply. No tax invoice is required to be issued in this case but the specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules.

In case the entire quantity of specified goods is brought back within the stipulated period of six months from the date of removal, no tax invoice is required to be issued as no supply has taken place in such a case.

In case, however, the entire quantity of specified goods is neither sold nor brought back within six months from the date of removal, a tax invoice would be required to be issued for entire 100 units of specified goods in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules within the time period stipulated under sub-section (7) of section 31 of the CGST Act.

Question 6: Whether the refund claims can be preferred in respect of specified goods sent / taken out of India but not brought back?

(a) Since the activity of sending / taking specified goods out of India is not a zero-rated supply, therefore the sender of goods cannot prefer any refund claim when the specified goods are sent / taken out of India.

b) The supply would be deemed to have taken place:

(i) on the date of expiry of six months from the date of removal, if the specified goods are neither sold nor brought back within the said period; or

(ii) on the date of sale, in respect of such quantity of specified goods which have been sold abroad within the specified period of six months.

It is clarified accordingly that the sender can prefer refund claim even when the specified goods were sent / taken out of India without execution of a bond or LUT, if he is otherwise eligible for refund as per the provisions contained in sub-section (3) of section 54 the CGST Act read with sub-rule (4) of rule 89 of the CGST Rules, in respect of zero rated supply of goods after he has issued the tax invoice on the dates. It is further clarified that refund claim cannot be preferred under rule 96 of CGST Rules as supply is taking place at a time after the goods have already been sent / taken out of India earlier

Example 2: M/s ABC sends 100 units of specified goods out of India. The activity of sending / taking such specified goods out of India is not a supply. No tax invoice is required to be issued in this case but the specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules. If 10 units of specified goods are sold abroad say after one month of sending / taking out and another 50 units are sold say after two months of sending / taking out, a tax invoice would be required to be issued for 10 units and 50 units, as the case may be, at the time of each of such sale in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules. If the remaining 40 units are not brought back within the stipulated period of six months from the date of removal, a tax invoice would be required to be issued for 40 units in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules. Further, M/s ABC may claim refund of accumulated input tax credit in accordance with the provisions contained in subsection (3) of section 54 of the CGST Act read with sub-rule (4) of rule 89 of the CGST Rules in respect of zero-rated supply of 60 units.

(7) DEMANDS AND RECOVERY UNDER GST

PART A- DETERMINATION OF DEMAND

1. SECTION 73 [NO FRAUD CASE]

DETERMINATION OF TAX NOT PAID/SHORT PAID/ERRONEOUSLY REFUNDED/INPUT TAX CREDIT WRONGLY AVAILABLE/UTILISED FOR ANY REASON OTHER THAN FRAUD/ANY WILFULL MISSTATEMENT/SUPPRESSION OF FACTS

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any willful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

(2) The proper officer shall issue the notice under sub-section (1) at least 3 months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

Question: Whether penalty in accordance with section 73 (11) of the CGST Act should be levied in cases where the return in FORM GSTR-3B has been filed after the due date of filing such return?

Answer- 1. The provisions of section 73(11) of the CGST Act can be invoked only when the provisions of section 73 are invoked.

2. The provisions of section 73 of the CGST Act are generally not invoked in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has already been paid but after the due date for payment of such tax.

3. It is accordingly clarified that penalty under the provisions of section 73(11) of the CGST Act is not payable in such cases.

4. It is further clarified that since the tax has been paid late in contravention of the provisions of the CGST Act, a general penalty under section 125 of the CGST Act may be imposed after following the due process of law. **[Circular No. 76/2018, dated 31.12.2018]**

2. SECTION 74 [FRAUD CASE]

DETERMINATION OF TAX NOT PAID OR SHORT PAID OR ERRONEOUSLY REFUNDED OR INPUT TAX CREDIT WRONGLY AVAILABLE OR UTILISED BY REASON OF FRAUD OR ANY WILFUL MISSTATEMENT OR SUPPRESSION OF FACTS.

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least 6 months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1— For the purposes of section 73 and this section,—

(i) the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

Explanation 2.— For the purposes of this Act, the expression “suppression” shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

Officers empowered to issue SCN and orders U/s 73 and 74

	Officer empowered for the issue of SCN U/S 73/74	Monetary limits CGST not paid/short paid	Monetary limits SGST not paid/short paid	Monetary limits CGST & SGST not paid/short paid
1.	Superintendent of Central tax	Not exceeding Rs.10 lakhs	Not exceeding Rs.20 lakhs	Not exceeding Rs. 20 lakhs
2.	Deputy or Assistant Commissioner of Central Tax	Above Rs.10 lakhs and not exceeding Rs.1 crore	Above Rs.20 lakhs and not exceeding Rs. 2 crores	Above Rs.20 lakhs and not exceeding Rs. 2 crores
3.	Additional or Joint Commissioner of Central Tax	Above Rs. 1 crore without any limit	Above Rs.2 crores without any limit	Above Rs.2 crores without any limit

Communication before issue of notice [Rule 142(1A)]

The proper officer shall, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, shall communicate the details of any tax, interest and penalty as ascertained by him, in prescribed form. Where such person has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in prescribed form.

where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act whether on his own ascertainment or, as **communicated by the proper officer** u/r 142(1A), 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. [**N.B- This will help to take advantages of nil/reduced penalty u/s. 73(5)/74(5)**]

3. GENERAL PROVISIONS RELATING TO DETERMINATION OF TAX

[SECTION 75]

(1) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74, as the case may be.

(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.

(3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.

(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

(8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

(9) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

(10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.

(11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.

(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

(13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

4. TAX COLLECTED BUT NOT PAID TO GOVERNMENT [SEC. 76]

(1) Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

(2) Where any amount is required to be paid to the Government under sub-section (1), and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.

(3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person and thereupon such person shall pay the amount so determined.

(4) The person referred to in sub-section (1) shall in addition to paying the amount referred to in sub-section (1) or sub-section (3) also be liable to pay interest thereon at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.

(5) An opportunity of hearing shall be granted where a request is received in writing from the person to whom the notice was issued to show cause.

(6) The proper officer shall issue an order within one year from the date of issue of the notice.

(7) Where the issuance of order is stayed by an order of the court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of one year.

(8) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(9) The amount paid to the Government under sub-section (1) or sub-section (3) shall be adjusted against the tax payable, if any, by the person in relation to the supplies referred to in sub-section (1).

(10) Where any surplus is left after the adjustment under sub-section (9), the amount of such surplus shall either be credited to the Fund or refunded to the person who has borne the incidence of such amount.

(11) The person who has borne the incidence of the amount, may apply for the refund of the same in accordance with the provisions of section 54.

5. TAX WRONGFULLY COLLECTED AND PAID TO CENTRAL/STATE GOVT. [SECTION 77]

(1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable.

PART B- RECOVERY OF DEMAND

1. INITIATION OF RECOVERY PROCEEDINGS [SECTION 78]

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.

2. RECOVERY OF TAX [SECTION 79]

(1) Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely:—

- (a) the proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other specified officer;
- (b) the proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the proper officer or such other specified officer;
- (c) (i) the proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the Government either forthwith upon the money becoming due or being held, or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;

(ii) every person to whom the notice is issued under sub-clause (i) shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;

(iii) in case the person to whom a notice under sub-clause (i) has been issued, fails to make the payment in pursuance thereof to the Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder shall follow;

(iv) the officer issuing a notice under sub-clause (i) may, at any time, amend or revoke such notice or extend the time for making any payment in pursuance of the notice;

(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;

(vii) where a person on whom a notice is served under sub-clause (i) proves to the satisfaction of the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person or be held for or on account of such person, nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the Government any such money or part thereof;

(d) the proper officer may, in accordance with the rules to be made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;

(e) the proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue;

(f) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application to the appropriate Magistrate and such 2 of 1974. 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.

‘Explanation: For the purposes of this section, the word person shall include “distinct persons” as referred to in sub-section (4) or, as the case may be, sub-section (5) of section 25. [w.e.f 1.2.2018]

3. PROCEDURES FOR RECOVERY [RULE 142 TO 161]

(1) Recovery by sale of goods under the control of the proper officer (Rule 144)	The proper officer shall prepare an inventory, estimate the market value and start auctioning only so much of the goods as required for recovering the amount. He shall issue notice at least 15 days prior to last date bidding/auction. Perishable goods can be sold immediately. Auction shall be cancelled if amount along with expenses incurred for recovery has been paid by the defaulter.
(2) Recovery through execution of a decree (Rule 146)	Request shall be sent to court for recovery, against any amount payable to defaulter in the execution of a decree of a civil court. The Court shall, subject to the provisions of the Code of Civil Procedure, 1908, execute the attached decree, and credit the net proceeds for settlement of the amount recoverable.
(3) Recovery by sale of movable or immovable property (Rule 147 to 150)	<p>(i) He shall prepare a list of property belonging to the defaulter, estimate the market value and issue an order of attachment or distraint and a notice for sale prohibiting any transaction with regard to such property required for the recovery.</p> <p>(ii) In case of an immovable property, the order of attachment or distraint shall be affixed on the said property and shall remain affixed till the confirmation of sale;</p> <p>(iii) in case of movable property, the proper officer shall seize the said property and take its custody.</p> <p>(iv) In case of negotiable instrument/shares, it shall be sold through broker. Other property, shall be sold through auction. Auction shall be cancelled if due is cleared by the defaulter.</p> <p>(v) In case of any claim/objection is raised, attachment shall be released/claim rejected only after investigation.</p> <p>(vi) The buyer shall require to pay relevant taxes such as stamp duty etc. to Govt.</p> <p>(viii) The officer/person involved in recovery proceedings cannot be participate in auction.</p> <p>(ix) No auction shall be made on a Sunday or other general holidays.</p> <p>(x) Assistance from the officer in- charge of the jurisdictional police station may be taken.</p>

(4) Attachment of property in custody of courts or Public Officer [Rule 152]	the proper officer shall send the order of attachment to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held till the recovery of the amount payable.
(5) Attachment of interest in partnership (Rule 153)	<p>(1) The proper officer may make an order charging the share of partner in the partnership property and profits, appoint a receiver and make an order for the sale of such interest or such other order as the circumstances of the case may require.</p> <p>(2) The other partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.</p>
(6) Attachment of debts and shares, etc [Rule 151]	<p>Order shall be given,</p> <p>(a) in the case of an unsecured debt, the creditor from recovering the debt and the debtor from making payment thereof until the receipt of a further order from the proper officer;</p> <p>(b) in the case of a share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;</p> <p>(c) in the case of any other movable property, the person in possession of the same from giving it to the defaulter.</p> <p>(3) A debtor, may pay the amount of his debt to the proper officer, and such payment shall be deemed as paid to the defaulter.</p>

DISPOSAL OF PROCEEDS OF SALE OF GOODS AND MOVABLE OR IMMOVABLE PROPERTY (RULE 154)

The amounts so realised from the sale of goods, movable or immovable property, for the recovery of dues from a defaulter shall,-

- (a) first, be appropriated against the administrative cost of the recovery process;
- (b) next, be appropriated against the amount to be recovered;
- (c) next, be appropriated against any other amount due from the defaulter under CGST/IGST/UTGST/SGST and
- (d) any balance, be paid to the defaulter.

4. PAYMENT OF TAX AND OTHER AMOUNT IN INSTALMENTS [SECTION 80]

On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed:

Provided that where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.

PROCEDURES (RULE 158):

(1) The Commissioner may issue an order allowing the taxable person to make payment in monthly instalments, subject to maximum 24 instalments, after getting a report from the jurisdictional officer about the financial ability of the taxable person.

(2) The above facility shall not be allowed where-

(a) the taxable person has already defaulted on the payment of any amount under GST Law for which the recovery process is on.

(b) the taxable person has not been allowed to make payment in instalments in the preceding financial year under any of the GST Act;

(c) the amount for which instalment facility is sought is less than ₹25,000.

5. TRANSFER OF PROPERTY TO BE VOID IN CERTAIN CASES

[SECTION 81]

Where a person, after any amount has become due from him, creates a charge on or Transfer of parts with the property belonging to him or in his possession by way of sale, mortgage, property to exchange, or any other mode of transfer whatsoever of any of his properties in favour of any be void in certain cases. other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person:

Provided that, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

6. TAX TO BE FIRST CHARGE ON PROPERTY [SECTION 82]

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.

7. PROVISIONAL ATTACHMENT TO PROTECT REVENUE IN CERTAIN CASES [SECTION 83]

(1) Where during the pendency of any proceedings under section 62 or section 63 Provisional or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that attachment to for the purpose of protecting the interest of the Government revenue, it is necessary so to protect revenue in do, he may, by order in writing attach provisionally any property, including bank account, certain cases. belonging to the taxable person in such manner as may be prescribed.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

PROCEDURES (RULE 159)

(1) The order for attachment shall be passed and a copy shall be send to the concerned Revenue Authority/Transport Authority/ any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the Commissioner to that effect. The person shall file objection within 7 days of attachment and on proper investigation it may be released/ claim rejected.

(2) Perishable or hazardous goods can be realised on payment of amount due or market price of such goods, whichever is lower. Otherwise, the Commissioner may dispose of such property and the amount realized thereby shall be adjusted against the tax, interest, penalty, fee or any other amount payable by the taxable person.

8. CONTINUATION AND VALIDATION OF CERTAIN RECOVERY PROCEEDINGS [SECTION 84]

Where any notice of demand in respect of any tax, penalty, interest or any other Continuation amount payable under this Act, (hereafter in this section referred to as “Government dues”), and validation is served upon any taxable person or any other person and any appeal or revision application of certain recovery is filed or any other proceedings is initiated in respect of such Government dues, then—

(a)where such Government dues are enhanced in such appeal, revision or other proceedings, the Commissioner shall serve upon the taxable person or any other person another notice of demand in respect of the amount by which such Government dues are enhanced and any recovery proceedings in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of such appeal, revision or other proceedings may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;

(b)where such Government dues are reduced in such appeal, revision or in other proceedings—

(i)it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;

(ii)the Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;

(iii)any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

(8) LIABILITY TO PAY GST IN CERTAIN CASES

LIABILITY IN CASE OF TRANSFER OF BUSINESS

[Section 85]

(1) Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person up to the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.

(2) Where the transferee of a business referred to in sub-section (1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the supply of goods or services or both effected by him with effect from the date of such transfer and shall, if he is a registered person under this Act, apply within the prescribed time for amendment of his certificate of registration.

LIABILITY OF AGENT AND PRINCIPAL

[Section 86]

Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall, jointly and severally, be liable to pay the tax payable on such goods under this Act.

LIABILITY IN CASE OF AMALGAMATION/MERGER OF COMPANIES [SECTION 87]

(1) When two or more companies are amalgamated or merged in pursuance of an order of court or of Tribunal or otherwise and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied or received any goods or services or both to or from each other during the period commencing on the date from which the order takes effect till the date of the order, then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly.

(2) Notwithstanding anything contained in the said order, for the purposes of this Act, the said two or more companies shall be treated as distinct companies for the period up to the date of the said order and the registration certificates of the said companies shall be cancelled with effect from the date of the said order.

LIABILITY IN CASE OF COMPANY IN LIQUIDATION

[Section 88]

(1) When any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as receiver of any assets of a company (hereafter in this section referred to as the “liquidator”), shall, within thirty days after his appointment, give intimation of his appointment to the Commissioner.

(2) The Commissioner shall, after making such inquiry or calling for such information as he may deem fit, notify the liquidator within three months from the date on which he receives intimation of the appointment of the liquidator, the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.

(3) When any private company is wound up and any tax, interest or penalty determined under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of such company at any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such tax, interest or penalty, unless he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

LIABILITY OF DIRECTORS OF PRIVATE COMPANY

[Section 89]

(1) Notwithstanding anything contained in the Companies Act, 2013, where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of such tax, interest or penalty unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

(2) Where a private company is converted into a public company and the tax, interest or penalty in respect of any supply of goods or services or both for any period during which such company was a private company cannot be recovered before such conversion, then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax, interest or penalty in respect of such supply of goods or services or both of such private company:

Provided that nothing contained in this sub-section shall apply to any personal penalty imposed on such director.

LIABILITY OF PARTNERS OF FIRM TO PAY TAX

[Section 90]

Notwithstanding any contract to the contrary and any other law for the time being in force, where any firm is liable to pay any tax, interest or penalty under this Act, the firm and partners of each of the partners of the firm shall, jointly and severally, be liable for such payment: firm to pay tax.

Provided that where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing and such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date:

Provided further that if no such intimation is given within one month from the date of retirement, the liability of such partner under the first proviso shall continue until the date on which such intimation is received by the Commissioner.

LIABILITY OF GUARDIANS, TRUSTEES etc.

[Section 91]

Where the business in respect of which any tax, interest or penalty is payable under this Act is carried on by any guardian, trustee or agent of a minor or other incapacitated guardians, person on behalf of and for the benefit of such minor or other incapacitated person, the tax, interest or penalty shall be levied upon and recoverable from such guardian, trustee or agent in like manner and to the same extent as it would be determined and recoverable from any such minor or other incapacitated person, as if he were a major or capacitated person and as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

LIABILITY OF COURT OF WARDS etc.

[Section 92]

Where the estate or any portion of the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable under this Act is under the control Court of the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a court, the tax, interest or penalty shall be levied upon and be recoverable from such Court of Wards, Administrator General, Official Trustee, receiver or manager in like manner and to the same extent as it would be determined and be recoverable from the taxable person as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

SPECIAL PROVISIONS REGARDING LIABILITY TO PAY TAX, INTEREST OR PENALTY IN CERTAIN CASES

[Section 93]

(1) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies, then—

- (a) if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act; and
- (b) if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

(2) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person, liable to pay tax, interest or penalty under this Act, is a Hindu Undivided Family or an association of persons and the property of the Hindu Undivided Family or the association of persons is partitioned amongst the various members or groups of members, then, each member or group of members shall, jointly and severally, be liable to pay the tax, interest or penalty due from the taxable person under this Act up to the time of the partition whether such tax, penalty or interest has been determined before partition but has remained unpaid or is determined after the partition.

(3) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person, liable to pay tax, interest or penalty under this Act, is a firm, and the firm is dissolved, then, every person who was a partner shall, jointly and severally, be liable to pay the tax, interest or penalty due from the firm under this Act up to the time of dissolution whether such tax, interest or penalty has been determined before the dissolution, but has remained unpaid or is determined after dissolution.

(4) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person liable to pay tax, interest or penalty under this Act,—

- (a) is the guardian of a ward on whose behalf the business is carried on by the guardian; or
 - (b) is a trustee who carries on the business under a trust for a beneficiary, then, if the guardianship or trust is terminated, the ward or the beneficiary shall be liable to pay the tax, interest or penalty due from the taxable person up to the time of the termination of the guardianship or trust, whether such tax, interest or penalty has been determined before the termination of guardianship or trust but has remained unpaid or is determined thereafter.
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LIABILITY IN OTHER CASES

[Section 94]

(1) Where a taxable person is a firm or an association of persons or a Hindu Undivided Family and such firm, association or family has discontinued business—

- (a) the tax, interest or penalty payable under this Act by such firm, association or family up to the date of such discontinuance may be determined as if no such discontinuance had taken place; and
- (b) every person who, at the time of such discontinuance, was a partner of such firm, or a member of such association or family, shall, notwithstanding such discontinuance, jointly and severally, be liable for the payment of tax and interest determined and penalty imposed and payable by such firm, association or family, whether such tax and interest has been determined or penalty imposed prior to or after such discontinuance and subject as aforesaid, the provisions of this Act shall, so far as may be, apply as if every such person or partner or member were himself a taxable person.

(2) Where a change has occurred in the constitution of a firm or an association of persons, the partners of the firm or members of association, as it existed before and as it exists after the reconstitution, shall, without prejudice to the provisions of section 90, jointly and severally, be liable to pay tax, interest or penalty due from such firm or association for any period before its reconstitution.

(3) The provisions of sub-section (1) shall, so far as may be, apply where the taxable person, being a firm or association of persons is dissolved or where the taxable person, being a Hindu Undivided Family, has effected partition with respect to the business carried on by it and accordingly references in that sub-section to discontinuance shall be construed as reference to dissolution or to partition.

Explanation.—For the purposes of this Chapter,—

- (i) a “Limited Liability Partnership” formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be considered as a firm;
- (ii) “court” means the District Court, High Court or Supreme Court.

Who is liable to pay tax due in case of transfer of business due to death of sole proprietor:

As per sub-section (1) of section 85 of the CGST Act, the transferor and the transferee / successor shall jointly and severally be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business “in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever”.

Furthermore, sub-section (1) of section 93 of the CGST Act provides that where a person, liable to pay tax, interest or penalty under the CGST Act, dies, then the person who continues business after his death, shall be liable to pay tax, interest or penalty due from such person under this Act.

It is therefore clarified that the transferee / successor shall be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business due to death of sole proprietor. [Circular No. 96/2019, dated 28.03.2019]

(9) ADVANCE RULING

An advance ruling helps the applicant in planning his activities, which are liable for payment of GST, well in advance. It provides certainty and transparency to a taxpayer with respect to an issue which may potentially cause a dispute with the tax administration. A legally constituted body called Authority for Advance Ruling (AAR) can give a binding ruling to an applicant who is a registered person or is desirous of obtaining registration. The advance ruling given by the Authority can be appealed before an Appellate authority for Advance Ruling (AAAR).

Objective: (i) provide certainty in tax liability in advance, in relation to an activity proposed to be undertaken by the applicant; (ii) attract Foreign Direct Investment (FDI); (iii) reduce litigation; (iv) pronounce ruling expeditiously in transparent and inexpensive manner [CBIC E-flyers]

Registered Person/ Person desirous to obtain Registration

File application in Form GST ARA-01 with fee of ₹ 5000

On any of the following matter –

- Classification, Time and Value of supply, ITC,
- determination of liability to pay Tax,
- requirement of registration under GST,
- determination of supply,
- Applicability of a notification

Authority for Advance Ruling (AAR)

Either accept or reject application

Application not admitted if matter already decided/ pending in any proceedings

if accepted shall pronounce advance ruling within 90 days

if members of AAR differ on any questions

jurisdictional officer/ applicant aggrieved by any advance ruling order file appeal within 30 days

Applicant- in Form ARA-02 with fee of ₹ 10,000

Dept-in Form ARA-03 (no fee)

Appellate Authority for Advance Ruling (AAAR)

**Pass order within 90 days as it think fit, confirming/ modifying the ruling
NO ADVANCE RULING (If members of AAAR differ on any point)**

Points to be noted – (i) Advance ruling order is binding on applicant and on the concerned officer unless the law have changed. (ii) Order can be rectified within 6 months for any error apparent on the face of the record.

(iii) Advance ruling shall be void if obtained by fraud, suppression of certain material facts, misrepresentation of facts.

1. DEFINITIONS [SECTION 95]

In this Chapter, unless the context otherwise requires, —

- (a) “advance ruling” means a decision provided by the Authority or the Appellate Authority or **the National Appellate Authority** to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, **of section 101C** in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;
- (b) “Appellate Authority” means the Appellate Authority for Advance Ruling referred to in section 99;
- (c) “applicant” means any person registered or desirous of obtaining registration under this Act;
- (d) “application” means an application made to the Authority under sub-section (1) of section 97;
- (e) “Authority” means the Authority for Advance Ruling referred to in section 96.
- (f) “National Appellate Authority” means the National Appellate Authority for Advance Ruling referred to in section 101A

2. AUTHORITY FOR ADVANCE RULING [SECTION 96]

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.

3. APPLICATION FOR ADVANCE RULING [SECTION 97]

(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in **FORM GST ARA-01** and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought under this Act, shall be in respect of,—

- (a) classification of any goods or services or both;
 - (b) applicability of a notification issued under the provisions of this Act;
 - (c) determination of time and value of supply of goods or services or both;
 - (d) admissibility of input tax credit of tax paid or deemed to have been paid;
 - (e) determination of the liability to pay tax on any goods or services or both;
 - (f) whether applicant is required to be registered;
 - (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
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4. PROCEDURE ON RECEIPT OF APPLICATION [SECTION 98]

(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 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.

5. APPELLATE AUTHORITY FOR ADVANCE RULING [SECTION 99]

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.

6. APPEAL TO APPELLATE AUTHORITY [SECTION 100]

(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 **FORM GST ARA-03**, accompanied by such fee and verified in such manner as may be prescribed.

7. ORDERS OF APPELLATE AUTHORITY [SECTION 101]

(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.

8. RECTIFICATION OF ADVANCE RULING [SECTION 102]

The Authority or the Appellate Authority or the National Appellate Authority may amend any order passed by it under section 98 or section 101 or section 101C, respectively so as to rectify any error apparent on the face of the record, of advance ruling. 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.

9. APPLICABILITY OF ADVANCE RULING [SECTION 103]

(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.

(1A) The Advance Ruling pronounced by the National Appellate Authority under this Chapter shall be binding on—

(a) the applicants, being distinct persons, who had sought the ruling under sub-section (1) of section 101B and all registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961;

(b) the concerned officers and the jurisdictional officers in respect of the applicants referred to in clause (a) and the registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961.”

(2) The advance ruling referred to in sub-section (1)/(1A) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

10. ADVANCE RULING TO BE VOID IN CERTAIN CIRCUMSTANCES [SECTION 104]

1) Where the Authority or the Appellate Authority or the National Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 or under section 101C has been obtained by the applicant or the appellant by fraud or suppression of certain material facts or misrepresentation of facts, it may, by order, declare such ruling to be void *ab-initio* and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:

Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.

Explanation. —The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74.

(2) A copy of the order made under sub-section (1) shall be sent to the applicant, the concerned officer and the jurisdictional officer.

11. POWERS OF AUTHORITY, APPELLATE AUTHORITY AND NATIONAL APPELLATE AUTHORITY [SECTION 105]

(1) The Authority or the Appellate Authority or the National Appellate Authority shall, for the purpose of exercising its powers regarding—

- (a) discovery and inspection;
- (b) enforcing the attendance of any person and examining him on oath;
- (c) issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908.

(2) The Authority or the Appellate Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and

every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.

12. PROCEDURE OF AUTHORITY AND APPELLATE AUTHORITY

[SECTION 106]

The Authority or the Appellate Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure.

NATIONAL APPELLATE AUTHORITY FOR ADVANCE RULING

Constitution of National Appellate Authority for Advance Ruling

[Section 101A- effective date yet to be notified]

(1) The Government shall, on the recommendations of the Council, by notification, constitute, with effect from such date as may be specified therein, an Authority known as the National Appellate Authority for Advance Ruling for hearing appeals made under section 101B.

(2) The National Appellate Authority shall consist of—

- (i) the President, who has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years;
- (ii) a Technical Member (Centre) who is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A;
- (iii) a Technical Member (State) who is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the Additional Commissioner of State tax with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation.

(3) The President of the National Appellate Authority shall be appointed by the Government after consultation with the Chief Justice of India or his nominee:

Provided that in the event of the occurrence of any vacancy in the office of the President by the reason of his death, resignation or otherwise, the senior most Member of the National Appellate Authority shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office:

Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member of the National Appellate Authority shall discharge the functions of the President until the date on which the President resumes his duties.

(4) The Technical Member (Centre) and Technical Member (State) of the National Appellate Authority shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.

(5) No appointment of the Members of the National Appellate Authority shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee.

(6) Before appointing any person as the President or Members of the National Appellate Authority, the Government shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.

(7) The salary, allowances and other terms and conditions of service of the President and the Members of the National Appellate Authority shall be such as may be prescribed:

Provided that neither salary and allowances nor other terms and conditions of service of the President or Members of the National Appellate Authority shall be varied to their disadvantage after their appointment.

(8) The President of the National Appellate Authority shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier and shall also be eligible for reappointment.

(9) The Technical Member (Centre) or Technical Member (State) of the National Appellate Authority shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall also be eligible for reappointment.

(10) The President or any Member may, by notice in writing under his hand addressed to the Government, resign from his office:

Provided that the President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Government, or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(11) The Government may, after consultation with the Chief Justice of India, remove from the office such President or Member, who—

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or

(c) has become physically or mentally incapable of acting as such President or Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.

(12) Without prejudice to the provisions of sub-section (11), the President and Technical Members of the National Appellate Authority shall not be removed from their office except by an order made by the Government on the ground of proven misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Government and such President or Member had been given an opportunity of being heard.

(13) The Government, with the concurrence of the Chief Justice of India, may suspend from office, the President or Technical Members of the National Appellate Authority in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (12).

(14) Subject to the provisions of article 220 of the Constitution, the President or Members of the National Appellate Authority, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Appellate Authority where he was the President or, as the case may be, a Member.

Appeal to National Appellate Authority
[Section 101B, effective date is yet to be notified]

(1) Where, in respect of the questions referred to in sub-section (2) of section 97, conflicting Advance Rulings are given by the Appellate Authorities of two or more States or Union territories or both under sub-section (1) or sub-section (3) of section 101, any officer authorised by the Commissioner or an applicant, being distinct person referred to in section 25 aggrieved by such Advance Ruling, may prefer an appeal to National Appellate Authority:

Provided that the officer shall be from the States in which such Advance Rulings have been given.

(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 applicants, concerned officers and jurisdictional officers:

Provided that the officer authorised by the Commissioner may file appeal within a period of ninety days from the date on which the ruling sought to be appealed against is communicated to the concerned officer or the jurisdictional officer:

Provided further that the National 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, or as the case may be, ninety days, allow such appeal to be presented within a further period not exceeding thirty days.

Explanation.—For removal of doubts, it is clarified that the period of thirty days or as the case may be, ninety days shall be counted from the date of communication of the last of the conflicting rulings sought to be appealed against.

(3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

Order of National Appellate Authority
[Section 101C – effective date is yet to be notified]

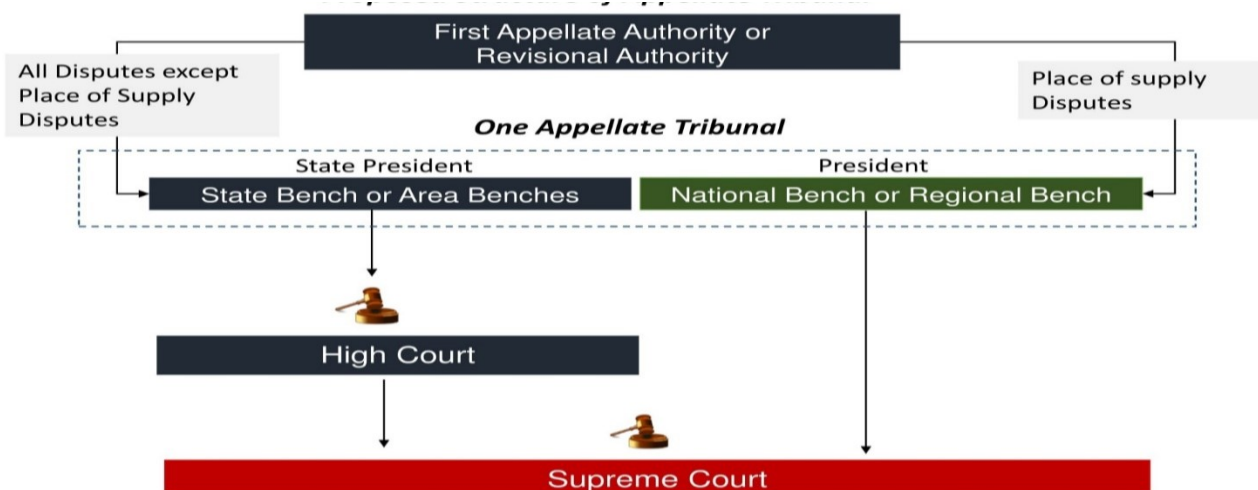
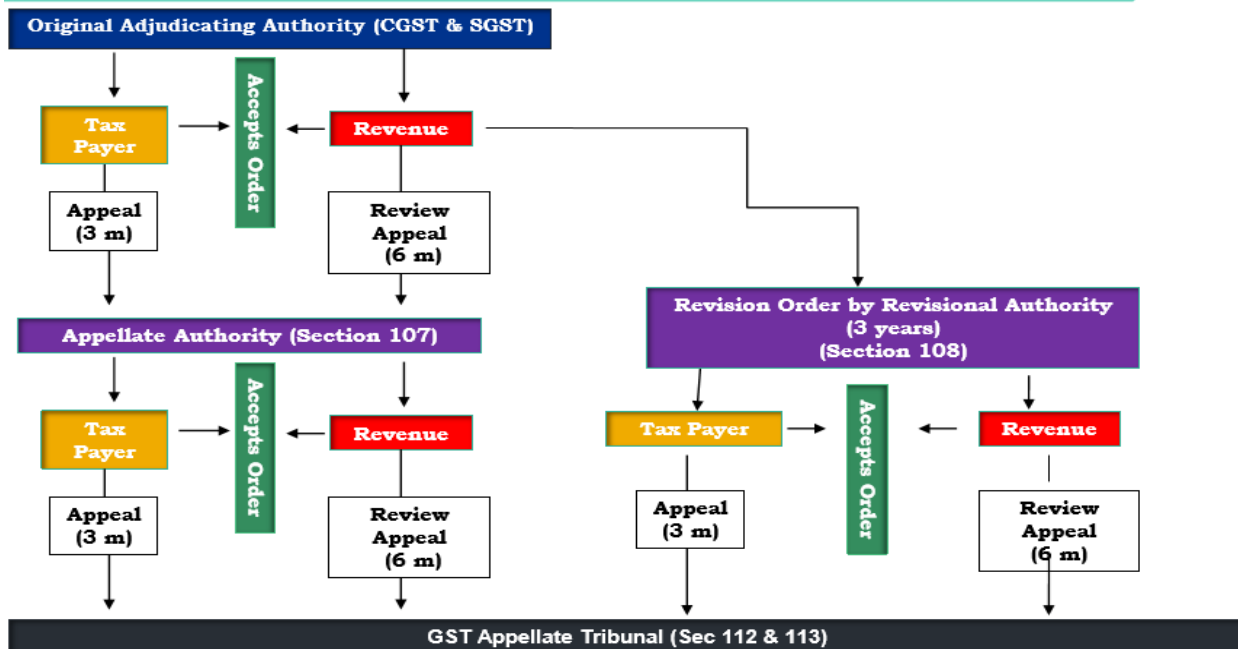
(1) The National Appellate Authority may, after giving an opportunity of being heard to the applicant, the officer authorised by the Commissioner, all Principal Chief Commissioners, Chief Commissioners of Central tax and Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories, pass such order as it thinks fit, confirming or modifying the rulings appealed against.

(2) If the members of the National Appellate Authority differ in opinion on any point, it shall be decided according to the opinion of the majority.

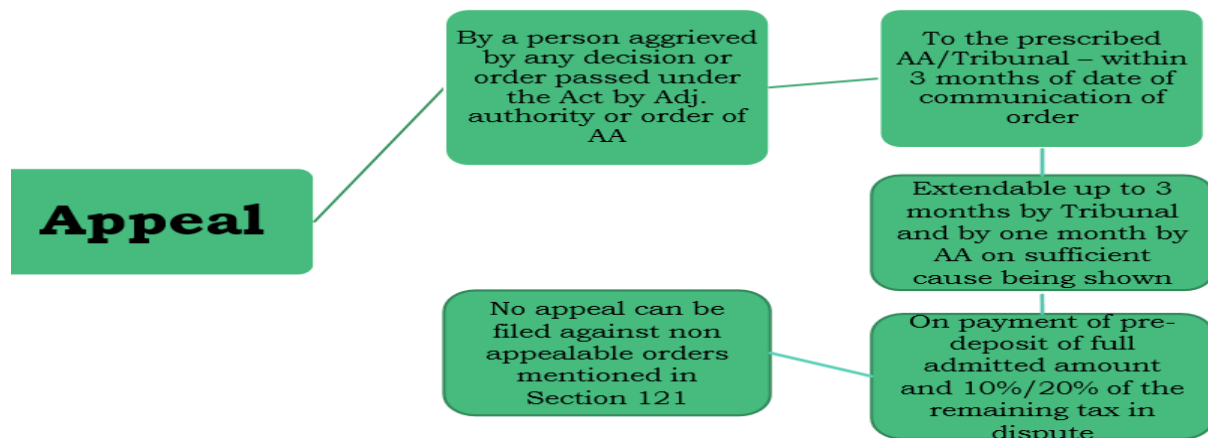
(3) The order referred to in sub-section (1) shall be passed as far as possible within a period of ninety days from the date of filing of the appeal under section 101B.

(4) A copy of the Advance Ruling pronounced by the National Appellate Authority shall be duly signed by the Members and certified in such manner as may be prescribed and shall be sent to the applicant, the officer authorised by the Commissioner, the Board, the Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories and to the Authority or Appellate Authority, as the case may be, after such pronouncement.”.

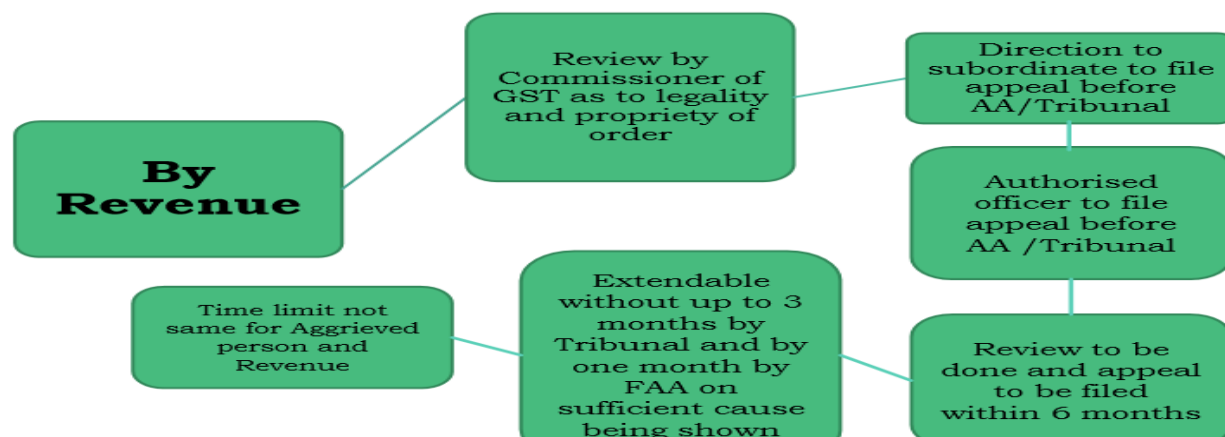
(10) APPEALS AND REVISION



APPEAL BY AGGRIEVED PERSON UNDER GST ACT



REVIEW APPEAL BY REVENUE UNDER CGST



Non-appealable orders Section 121



Order related to –

- Transfer of proceedings from one officer to another officer
- Seizure or retention of books/register/doc.
- Prosecution
- Payment of tax on instalment (sec. 80)

1. APPEALS TO APPELLATE AUTHORITY [SECTION 107]

Appellate Authority [Commissioner (Appeal)]

Appeals to First Appellate Authority



Filled by Tax Payer

- ✎ Appeal against order of adjudicating authority within 3 months.(can extend by further 1 months)
- ✎ Application filed in Form GST APL-01
- ✎ A certified copy such order is submitted within 7 days from the application.
- ✎ Pre deposit – Full amount of demand admitted + (10% of the disputed amount or ₹ 25 cr, lower)

Filled by Department

- ✎ Appeal against the decision passed by adjudicating authority within 6 months (extends by further 1 months)
- ✎ Application filed in Form GST APL-03
- ✎ A certified copy such order is submitted within 7 days from the application.
- ✎ NO pre-deposit

Power :

- ✎ Maximum 3 adjournment
- ✎ Allow to add new ground of appeal if omission was not wilful or unreasonable.
- ✎ If possible pass order within 1 year
- ✎ Can confirm, modify, annul but cannot refer back for fresh adjudication.
- ✎ Production of additional evidence not possible except certain circumstances
- ✎ If pre-deposit amount consequent to an order is not refunded then interest payable @ 9% p.a from the date of payment till the date of refund

(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

Who is adjudicating authority?

Section 2(4) “adjudicating authority” →

means -	any authority, appointed or authorised to pass any order or decision under this Act
but does not include -	the Central Board of Excise and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the National Appellate Authority for Advance Ruling, the Appellate Authority, the Appellate Tribunal and anti- profiteering authority.

Who is Appellate Authority?

Where Adjudicating authority is -	Appellate Authority shall be -
An Additional or Joint Commissioner	Commissioner (Appeals)
a Deputy or Assistant Commissioner or Superintendent	any officer not below the rank of Joint Commissioner (Appeals).

(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

(3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

(5) Every appeal under this section shall be in **FORM GST APL-01/APL-03** and shall be verified in such manner as may be prescribed.

(6) No appeal shall be filed under sub-section (1), unless the appellant has paid—

- (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
- (b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order **subject to a maximum of ₹ 25 crore** in relation to which the appeal has been filed.[For IGST limit is ₹50 cr]

(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.

(8) The Appellate Authority shall give an opportunity to the appellant of being heard.

(9) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(10) The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any

ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.

(12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.

(13) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:

Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

(14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.

(15) A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.

(16) Every order passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118 be final and binding on the parties.

PROCEDURES

Rule 108. Appeal to the Appellate Authority.-

(1) An appeal to the Appellate Authority under sub-section (1) of section 107 shall be filed in FORM GST APL-01, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner, and a provisional acknowledgement shall be issued to the appellant immediately.

(2) The grounds of appeal and the form of verification as contained in FORM GST APL- 01 shall be signed in the manner specified in rule 26.

(3) A certified copy of the decision or order appealed against shall be submitted within seven days of filing the appeal under sub-rule (1) and a final acknowledgement, indicating appeal number shall be issued thereafter in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf:

Provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the FORM GST APL-01, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy.

Explanation.— For the provisions of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.

Rule 109. Application to the Appellate Authority.-

(1) An application to the Appellate Authority under sub-section (2) of section 107 shall be made in FORM GST APL-03, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner.

(2) A certified copy of the decision or order appealed against shall be submitted within seven days of the filing the application under sub-rule (1) and an appeal number shall be generated by the appellate Authority or an officer authorised by him in this behalf.

Rule 109B. Notice to person and order of revisional authority in case of revision u/s. 108

(1) Where the Revisional Authority decides to pass an order in revision under section 108 which is likely to affect the person adversely, the Revisional Authority shall serve on him a notice and shall give him a reasonable opportunity of being heard.

(2) The Revisional Authority shall, along with its order under sub-section (1) of section 108, issue a summary of the order clearly indicating the final amount of demand confirmed.

2. POWERS OF REVISIONAL AUTHORITY [SECTION 108]



- ✍ Order passed by subordinate authority
 - erroneous (prejudicial to the interest of revenue + illegal/improper/not considered material facts)
- ✍ stay the operation of such order
- ✍ pass revision order as thinks just and proper (can enhance, modify, annul)
- ✍ opportunity of being heard given
- ✍ No revision order –
 - after expiry of 3 years
 - matter already taken and decided in appeal (*for other matters revision possible*)
 - matter already taken for revisions at earlier stage
 - revision order already passed once
 - before expiry of 6 months/extended period given u/s. 107(2)
 - non-appealable orders u/s. 121

(1) Subject to the provisions of section 121 and any rules made thereunder, the Revisional Authority may, on his own motion, or upon information received by him or on request from the Commissioner of State tax, or the Commissioner of Union territory tax, call for and examine the record of any proceedings, and if he considers that any decision or order passed under this Act or under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, stay the operation of such decision or order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.

- (2) The Revisional Authority shall not exercise any power under sub-section (1), if—
- (a) the order has been subject to an appeal under section 107 or section 112 or section 117 or section 118; or
 - (b) the period specified under sub-section (2) of section 107 has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised; or
 - (c) the order has already been taken for revision under this section at an earlier stage; or
 - (d) the order has been passed in exercise of the powers under sub-section (1):

Provided that the Revisional Authority may pass an order under sub-section (1) on any point which has not been raised and decided in an appeal referred to in clause (a) of sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or before the expiry of a period of three years referred to in clause (b) of that sub-section, whichever is later.

- (3) Every order passed in revision under sub-section (1) shall, subject to the provisions of section 113 or section 117 or section 118, be final and binding on the parties.

(4) If the said decision or order involves an issue on which the Appellate Tribunal or the High Court has given its decision in some other proceedings and an appeal to the High Court or the Supreme Court against such decision of the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Tribunal and the date of the decision of the High Court or the date of the decision of the High Court and the date of the decision of the Supreme Court shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2) where proceedings for revision have been initiated by way of issue of a notice under this section.

(5) Where the issuance of an order under sub-section (1) is stayed by the order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2).

(6) For the purposes of this section, the term, —

(i) “record” shall include all records relating to any proceedings under this Act available at the time of examination by the Revisional Authority;

(ii) “decision” shall include intimation given by any officer lower in rank than the Revisional Authority.

3. APPEALS TO APPELLATE TRIBUNAL



- Filed by Tax Payer
 - ✎ Appeal against order of appellate authority/ revisional authority within 3 months.(can extend by further 3 months)
 - ✎ Application filed in Form GST APL-05
 - ✎ Application Fee ₹ 1000/for every ₹1 lakhs of tax/ITC or ₹ 25,000, lower
 - ✎ NO application fee for rectification of order
 - ✎ Pre deposit – Full amount of demand admitted + (20% of the disputed amount or ₹ 50 cr, lower)
- Filed by Department (on direction of commissioner)
 - ✎ Appeal against the order of appellate authority/ revisional authority within 6 months (extends by further 6 months)
 - ✎ Application filed in Form GST APL-07
 - ✎ A certified copy such order is submitted within 7 days from the application.
 - ✎ NO pre-deposit
 - ✎ No application fee
- Memorandum of cross objection shall be filed within 45 days (further extended to 45 days) by the defendant
- Power
 - ✎ Discretionary power to admit case if tax/ITC involved upto ₹ 50,000.
 - ✎ Production of additional evidence not possible except certain circumstances
 - ✎ Maximum 3 adjournment
 - ✎ Allow to add new ground of appeal if omission was not wilful or unreasonable.
 - ✎ If possible pass order within 1 year
 - ✎ Can confirm, modify, annul but refer back for fresh adjudication.
 - ✎ Opportunity of being heard given.
- If pre-deposit amount consequent to an order is not refunded then interest payable @ 9% p.a from the date of payment till the date of refund
- Matters related to Place of Supplies shall lie before National Bench/Regional Bench of the Tribunal
- Matters related to other than place of supply shall lie before State Bench/Area Bench of the Tribunal

1. APPEALS TO APPELLATE TRIBUNAL [SECTION 112]

(1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.

(2) The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed fifty thousand rupees.

(3) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or Commissioner of Union territory tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act for the purpose of satisfying himself as to the legality or propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed for determination of such points arising out of the said order as may be specified by the Commissioner in his order.

(4) Where in pursuance of an order under sub-section (3) the authorised officer makes an application to the Appellate Tribunal, such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order under sub-section (11) of section 107 or under sub-section (1) of section 108 and the provisions of this Act shall apply to such application, as they apply in relation to appeals filed under sub-section (1).

(5) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of notice, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal presented within the time specified in sub-section (1).

(6) The Appellate Tribunal may admit an appeal within three months after the expiry of the period referred to in sub-section (1), or permit the filing of a memorandum of cross-objections within forty-five days after the expiry of the period referred to in sub-section (5) if it is satisfied that there was sufficient cause for not presenting it within that period.

(7) An appeal to the Appellate Tribunal shall be in **FORM GST APL-05** verified in such manner and shall be accompanied by such fee, as may be prescribed.

(8) No appeal shall be filed under sub-section (1), unless the appellant has paid—

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and

(b) a sum equal to twenty per cent. of the remaining amount of tax in dispute **subject to maximum ₹ 50 crores**, in addition to the amount paid under sub-section (6) of section 107, arising from the said order, in relation to which the appeal has been filed. [For IGST limit is ₹100 cr]

(9) Where the appellant has paid the amount as per sub-section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

(10) Every application made before the Appellate Tribunal, —

(a) in an appeal for rectification of error or for any other purpose; or

(b) for restoration of an appeal or an application, shall be accompanied by such fees as may be prescribed.

2. ORDERS OF APPELLATE TRIBUNAL [SECTION 113]

(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the Appellate Authority, or the Revisional Authority or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision after taking additional evidence, if necessary.

(2) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(3) The Appellate Tribunal may amend any order passed by it under sub-section (1) so as to rectify any error apparent on the face of the record, if such error is noticed by it on its own accord, or is brought to its notice by the Commissioner or the Commissioner of State tax or the Commissioner of the Union territory tax or the other party to the appeal within a period of three months from the date of the order:

Provided that no amendment which has the effect of enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability of the other party, shall be made under this sub-section, unless the party has been given an opportunity of being heard.

(4) The Appellate Tribunal shall, as far as possible, hear and decide every appeal within a period of one year from the date on which it is filed.

(5) The Appellate Tribunal shall send a copy of every order passed under this section to the Appellate Authority or the Revisional Authority, or the original adjudicating authority, as the case may be, the appellant and the jurisdictional Commissioner or the Commissioner of State tax or the Union territory tax.

(6) Save as provided in section 117 or section 118, orders passed by the Appellate Tribunal on an appeal shall be final and binding on the parties.

Procedures

Rule 110. Appeal to the Appellate Tribunal

(1) An appeal to the Appellate Tribunal under subsection (1) of section 112 shall be filed along with the relevant documents either electronically or otherwise as may be notified by the Registrar, in FORM GST APL-05, on the common portal and a provisional acknowledgement shall be issued to the appellant immediately.

(2) A memorandum of cross-objections to the Appellate Tribunal under sub-section (5) of section 112 shall be filed either electronically or otherwise as may be notified by the Registrar, in FORM GST APL-06.

(5) The fees for filing of appeal or restoration of appeal shall be one thousand rupees for every one lakh rupees of tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of twenty five thousand rupees.

(6) There shall be no fee for application made before the Appellate Tribunal for rectification of errors referred to in sub-section (10) of section 112.

Rule 111. Application to the Appellate Tribunal. -

(1) An application to the Appellate Tribunal under sub-section (3) of section 112 shall be made electronically or otherwise, in FORM GST APL-07, along with the relevant documents on the common portal.

(2) A certified copy of the decision or order appealed against shall be submitted within seven days of filing the application under sub-rule (1) and an appeal number shall be generated by the Registrar.

Rule 112. Production of additional evidence before the Appellate Authority or the Appellate Tribunal. -

(1) The appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the Appellate Authority except in the following circumstances, namely:-

(a) where the adjudicating authority or, as the case may be, the Appellate Authority has refused to admit evidence which ought to have been admitted; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or, as the case may be, the Appellate Authority; or

(c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the Appellate Authority any evidence which is relevant to any ground of appeal; or

(d) where the adjudicating authority or, as the case may be, the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

3. INTEREST ON REFUND OF AMOUNT PAID FOR ADMISSION OF APPEAL [Section 115]

Where an amount paid by the appellant under sub-section (6) of section 107 or sub-section (8) of section 112 is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, interest at the rate specified under section 56 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

4. CONSTITUTION OF APPELLATE TRIBUNAL AND BENCHES THEREOF [SECTION 109]

(1) The Government shall, on the recommendations of the Council, by notification, constitute with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.

(2) The powers of the Appellate Tribunal shall be exercisable by the National Bench and Benches thereof (hereinafter in this Chapter referred to as “Regional Benches”), State Bench and Benches thereof (hereafter in this Chapter referred to as “Area Benches”).

(3) The National Bench of the Appellate Tribunal shall be situated at New Delhi which shall be presided over by the President and shall consist of one Technical Member (Centre) and one Technical Member (State).

(4) The Government shall, on the recommendations of the Council, by notification, constitute such number of Regional Benches as may be required and such Regional Benches shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State).

(5) The National Bench or Regional Benches of the Appellate Tribunal shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases where one of the issues involved relates to the place of supply.

(6) The Government shall, by notification, specify for each State or Union territory, a Bench of the Appellate Tribunal (hereafter in this Chapter, referred to as “State Bench”) for exercising the powers of the Appellate Tribunal within the concerned State or Union territory:

Provided that the Government shall, on receipt of a request from any State Government, constitute such number of Area Benches in that State, as may be recommended by the Council:

Provided further that the Government may, on receipt of a request from any State, or on its own motion for a Union territory, notify the Appellate Tribunal in a State to act as the Appellate Tribunal for any other State or Union territory, as may be recommended by the Council, subject to such terms and conditions as may be prescribed.

(7) The State Bench or Area Benches shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases involving matters other than those referred to in sub-section (5).

(8) The President and the State President shall, by general or special order, distribute the business or

transfer cases among Regional Benches or, as the case may be, Area Benches in a State.

(9) Each State Bench and Area Benches of the Appellate Tribunal shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State) and the State Government may designate the senior most Judicial Member in a State as the State President.

(10) In the absence of a Member in any Bench due to vacancy or otherwise, any appeal may, with the approval of the President or, as the case may be, the State President, be heard by a Bench of two Members:

Provided that any appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed five lakh rupees and which does not involve any question of law may, with the approval of the President and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a bench consisting of a single member.

(11) If the Members of the National Bench, Regional Benches, State Bench or Area Benches differ in opinion on any point or points, it shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President or as the case may be, State President for hearing on such point or points to one or more of the other Members of the National Bench, Regional Benches, State Bench or Area Benches and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.

(12) The Government, in consultation with the President may, for the administrative convenience, transfer—

- (a) any Judicial Member or a Member Technical (State) from one Bench to another Bench, whether National or Regional; or
- (b) any Member Technical (Centre) from one Bench to another Bench, whether National, Regional, State or Area.

(13) The State Government, in consultation with the State President may, for the administrative convenience, transfer a Judicial Member or a Member Technical (State) from one Bench to another Bench within the State.

(14) No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal.

5. PRESIDENT AND MEMBERS OF APPELLATE TRIBUNAL, THEIR QUALIFICATION, APPOINTMENT, CONDITIONS OF SERVICE, ETC.

[SECTION 110]

(1) A person shall not be qualified for appointment as—

- (a) the President, unless he has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years;

(b) a Judicial Member, unless he—

(i) has been a Judge of the High Court; or service, etc.

(ii) is or has been a District Judge qualified to be appointed as a Judge of a High Court; or

(iii) is or has been a Member of Indian Legal Service and has held a post not less than Additional Secretary for three years;

(c) a Technical Member (Centre) unless he is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A;

(d) a Technical Member (State) unless he is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the State goods and services tax or such rank as may be notified by the concerned State Government on the recommendations of the Council with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation.

(2) The President and the Judicial Members of the National Bench and the Regional Benches shall be appointed by the Government after consultation with the Chief Justice of India or his nominee:

Provided that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the senior most Member of the National Bench shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office:

Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member of the National Bench shall discharge the functions of the President until the date on which the President resumes his duties.

(3) The Technical Member (Centre) and Technical Member (State) of the National Bench and Regional Benches shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.

(4) The Judicial Member of the State Bench or Area Benches shall be appointed by the State Government after consultation with the Chief Justice of the High Court of the State or his nominee.

(5) The Technical Member (Centre) of the State Bench or Area Benches shall be appointed by the Central Government and Technical Member (State) of the State Bench or Area Benches shall be appointed by the State Government in such manner as may be prescribed.

(6) No appointment of the Members of the Appellate Tribunal shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee.

(7) Before appointing any person as the President or Members of the Appellate Tribunal, the Central Government or, as the case may be, the State Government, shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.

(8) The salary, allowances and other terms and conditions of service of the President, State President and the Members of the Appellate Tribunal shall be such as may be prescribed:

Provided that neither salary and allowances nor other terms and conditions of service of the President, State President or Members of the Appellate Tribunal shall be varied to their disadvantage after their appointment.

(9) The President of the Appellate Tribunal shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier and shall be eligible for reappointment.

(10) The Judicial Member of the Appellate Tribunal and the State President shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment.

(11) The Technical Member (Centre) or Technical Member (State) of the Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment.

(12) The President, State President or any Member may, by notice in writing under his hand addressed to the Central Government or, as the case may be, the State Government resign from his office:

Provided that the President, State President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Central Government, or, as the case may be, the State Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(13) The Central Government may, after consultation with the Chief Justice of India, in case of the President, Judicial Members and Technical Members of the National Bench, Regional Benches or Technical Members (Centre) of the State Bench or Area Benches, and the State Government may, after consultation with the Chief Justice of High Court, in case of the State President, Judicial Members, Technical Members (State) of the State Bench or Area Benches, may remove from the office such President or Member, who—

- (a) has been adjudged an insolvent; or
- (b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or
- (c) has become physically or mentally incapable of acting as such President, State President or Member; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, State President or Member; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President, State President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.

(14) Without prejudice to the provisions of sub-section (13),—

- (a) the President or a Judicial and Technical Member of the National Bench or Regional Benches, Technical Member (Centre) of the State Bench or Area Benches shall not be removed from their office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Central Government and of which the President or the said Member had been given an opportunity of being heard;
- (b) the Judicial Member or Technical Member (State) of the State Bench or Area Benches shall not be removed from their office except by an order made by the State Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the concerned High Court nominated by the Chief Justice of the concerned High Court on a reference made to him by the State Government and of which the said Member had been given an opportunity of being heard.

(15) The Central Government, with the concurrence of the Chief Justice of India, may suspend from office, the President or a Judicial or Technical Members of the National Bench or the Regional Benches or the Technical Member (Centre) of the State Bench or Area Benches in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (14).

(16) The State Government, with the concurrence of the Chief Justice of the High Court, may suspend from office, a Judicial Member or Technical Member (State) of the State Bench or Area Benches in respect of whom a reference has been made to the Judge of the High Court under sub-section (14).

(17) Subject to the provisions of article 220 of the Constitution, the President, State President or other Members, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Bench and the Regional Benches or the State Bench and the Area Benches thereof where he was the President or, as the case may be, a Member.

6. PROCEDURE BEFORE APPELLATE TRIBUNAL [SECTION 111]

(1) The Appellate Tribunal shall not, while disposing of any proceedings before it or an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of this Act and the rules made thereunder, the Appellate Tribunal shall have power to regulate its own procedure.

(2) The Appellate Tribunal shall, for the purposes of discharging its functions under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) dismissing a representation for default or deciding it *ex parte*;
- (g) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and

(h) any other matter which may be prescribed.

(3) Any order made by the Appellate Tribunal may be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,—

- (a) in the case of an order against a company, the registered office of the company is situated; or
- (b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

(4) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

7. FINANCIAL AND ADMINISTRATIVE POWERS OF PRESIDENT [SECTION 114]

The President shall exercise such financial and administrative powers over the National Bench and Regional Benches of the Appellate Tribunal as may be prescribed:

Provided that the President shall have the authority to delegate such of his financial and administrative powers as he may think fit to any other Member or any officer of the National Bench and Regional Benches, subject to the condition that such Member or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the President.

8. APPEARANCE BY AUTHORISED REPRESENTATIVE [SEC. 116]

(1) Any person who is entitled or required to appear before an officer appointed under this Act, or the Appellate Authority or the Appellate Tribunal in connection with any proceedings under this Act, may, otherwise than when required under this Act to appear personally for examination on oath or affirmation, subject to the other provisions of this section, appear by an authorised representative.

(2) For the purposes of this Act, the expression “authorised representative” shall mean a person authorised by the person referred to in sub-section (1) to appear on his behalf, being —

- (a) his relative or regular employee; or
- (b) an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or
- (c) any chartered accountant, a cost accountant or a company secretary, who holds a certificate of practice and who has not been debarred from practice; or
- (d) a retired officer of the Commercial Tax Department of any State Government or Union territory or of the Board who, during his service under the Government, had worked in a post not below the rank than that of a Group-B Gazetted officer for a period of not less than two years:

Provided that such officer shall not be entitled to appear before any proceedings under this Act for a period of one year from the date of his retirement or resignation; or

- (e) any person who has been authorised to act as a goods and services tax practitioner on behalf of the

concerned registered person.

(3) No person,—

(a) who has been dismissed or removed from Government service; or

(b) who is convicted of an offence connected with any proceedings under this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, or under the existing law or under any of the Acts passed by a State Legislature dealing with the imposition of taxes on sale of goods or supply of goods or services or both; or

(c) who is found guilty of misconduct by the prescribed authority;

(d) who has been adjudged as an insolvent, shall be qualified to represent any person under sub-section

(1)—

(i) for all times in case of persons referred to in clauses (a), (b) and (c); and

(ii) for the period during which the insolvency continues in the case of a person referred to in clause (d).

(4) Any person who has been disqualified under the provisions of the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be disqualified under this Act.

Rule 116. Disqualification for misconduct of an authorised representative.-

Where an authorised representative, other than those referred to in clause (b) or clause (c) of sub-section (2) of section 116 is found, upon an enquiry into the matter, guilty of misconduct in connection with any proceedings under the Act, the Commissioner may, after providing him an opportunity of being heard, disqualify him from appearing as an authorised representative.

APPEALS TO HIGH COURT & SUPREME COURT



▪ Appeals to High Court

- ✎ Appeal in From GST APL-08 within 180 days (extension allowed)
- ✎ Against the order of the Tribunal (State Bench/Area Bench)
- ✎ Case involves a substantial question of law

▪ Appeals to Supreme Court

- ✎ Appeal against the order of the Tribunal (National Bench/Regional Bench)
- ✎ Appeal against the order of High Court u/s 117 (Fit Certificate from High Court reqd.)

4. APPEAL TO HIGH COURT [SECTION 117]

(1) Any person aggrieved by any order passed by the State Bench or Area Appeal to Benches of the Appellate Tribunal may file an appeal to the High Court and the High Court may admit such appeal, if it is satisfied that the case involves a substantial question of law.

(2) An appeal under sub-section (1) shall be filed within a period of one hundred and eighty days from the date on which the order appealed against is received by the aggrieved person and it shall be, verified in such manner as may be prescribed:

Provided that the High Court may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within such period.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question and the appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(4) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(5) The High Court may determine any issue which—

- (a) has not been determined by the State Bench or Area Benches; or
- (b) has been wrongly determined by the State Bench or Area Benches, by reason of a decision on such question of law as herein referred to in sub-section (3).

(6) Where an appeal has been filed before the High Court, it shall be heard by a Bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(7) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only, by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

(8) Where the High Court delivers a judgment in an appeal filed before it under this section, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment.

(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

Procedures

Rule 114.

(1) An appeal to the High Court shall be filed in FORM GST APL-08.

(2) The grounds of appeal and the form of verification as contained in FORM GST APL-08 shall be signed in the manner specified in rule 26.

115. Demand confirmed by the Court.- The jurisdictional officer shall issue a statement in FORM GST APL-04 clearly indicating the final amount of demand confirmed by the High Court or, as the case may be, the Supreme Court.

5. APPEAL TO SUPREME COURT [SECTION 118]

(1) An appeal shall lie to the Supreme Court—

(a) from any order passed by the National Bench or Regional Benches of the Appellate Tribunal; or
(b) from any judgment or order passed by the High Court in an appeal made under section 117 in any case which, on its own motion or on an application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court.

(2) The provisions of the Code of Civil Procedure, 1908, relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under this section as they apply in the case of appeals from decrees of a High Court.

(3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 117 in the case of a judgment of the High Court.

6. SUMS DUE TO BE PAID NOTWITHSTANDING APPEAL ETC. [SECTION 119]

Notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, sums due to the Government as a result of an order passed by the National or Regional Benches of the Appellate Tribunal under sub-section (1) of section 113 or an order passed by the State Bench or Area Benches

of the Appellate Tribunal under sub-section (1) of section 113 or an order passed by the High Court under section 117, as the case may be, shall be payable in accordance with the order so passed.

7. APPEAL NOT TO BE FILED IN CERTAIN CASES [SECTION 120]

(1) The Board may, on the recommendations of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the central tax under the provisions of this Chapter.

(2) Where, in pursuance of the orders or instructions or directions issued under sub-section (1), the officer of the central tax has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such officer of the central tax from filing appeal or application in any other case involving the same or similar issues or questions of law.

(3) Notwithstanding the fact that no appeal or application has been filed by the officer of the central tax pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the officer of the central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application.

(4) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the officer of the central tax in pursuance of the orders or instructions or directions issued under sub-section (1).

8. NON-APPEALABLE DECISIONS AND ORDERS [SECTION 121]

Notwithstanding anything to the contrary in any provisions of this Act, no appeal shall lie against any decision taken or order passed by an officer of central tax if such decision taken or order passed relates to any one or more of the following matters, namely: —

- (a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or
 - (b) an order pertaining to the seizure or retention of books of account, register and other documents; or
 - (c) an order sanctioning prosecution under this Act; or
 - (d) an order passed under section 80.
-

(11) OFFENCES AND PENALTIES

Offences	Quantum of penalty
<u>Section 122(1): Offences applicable for Taxable Person</u>	Higher of the following –
<u>Invoice related</u>	(a) ₹10,000
(1) Making a supply without Invoice or with incorrect/false invoice;	(b) <u>100% of tax evaded;</u> or
(2) issuing any invoice/bill without supply of goods or services or both;	-100% of tax not/short deducted/collected; or
(3) issues any invoice or document by using the registration number of another registered person;	-100% of tax deducted/collected but not deposited; or
<u>Tax related</u>	-100% of input tax credit availed of or passed on or distributed irregularly, or
(4) GST collected but not paid to Govt. for a period exceeding 3 months from the due date of payment.	-100% of the refund claimed fraudulently,
(5) GST collected in contravention of the provisions of this Act but not paid to Govt. for a period exceeding 3 months from due date of payment.	as the case may be.
(6) suppresses his turnover leading to evasion of tax under this Act;	
<u>TDS/TCS related</u>	
(7) Non deduction or lower deduction of tax deducted at source or not depositing tax deducted at source under section 51;	
(9) Non collection or lower collection of or non- payment of tax collectible at source under section 52;	
<u>Input tax credit</u>	
(9) takes or utilises input tax credit without actual receipt of goods or services or both.	
(10) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;	
<u>Refund related</u>	
(11) fraudulently obtains refund of tax under this Act;	
<u>Registration</u>	
(12) Failure to register despite being liable to pay tax	

<p><u>Information/Books of Accounts/records related</u></p> <p>(13) Furnishing false information or falsification of financial records or furnishing of fake accounts/ documents with intent to evade payment of tax;</p> <p>(14) Furnishing false information regarding registration particulars either at the time of applying for registration or subsequently;</p> <p>(135) Failure to keep, maintain or retain accounts/documents in the manner specified in the Act or</p> <p>(16) Failure to furnish information/documents required by an officer in terms of the Act/Rules or furnishing false information/documents during the course of any proceeding;</p> <p><u>Transport related</u></p> <p>(17) transports any taxable goods without the cover of documents as may be specified in this behalf;</p> <p>(18) supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;</p> <p><u>Miscellaneous</u></p> <p>(19) obstructs or prevents any officer in discharge of his duties under this Act;</p> <p>(20) tampers with, or destroys any material evidence or document;</p> <p>(21) disposes off or tampers with any goods that have been detained, seized, or attached under this Act,</p>	
<p>Section 122(2): Offences applies to registered person</p> <p>(1) <u>For Tax not paid/short paid/erroneously refunded/ input tax credit wrongly availed/utilised –</u></p> <p>(a) For without any fraudulent reasons -</p> <p>(b) for reason of fraud/wilful misstatement/suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.</p>	<p>(a) 10% of tax due or ₹ 10,000, higher (no fraud case)</p> <p>(b) 100% of tax due or ₹10,000; higher (fraud case)</p>
<p>Section 10(5)- person opt for composition scheme despite being ineligible for the scheme.</p>	<p>100% of tax payable as normal taxpayer. (penalty in addition to tax payable).</p>
<p>Section 122(3): Penalty on persons other than the taxable/registered person</p> <p>For following offences –</p>	<p>Penalty upto ₹ 25000.</p>

<p>(a) any person who aids or abets any of the 21 offences prescribed u/s. 122(1).</p> <p>(b) deals in any way (whether receiving, supplying, storing or transporting) with goods that are liable to confiscation)</p> <p>(c) receives or deals with supply of services in contravention of the Act</p> <p>(d) fails to appear before an authority who has issued a summon,</p> <p>(e) fails to issue any invoice for a supply or account for any invoice in his books of accounts</p>	
Section 123- failure to furnish information return within the period specified in the notice u/s. 150(3)	₹ 100 for each day of default or ₹5000; higher
Section 124: fails to furnish/furnishes false information or return u/s. 151(collection of statistics)	Upto ₹10,000. In case of continuing offence, ₹ 100 per day of default or ₹ 25,000, lower.
<p>Section 125- General penalty</p> <p>Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act,</p>	Upto ₹ 25,000

Note:**(1) The penalty shall not be imposed –**

- (a) for minor breaches (i.e amount of tax is below ₹5000) of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable (i.e error apparent on the face of record) and made without fraudulent intent or gross negligence.
- (b) Without giving an opportunity of being heard.[Section 126]
- (2) Point (1) shall not apply in such cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage.
- (3) Penalty proceedings shall be started without any assessment proceedings also, as per section 127.
- (4) The Govt. by notification can waive penalty/late fee [Sec. 128]

DETENTION/SEIZER/ CONFISCATION OF GOODS OR CONVEYANCES

Particulars	Penalty/ fine in lieu of confiscation
<p>Where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder,</p> <p>all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure.</p> <p>[Section 129]</p> <p>Who will be considered as the „owner of the goods“ for the purposes of section 129(1) of the CGST Act?</p> <p>It is hereby clarified that if the invoice or any other specified document is accompanying the consignment of goods, then either the consignor or the consignee should be deemed to be the owner. If the invoice or any other specified document is not accompanying the consignment of goods, then in such cases, the proper officer should determine who should be declared as the owner of the goods [CBIC clarification]</p>	<p>shall be released on payment of applicable tax and following penalty—</p> <p><u>where owner comes forward</u> – penalty @ 100% of tax or upon furnishing of security equivalent to the tax and penalty amount.</p> <p>In case of exempted goods, penalty is 2% of value of goods or ₹25,000, whichever is less.</p> <p><u>where owner does not come forward:</u> penalty@ 50% of value of goods or upon furnishing of security equivalent to the tax and penalty amount.</p> <p>In case of exempted goods, penalty is 5% of value of goods or ₹25,000, whichever is less.</p> <p>If tax and penalty paid then proceedings u/s. 129 shall deemed to be concluded.</p> <p>If payment not made within 14 days from detention/seizure, then confiscation proceedings shall be started as per section 130.</p> <p>[for perishable or hazardous goods time limit of 7 days may be reduced]</p>
<p>Confiscation u/s. 130: on following cases-</p> <p>If any person -</p> <p>(i) supplies or receives any goods in contravention of any provision of this Act and such contravention results in evasion of tax payable under the Act, or</p> <p>(ii) does not account for any goods in the manner required under the Act, or</p> <p>(iii) supplies goods that are liable to tax under the Act without applying for registration, or</p> <p>(iv) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of CGST/SGST Act (unless used without knowledge of owner)</p> <p>(v) contravenes any provision of the Act/Rules with the intention of evading payment of tax.</p>	<p>all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty of under section 122.</p> <p><u>Fine in lieu of confiscation:</u> shall give the option to pay fine in addition to penalty—</p> <p>Maximum- the market price of such goods (-) tax payable on such goods.</p> <p>However, the fine and penalty should not be lower than the penalty u/s. 129(1).</p> <p>Time allowed- maximum 3 months for payment of fine.</p> <p>Conveyance used on hire, then the owner shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.</p> <p>Note: section 131, confiscation/penalty shall not interfere with other punishments.</p>

PROSECUTIONS AT A GLANCE**OFFENCES****PUNISHMENT**

Section 132 (1) Whoever commits any of the following offences, namely: —

Invoice related

(1) Making supplies without invoice/issuance of false/incorrect invoice. with the intention to evade tax;

(2) issuing invoice without supply leading to wrongful availment or utilisation of input tax credit or refund of tax;

Payment of tax

(3) not paying any amount collected as tax for a period exceeding 3 months;

Input tax Credit related

(4) avails input tax credit without receiving goods or services by using invoice referred in clause(b);

(5) evades tax, fraudulently avails input tax credit or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);

Others

(6) Dealing with goods liable to confiscation i.e. receipt, supply, storage or transportation of goods liable to confiscation;

(7) Receiving/dealing with supply of services in contravention of the Act

(8) Failing to supply any information required of him under the Act/Rules or supplying false information

(9) attempts to commit, or abets the commission of any of the offences mentioned under this section,

Accounts/records/obstructs

In cases where he commits or abets the commission of an offence -

(10) 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;

(11) tampers with or destroys any material evidence or documents;

(12) obstructs or prevents any officer in the discharge of his duties under this Act;

If Tax evaded/credit wrongly availed/refund wrongly taken: -

Quantum	Imprisonment upto
> 5 crores	5 years and fine
> 2 crores but does not exceed 5 crores	3 years and fine
> 1 crore but does not exceeds ₹ 2 cr.	1 years and fine

All cases: imprisonment shall not be less than 6 months.

Note: prior sanction of commissioner required for all cases.

imprisonment for a term which may extend to 6 months or with fine or with both.

For repeat offences Where any person convicted of an offence under this section is again convicted of an offence under this section,	shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to 5 years and with fine.
Non-Cognizable and bailable offences	All offences where the evasion of tax is less than ₹ 5 crores
Cognizable and non-bailable offences	For offences mentioned in point (1) to (4), if the evasion of tax is more than ₹ 5 crores. No court shall take cognizance of any offence without previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class, shall try any such offence. [Sec. 134]
Mensrea [culpable mental state] [Section 135]	Presumed to be exist. Burden of prove is on the accused.
<u>Liability of Govt. officers/ other persons in GSTN/collecting statistics</u> If wilfully disclose any information/contents of return otherwise than in execution of his duties or for the purposes of prosecution. [Sec. 133]	imprisonment for a term which may extend to 6 months and/or fine upto ₹ 25,000. For Govt. officer - Previous sanction of the Govt. required. For others- previous sanctions of commissioner required.
<u>Offences by Companies [Se. 137]</u> All such persons who were in charge/responsible shall along with the company etc. be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. If any offences committed by the company etc. has been committed with the consent/connivance of or is attributable to negligence of any officer of the company, then such officer shall be deemed to be guilty of the said offence and liable to be proceeded against and punished accordingly. Unless, such persons prove that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. Similar provisions applicable for Firm/HUF/Trust	
<u>Compounding of offences [Sec. 138]</u> (a) For offense mentioned in point (1) to (5), (9) and (10) (b) any offences [except point(a)] where value of supply exceeding ₹1 crores, if compounded once earlier. (c) Any offences which is also an offence under any other Act. (d) person convicted under this Act by a court. (e) person accused of committing offences mentioned in point No. 8,9,11	Compounded either before or after institution of prosecution on payment of following amount – Minimum – 50% of tax involved or ₹10,000; higher. Maximum- 150% of tax involved or ₹30,000; higher.

Provisions of the Act**PENALTY FOR CERTAIN OFFENCES****[Section 122]**

(I) Where a taxable person who—

(i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;

(iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(v) fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;

(vi) fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;

(vii) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;

(viii) fraudulently obtains refund of tax under this Act;

(ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;

(x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;

(xi) is liable to be registered under this Act but fails to obtain registration;

(xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;

(xiii) obstructs or prevents any officer in discharge of his duties under this Act;

(xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;

(xv) suppresses his turnover leading to evasion of tax under this Act;

(xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;

(xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;

(xviii) supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;

(xix) issues any invoice or document by using the registration number of another registered person;

(xx) tampers with, or destroys any material evidence or document;

(xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act, he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,—

(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;

(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.

(3) Any person who—

(a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);

(b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

(d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;

(e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to twenty-five thousand rupees.

PENALTY FOR FAILURE TO FURNISH INFORMATION RETURN

[Section 123]

If a person who is required to furnish an information return under section 150 fails to do so within the period specified in the notice issued under sub-section (3) thereof, the proper officer may direct that such person shall be liable to pay a penalty of one hundred rupees for each day of the period during which the failure to furnish such return continues:

Provided that the penalty imposed under this section shall not exceed five thousand rupees.

FINE FOR FAILURE TO FURNISH STATISTICS

[SECTION 124]

If any person required to furnish any information or return under section 151, —

- (a) without reasonable cause fails to furnish such information or return as maybe required under that section, or
- (b) wilfully furnishes or causes to furnish any information or return which he knows to be false, he shall be punishable with a fine which may extend to ten thousand rupees and in case of a continuing offence to a further fine which may extend to one hundred rupees for each day after the first day during which the offence continues subject to a maximum limit of twenty-five thousand rupees.

GENERAL PENALTY

[Section 125]

Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees.

GENERAL DISCIPLINES RELATED TO PENALTY

[Section 126]

(1) No officer under this Act shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.

Explanation. —For the purpose of this sub-section, —

- (b) a breach shall be considered a ‘minor breach’ if the amount of tax involved is less than five thousand rupees;
- (c) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.

(2) The penalty imposed under this Act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.

(3) No penalty shall be imposed on any person without giving him an opportunity of being heard.

(4) The officer under this Act shall while imposing penalty in an order for a breach of any law, regulation or procedural requirement, specify the nature of the breach and the applicable law, regulation or procedure under which the amount of penalty for the breach has been specified.

(5) When a person voluntarily discloses to an officer under this Act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer under this Act, the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person.

(6) The provisions of this section shall not apply in such cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage.

POWER TO IMPOSE PENALTY IN CERTAIN CASES

[Section 127]

Where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceedings under section 62 or section 63 or section 64 or section 73 or section 74 or section 129 or section 130, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.

POWER TO WAIVE PENALTY/FEE/BOTH

[Section 128]

The Government may, by notification, waive in part or full, any penalty referred to in section 122 or section 123 or section 125 or any late fee referred to in section 47 for such or fee or both.

DETENTION, SEIZURE AND RELEASE OF GOODS AND CONVEYANCES IN TRANSIT

[Section 129]

(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—

- (a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;
- (b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;
- (c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) The provisions of sub-section (6) of section 67 shall, *mutatis mutandis*, apply for detention and seizure of goods and conveyances.

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).

(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within seven days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer.

CONFISCATION OF GOODS OR CONVEYANCES AND LEVY OF PENALTY [Section 130]

(1) Notwithstanding anything contained in this Act, if any person—

(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or class of taxpayers and under such mitigating circumstances as may be specified therein on the recommendations of the Council.

(ii) does not account for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act without having applied for registration; or

(iv) contravenes any of the provisions of this Act or the rules made there under with intent to evade payment of tax; or

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance, then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

(2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:

Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon: Provided further that the aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (1) of section 129:

Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.

(4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

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

(6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

(7) The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

CONFISCATION/ PENALTY NOT TO INTERFERE WITH OTHER PUNISHMENTS

Without prejudice to the provisions contained in the Code of Criminal Procedure, 1973, no confiscation made or penalty imposed under the provisions of this Act or the rules made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law for the time being in force. [Section 131]

PUNISHMENT FOR CERTAIN OFFENCES

[Section 132]

(1) Whoever commits any of the following offences, namely:—

(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

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

(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(e) evades tax, fraudulently avails input tax credit or fraudulently obtains refund and where such offence is not covered

under clauses (a) to (d);

(f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;

(g) obstructs or prevents any officer in the discharge of his duties under this Act;

(h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

(j) tampers with or destroys any material evidence or documents;

(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section, shall be punishable—

(i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;

(ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;

(iii) in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;

(iv) in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

(3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, except the offences referred to in sub-section (5) shall be noncognizable and bailable.

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.

(6) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

Explanation.— For the purposes of this section, the term “tax” shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.

LIABILITY OF OFFICERS AND CERTAIN OTHER PERSONS

[Section 133]

(1) Where any person engaged in connection with the collection of statistics under section 151 or compilation or computerisation thereof or if any officer of central tax having access to information specified under sub-section (1) of section 150, or if any person engaged in connection with the provision of service on the common portal or the agent of common portal, wilfully discloses any information or the contents of any return furnished under this Act or rules made thereunder otherwise than in execution of his duties under the said sections or for the purposes of prosecution for an offence

under this Act or under any other Act for the time being in force, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to twenty-five thousand rupees, or with both.

(2) Any person—

- (a) who is a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Government;
- (b) who is not a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

COGNIZANCE OF OFFENCES

[Section 134]

No court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class, shall try any such offence.

PRESUMPTION OF CULPABLE MENTAL STATE

[Section 135]

In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation. —For the purposes of this section,—

- (i) the expression “culpable mental state” includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact;
- (ii) a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

RELEVANCE OF STATEMENTS UNDER CERTAIN CIRCUMSTANCES

[Section 136]

A statement made and signed by a person on appearance in response to any summons issued under section 70 during the course of any inquiry or proceedings under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, —

- (a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or
- (b) when the person who made the statement is examined as a witness in the case before the court and the court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

OFFENCES BY COMPANIES

[Section 137]

(1) Where an offence committed by a person under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where an offence under this Act has been committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a trust, the partner or *karta* or managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly and the provisions of sub-section (2) shall, *mutatis mutandis*, apply to such persons.

(4) Nothing contained in this section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Explanation. —For the purposes of this section,—

- (i) “company” means a body corporate and includes a firm or other association of individuals; and
- (ii) “director”, in relation to a firm, means a partner in the firm.

COMPOUNDING OF OFFENCES**[Section 138]**

(1) Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed:

Provided that nothing contained in this section shall apply to—

- (a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (1) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;
- (b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;
- (c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;
- (d) a person who has been convicted for an offence under this Act by a court;
- (e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132; and
- (f) any other class of persons or offences as may be prescribed:

Provided further that any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law:

Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

(2) The amount for compounding of offences under this section shall be such as maybe prescribed, subject to the minimum amount not being less than ten thousand rupees or fifty per cent. of the tax involved, whichever is higher, and the maximum amount not being less than thirty thousand rupees or one hundred and fifty per cent. of the tax, whichever is higher.

(3) On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

Rule 162. Procedure for compounding of offences. -

(1) An applicant may, either before or after the institution of prosecution, make an application under sub-section (1) of section 138 in FORM GST CPD-01 to the Commissioner for compounding of an offence.

(2) On receipt of the application, the Commissioner shall call for a report from the concerned officer with reference to the particulars furnished in the application, or any other information, which may be considered relevant for the examination of such application.

(3) The Commissioner, after taking into account the contents of the said application, may, by order in FORM GST CPD-02, on being satisfied that the applicant has co-operated in the proceedings before him and has made full and true disclosure of facts relating to the case, allow the application indicating the compounding amount and grant him immunity from prosecution or reject such application within ninety days of the receipt of the application.

(4) The application shall not be decided under sub-rule (3) without affording an opportunity of being heard to the applicant and recording the grounds of such rejection.

(5) The application shall not be allowed unless the tax, interest and penalty liable to be paid have been paid in the case for which the application has been made.

(6) The applicant shall, within a period of thirty days from the date of the receipt of the order under sub-rule (3), pay the compounding amount as ordered by the Commissioner and shall furnish the proof of such payment to him.

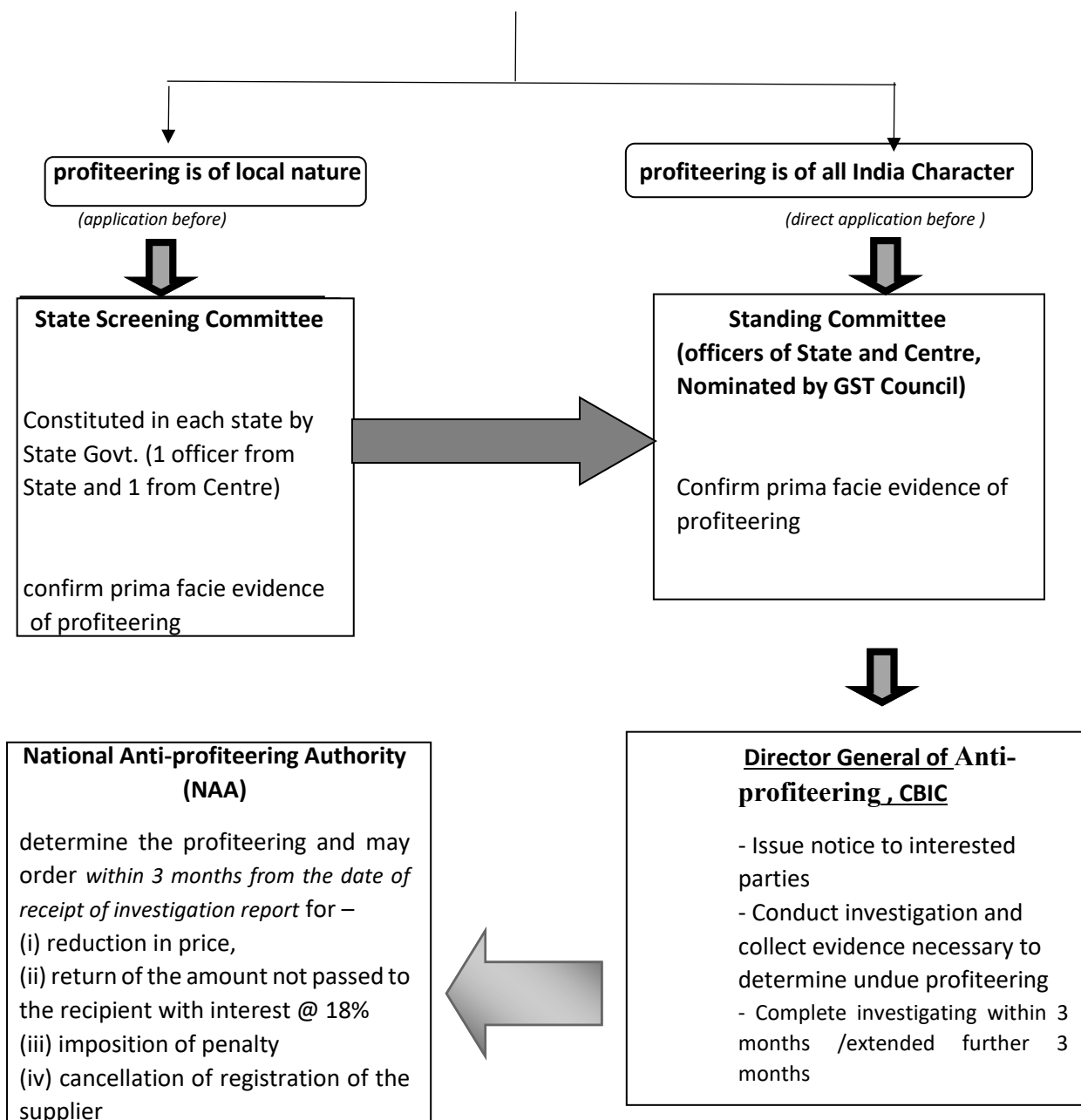
(7) In case the applicant fails to pay the compounding amount within the time specified in sub-rule (6), the order made under sub-rule (3) shall be vitiated and be void.

(8) Immunity granted to a person under sub-rule (3) may, at any time, be withdrawn by the Commissioner, if he is satisfied that such person had, in the course of the compounding proceedings, concealed any material particulars or had given false evidence. Thereupon such person may be tried for the offence with respect to which immunity was granted or for any other offence that appears to have been committed by him in connection with the compounding proceedings and the provisions the Act shall apply as if no such immunity had been granted.”;

(12) ANTI-PROFITEERING MEASURE

“National Anti-Profiteering Authority is a mechanism devised to ensure that prices remain under check and to ensure that businesses do not pocket all the gains from GST because profit is fine, but undue profiteering at the expense of the common man is not” – CBIC e-flyers

Application by Consumer



Points to be noted:

1. The NAA shall consist of- (a) a Chairman + (2) 4 Technical Members (Commissioners of State/Central tax). It will exist for 4 years from the date on which the Chairman enters upon his office unless the Council recommends otherwise.
2. The Authority will determine the method and procedure for determining whether the reduction in rate or the benefit of input tax credit has been passed on by the seller to the buyer by reducing the prices.
3. Duties of the Authority is to *determine whether the reduction in tax rate or the benefit of input tax credit has been passed on by the seller to the buyer by reducing the prices* and Identify the taxpayer who has not passed on the benefit.

DETAIL PROVISIONS

ANTI-PROFITEERING MEASURE [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.

(2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

(3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.

w.e.f 1.1.2020 – Penalty @ 10% of the profiteered amount, if not paid in 30 days

(3A) Where the Authority referred to in sub-section (2), after holding examination as required under the said sub-section comes to the conclusion that any registered person has profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to 10% of the amount so profiteered:

Provided that no penalty shall be leviable if the profiteered amount is deposited within 30 days of the date of passing of the order by the Authority.

Explanation.—For the purposes of this section, the expression “profiteered” shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both.’

PROCEDURES [RULE 122 TO 137]

1. Constitution of the Authority

(i) 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.

(ii) An officer not below the rank of Additional Commissioner (working in the Directorate General of Anti-profiteering) shall be the Secretary to the Authority

(iii) The Authority shall cease to exist after the expiry of **24 years** from the date on which the Chairman enters upon his office unless the Council recommends otherwise

(iv) 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

2. Duties of the Authority

The Authority would have the following duties:

- (i) to determine whether any reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices;
 - (ii) to identify the registered person who has not passed on the benefit of reduction in the rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices;
 - (iii) pass such order (separately covered).
-

3. Procedures

(i) All applications from interested parties forwarded by on issues of local nature or those forwarded by the standing committee shall first be examined by the **State level Screening Committee** constituted in each State by the State Governments consisting of an officer of the State Government, to be nominated by the Commissioner, and an officer of the Central Government, to be nominated by the Chief Commissioner

(ii) The Screening Committee shall **within 2 months from the date of receipt of a written application, or within such extended period not exceeding a further period of one month for reasons to be recorded in writing** as may be allowed by the Authority on being satisfied, will forward the application with its recommendations to the **Standing Committee on Anti-profiteering**, which shall consist of such officers of the State Government and Central Government as may be nominated by the GST council, for further action

(iii) On being satisfied, the Standing committee **within a period of 2 months from the date of the receipt of a written application or within such extended period not exceeding a further period of one month for reasons to be recorded in writing** as may be allowed by the Authority, shall examine the matters and if satisfied with the prima-facie shall refer the matter to the Director General of **Anti-profiteering** for a detailed investigation.

(iv) **Investigation:** The Director General of **Anti-profiteering** 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:

- (a) the description of the goods or services in respect of which the proceedings have been initiated;
- (b) summary of the statement of facts on which the allegations are based; and

(c) the time limit allowed to the interested parties and other persons who may have information related to the proceedings for furnishing their reply

The evidence or information presented to the Director General of **Anti-profiteering** 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, shall apply mutatis mutandis to the disclosure of any information which is provided on a confidential basis

The Director General of **Anti-profiteering** can seek opinion of any other agency or statutory authorities in the discharge of his duties. The Director General of **Anti-profiteering**, 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 **Anti-profiteering** will complete the investigation within a period of **6 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.

(v) The Authority, Director General of Anti-profiteering, or an officer authorised by him in this behalf, shall be deemed to be the proper officer to exercise the power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing under section 70 and shall 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.

Order of the Authority

(1) The Authority shall, within a period of **6 three** months from the date of the receipt of the report from the Director General of **Anti-profiteering** determine whether a registered person has passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.

(2) An opportunity of hearing shall be granted to the interested parties by the Authority where any request is received in writing from such interested parties.

(2A) The Authority may seek the clarification, if any, from the Director General of Anti-Profiteering on the report submitted during the process of determination

(3) Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order-

- (a) reduction in prices;
- (b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen per cent. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be;
- (c) the deposit of an amount equivalent to 50% of the amount determined under the above clause **along with interest @ 18%** from the date of collection of the higher amount till the date of deposit of such amount in the Fund constituted under section 57 and the remaining 50% of the amount in the Fund constituted under section 57 of the Goods and Services Tax Act, 2017 of the concerned State, where the eligible person does not claim return of the amount or is not identifiable;
- (d) imposition of penalty as specified under the Act; and
- (e) cancellation of registration under the Act.

Explanation: For the purpose of this sub-rule, the expression, “concerned State” means the **State/UT** in respect of which the Authority passes an order.

(4) If the report of the Director General of **Anti-profiteering** recommends that there is contravention or even non contravention of the provisions of section 171 or these rules, but the Authority is of the opinion that further investigation or inquiry is called for in the matter, it may, for reasons to be recorded in writing, refer the matter to the Director General of **Anti-profiteering** to cause further investigation or inquiry in accordance with the provisions of the Act and these rules.

However, where upon receipt of the report of the Director General of Anti-profiteering, the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods or services or both other than those covered in the said report, it may, for reasons to be recorded in writing, within 6 months, direct the Director General of Anti-profiteering to cause investigation or inquiry with regard to such other goods or services or both, in accordance with the provisions of the Act and these rules.

Further, such investigation or enquiry shall be deemed to be a new investigation or enquiry and all the provisions shall mutatis mutandis apply to such investigation or enquiry

- (5) If the Members of the Authority differ in opinion on any point, the point shall be decided according to the opinion of the majority.
- (6) 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.
- (7) 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

(13) MISCELLANEOUS

PRESUMPTION AS TO DOCUMENTS IN CERTAIN CASES

[Section 144]

Where any document—

- (i) is produced by any person under this Act or any other law for the time being in force; or
- (ii) has been seized from the custody or control of any person under this Act or any other law for the time being in force; or
- (iii) has been received from any place outside India in the course of any proceedings under this Act or any other law for the time being in force, and such document is tendered by the prosecution in evidence against him or any other person who is tried jointly with him, the court shall—

(a) unless the contrary is proved by such person, presume—

- (i) the truth of the contents of such document;
 - (ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;
- (b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

ADMISSIBILITY OF MICRO FILMS, FASCIMILE COPIES OF DOCUMENTS AND COMPUTER PRINTOUTS AS DOCUMENTS AND AS EVIDENCE

[Section 145]

(1) Notwithstanding anything contained in any other law for the time being in force, —

- (a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or
- (b) a facsimile copy of a document; or
- (c) a statement contained in a document and included in a printed material produced by a computer, subject to such conditions as may be prescribed; or
- (d) any information stored electronically in any device or media, including any hard copies made of such information, shall be deemed to be a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production

of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) In any proceedings under this Act or the rules made thereunder, where it is desired to give a statement in evidence by virtue of this section, a certificate, —

- (a) identifying the document containing the statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer, shall be evidence of any matter stated in the certificate and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

COMMON PORTAL

[Section 146]

The Government may, on the recommendations of the Council, notify the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, electronic way bill and for carrying out such other functions and for such purposes as may be prescribed.

SPECIAL PROCEDURE FOR CERTAIN PROCESSES

[Section 148]

The Government may, on the recommendations of the Council, and subject to such conditions and safeguards as may be prescribed, notify certain classes of registered persons, and the special procedures to be followed by such persons including those with regard to registration, furnishing of return, payment of tax and administration of such persons.

GOODS AND SERVICES TAX COMPLIANCE RATING

[Section 149]

(1) Every registered person may be assigned a goods and services tax compliance rating score by the Government based on his record of compliance with the provisions of this Act.

(2) The goods and services tax compliance rating score may be determined on the basis of such parameters as may be prescribed.

(3) The goods and services tax compliance rating score may be updated at periodic intervals and intimated to the registered person and also placed in the public domain in such manner as may be prescribed.

OBLIGATION TO FURNISH INFORMATION RETURN

[Section 150]

(I) Any person, being—

- (a) a taxable person; or
- (b) a local authority or other public body or association; or
- (c) any authority of the State Government responsible for the collection of value added tax or sales tax or State excise duty or an authority of the Central Government responsible for the collection of excise duty or customs duty; or
- (d) an income tax authority appointed under the provisions of the Income- tax Act, 1961; or
- (e) a banking company within the meaning of clause (a) of section 45A of the Reserve Bank of India Act, 1934; or
- (f) a State Electricity Board or an electricity distribution or transmission licensee under the Electricity Act, 2003, or any other entity entrusted with such functions by the Central Government or the State Government; or
- (g) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908; or
- (h) a Registrar within the meaning of the Companies Act, 2013; or
- (i) the registering authority empowered to register motor vehicles under the Motor Vehicles Act, 1988; or
- (j) the Collector referred to in clause (c) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; or
- (k) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956; or
- (l) a depository referred to in clause (e) of sub-section (I) of section 2 of the Depositories Act, 1996; or
- (m) an officer of the Reserve Bank of India as constituted under section 3 of the Reserve Bank of India Act, 1934; or
- (n) the Goods and Services Tax Network, a company registered under the Companies Act, 2013; or
- (o) a person to whom a Unique Identity Number has been granted under sub-section (9) of section 25; or
- (p) any other person as may be specified, on the recommendations of the Council, by the Government, who is responsible for maintaining record of registration or statement of accounts or any periodic return or document containing details of payment of tax and other details of transaction of goods or services or both or transactions related to a bank account or consumption of electricity or transaction of purchase, sale or exchange of goods or property or right or interest in a property under any law for the time being in force, shall furnish an information return of the same in respect of such periods, within such time, in such form and manner and to such authority or agency as may be prescribed.

(2) Where the Commissioner, or an officer authorised by him in this behalf, considers that the information furnished in the information return is defective, he may intimate the defect to the person who has furnished such information return and give him an opportunity of rectifying the defect within a period of thirty days from the date of such intimation or within such further period which, on an application made in this behalf, the said authority may allow and if the defect is not rectified within the said period of thirty days or, the further period so allowed, then, notwithstanding anything contained in any other provisions of this Act, such information return shall be treated as not furnished and the provisions of this Act shall apply.

(3) Where a person who is required to furnish information return has not furnished the same within the time specified in sub-section (1) or sub-section (2), the said authority may serve upon him a notice requiring furnishing of such information return within a period not exceeding ninety days from the date of service of the notice and such person shall furnish the information return.

POWER TO COLLECT STATISTICS

[Section 151]

(1) The Commissioner may, if he considers that it is necessary so to do, by Power to notification, direct that statistics may be collected relating to any matter dealt with by or in collect statistics. connection with this Act.

(2) Upon such notification being issued, the Commissioner, or any person authorised by him in this behalf, may call upon the concerned persons to furnish such information or returns, in such form and manner as may be prescribed, relating to any matter in respect of which statistics is to be collected .

BAR ON DISCLOSURE OF INFORMATION

[Section 152]

(1) No information of any individual return or part thereof with respect to any matter given for the purposes of section 150 or section 151 shall, without the previous consent in writing of the concerned person or his authorised representative, be published in such manner so as to enable such particulars to be identified as referring to a particular person and no such information shall be used for the purpose of any proceedings under this Act.

(2) Except for the purposes of prosecution under this Act or any other Act for the time being in force, no person who is not engaged in the collection of statistics under this Act or compilation or computerisation thereof for the purposes of this Act, shall be permitted to see or have access to any information or any individual return referred to in section 151.

(3) Nothing in this section shall apply to the publication of any information relating to a class of taxable persons or class of transactions, if in the opinion of the Commissioner, it is desirable in the public interest to publish such information.

TAKING ASSISTANCE FROM AN EXPERT

[Section 153]

Any officer not below the rank of Assistant Commissioner may, having regard to the nature and complexity of the case and the interest of revenue, take assistance of any expert at any stage of scrutiny, inquiry, investigation or any other proceedings before him.

POWER TO TAKE SAMPLES

[Section 154]

The Commissioner or an officer authorised by him may take samples of goods from the possession of any taxable person, where he considers it necessary, and provide a receipt for any samples so taken.

BURDEN OF PROOF

[SECTION 155]

Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

PERSONS DEEMED TO BE PUBLIC SERVANTS

[Section 156]

All persons discharging functions under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

PROTECTION OF ACTION TAKEN UNDER THIS ACT

[SECTION 157]

(1) No suit, prosecution or other legal proceedings shall lie against the President, State President, Members, officers or other employees of the Appellate Tribunal or any other person authorised by the said Appellate Tribunal for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

(2) No suit, prosecution or other legal proceedings shall lie against any officer appointed or authorised under this Act for anything which is done or intended to be done in good faith under this Act or the rules made thereunder.

DISCLOSURE OF INFORMATION BY A PUBLIC SERVANT

[Section 158]

(1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act (other than proceedings before a criminal court), or in any record of any proceedings under this Act shall, save as provided in sub-section (3), not be disclosed.

(2) Notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall, save as otherwise provided in sub-section (3), require any officer appointed or authorised under this Act to produce before it or to give evidence before it in respect of particulars referred to in sub-section (1).

(3) Nothing contained in this section shall apply to the disclosure of,—

- (a) any particulars in respect of any statement, return, accounts, documents, evidence, affidavit or deposition, for the purpose of any prosecution under the Indian Penal Code or the Prevention of Corruption Act, 1988, or any other law for the time being in force; or
- (b) any particulars to the Central Government or the State Government or to any person acting in the implementation of this Act, for the purposes of carrying out the objects of this Act; or
- (c) any particulars when such disclosure is occasioned by the lawful exercise under this Act of any process for the service of any notice or recovery of any demand; or
- (d) any particulars to a civil court in any suit or proceedings, to which the Government or any authority under this Act is a party, which relates to any matter arising out of any proceedings under this Act or under any other law for the time being in force authorising any such authority to exercise any powers thereunder; or
- (e) any particulars to any officer appointed for the purpose of audit of tax receipts or refunds of the tax imposed by this Act; or
- (f) any particulars where such particulars are relevant for the purposes of any inquiry into the conduct of any officer appointed or authorised under this Act, to any person or persons appointed as an inquiry officer under any law for the time being in force; or
- (g) any such particulars to an officer of the Central Government or of any State Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty; or
- (h) any particulars when such disclosure is occasioned by the lawful exercise by a public servant or any other statutory authority, of his or its powers under any law for the time being in force; or
- (i) any particulars relevant to any inquiry into a charge of misconduct in connection with any proceedings under this Act against a practising advocate, a tax practitioner, a practising cost accountant, a practising chartered accountant, a practising company secretary to the authority empowered to take disciplinary action against the members practising the profession of a legal practitioner, a cost accountant, a chartered accountant or a company secretary, as the case may be; or
- (j) any particulars to any agency appointed for the purposes of data entry on any automated system or for the purpose of operating, upgrading or maintaining any automated system where such

agency is contractually bound not to use or disclose such particulars except for the aforesaid purposes; or

- (k) any particulars to an officer of the Government as may be necessary for the purposes of any other law for the time being in force; or
- (l) any information relating to any class of taxable persons or class of transactions for publication, if, in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

PUBLICATION OF INFORMATION IN RESPECT OF PERSONS IN CERTAIN CASES

[Section 159]

(1) If the Commissioner, or any other officer authorised by him in this behalf, is of the opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings or prosecution under this Act in respect of such person, it may cause to be published such name and particulars in such manner as it thinks fit.

(2) No publication under this section shall be made in relation to any penalty imposed under this Act until the time for presenting an appeal to the Appellate Authority under section 107 has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

Explanation.—In the case of firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Commissioner, or any other officer authorised by him in this behalf, circumstances of the case justify it.

ASSESSMENT PROCEEDINGS, ETC NOT TO BE INVALID ON CERTAIN GROUNDS

[Section 160]

(1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law.

(2) The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication.

RECTIFICATION OF ERRORS APPARENT ON THE FACE OF RECORD

[Section 161]

Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:

Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:

Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:

Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.

BAR ON JURISDICTION OF CIVIL COURTS

[Section 162]

Save as provided in sections 117 and 118, no civil court shall have jurisdiction to deal with or decide any question arising from or relating to anything done or purported to be done under this Act.

LEVY OF FEE

[Section 163]

Wherever a copy of any order or document is to be provided to any person on an application made by him for that purpose, there shall be paid such fee as may be prescribed.

POWER OF GOVERNMENT TO MAKE RULES

[Section 164]

(1) The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the provisions of sub-section (1), the Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.

(3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.

(4) Any rules made under sub-section (1) or sub-section (2) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees.

POWER TO MAKE REGULATIONS [Section 165]

The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

LAYING OF RULES, REGULATIONS AND NOTIFICATIONS

[Section 166]

Every rule made by the Government, every regulation made by the Board and every notification issued by the Government under this Act, shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

DELEGATIONS OF POWER [Section 167]

The Commissioner may, by notification, direct that subject to such conditions, if any, as may be specified in the notification, any power exercisable by any authority or officer under this Act may be exercisable also by another authority or officer as may be specified in such notification.

POWER TO ISSUE INSTRUCTIONS OR DIRECTIONS

[Section 168]

(1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.

(2) The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, sub-section (1) of section 44, sub-sections (4) and (5) of section 52, sub-section (5) of section 66, sub-section (1) of section 143, sub-section (1) of

section 151, clause (1) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.

SERVICE OF NOTICE IN CERTAIN CIRCUMSTANCES

[Section 169]

(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:—

(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or

(b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

ROUNDING OFF OF TAX, etc.

[Section 170]

The amount of tax, interest, penalty, fine or any other sum payable, and the amount of refund or any other sum due, under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored.

REMOVAL OF DIFFICULTIES

[Section 172]

(1) If any difficulty arises in giving effect to any provisions of this Act, the Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

AMENDMENT OF ACT 32 OF 1994

[Section 173]

Save as otherwise provided in this Act, Chapter V of the Finance Act, 1994 shall be omitted.

REPEAL AND SAVING

[Section 174]

(1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, and the Central Excise Tariff Act, 1985 (hereafter referred to as the repealed Acts) are hereby repealed.

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as “such amendment” or “amended Act”, as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not—

- (a) revive anything not in force or existing at the time of such amendment or repeal; or
- (b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:

Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or

- (d) affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts; or

(e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;

(f) affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.

(3) The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

THE REVISIONARY TEST PAPER

Question 1: Shree Ganesh made an export of Rs.120 lakhs. He has made an application for the refund on 1.10.2019. Is he eligible for the refund of GST? Is there any provision for early refund? What are the documents to be attached for such refund?

Question 2: Ramesh imported raw material for Rs.250p.u. He incurred processing charges @750p.u. After adding profit margin 25% this was sold to Suresh who is a dealer in the said goods. Mr Ramesh comes to know that the said goods are exempted by notification. He makes an application for refund but the same is rejected by a proper officer. What is the course of action available to Ramesh in this case?

Question 3: The appeal made by Lost Ltd. was rejected and judgement was made in favour of the department. The matter pertains to clandestine supply made by the Company in Oct'19. of 20,000 units. The company wishes to appeal the same in High Court. State the manner in which the appeal is to be filed.

Question 4: Raja Ltd. got merged with Baja Ltd. on Oct 1,2019. Raja Ltd. is already a registered person under GST. The company wishes to know the taxability of the same under GST and provisions w.r.t. registration, Input Tax Credit and liability w.r.t. GST that may arise in future.

Question 5: Fast Ltd. has made an application to the Commissioner for payment of its GST dues in 24 instalments. What are the circumstances in which this application shall be allowed or rejected by the Commissioner? Is it appealable?

Question 6: Dishonest Ltd. has been issuing invoices to various parties without making any actual supply. State the actions which can be taken by the department in such a case.

Question 7: Dablu Ltd. has wrongly collected GST from its customers @28% although the actual rate is 18%. The company wishes to know the procedure to be followed by it under GST laws w.r.t. the excess collection.

Question 8: Showcause notice has been issued to Honest Ltd. for non-payment of GST U/s 74 on the ground of willful suppression. However, on an appeal filed in the court it was held that although the company is liable to pay GST, there is no case of willful suppression against it. The company now alleges that since showcause notice was issued against it u/s74 wrongly, the entire proceedings should be held as null and void. Discuss.

Question 9: Discuss the following:

- (1) A showcause notice can be issued only under certain circumstances.
- (2) State the circumstances when showcause notice is not required to be issued.
- (3) Circumstances when recovery can be made without showcause notice.
- (4) How tax liability shall be determined :
 - (i) Where a registered person fails to file his return
 - (ii) Files an incorrect return
 - (iii) A taxable person fails to register himself.

Question 10: Mr. Raj, runs a general store and also, a registered dealer under GST. He is confused regarding issue of invoice/ other documents under GST to customer and seeks your advice on the following matter-

- (i) Whether he is required to issue a tax invoices in all cases, even if he is engaged in B2C supply?

(ii) In case of supplying of both taxable as well as exempted goods of value ₹ 15,000, is he required to issue two separate GST documents?

(iii) Whether GST amount shall be separately indicated in the tax invoice?

Solution:

- (i) Consolidated invoice can be issued at the close of each day in respect of all such supplies, where the value of goods is less than ₹ 200, and the recipient is unregistered and the recipient does not require such invoice. [write provisions of section 31(3)(b) read with rule 46]
- (ii) Invoice cum bill of supply can be issued [write the provisions of rule 46A]
- (iii) As per section 33, GST amount shall be prominently indicated in the tax invoice. [write provisions in detail]

Question 11: Hero Ltd. has its headquarters in Mumbai and is engaged in the business of manufacture of computer hardwires. During the year 2019-20 the company exported various goods to its branch at Australia and provided technical support services to its another branch at Sweden. State whether under GST laws the said supplies shall be treated as 0 rated supplies or not.

APPENDIX

SOME RELEVANT UPDATES

1. Whether the supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Government departments are taxable under GST?

It may be noted that intra-State and inter State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by the Central Government, State Government, Union territory or a local authority is a taxable supply under GST.

2. Vide notification No. 36/2017-Centra Tax (Rate) and notification No. 37/2017- Integrated Tax (Rate) both dated 13.10.2017, it has been notified that intraState and inter-State supply respectively of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by the Central Government, State Government, Union territory or a local authority to any registered person, would be subject to GST on reverse charge basis as per which tax is payable by the recipient of such supplies.

3. A doubt has arisen about taxability of intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by the Central Government, State Government, Union territory or a local authority to an unregistered person.

4. It was noted that such supply to an unregistered person is also a taxable supply under GST but is not covered under notification No. 36/2017-Central Tax (Rate) and notification No. 37/2017- Integrated Tax (Rate) both dated 13.10.2017.

5. In this regard, it is clarified that the respective Government departments (i.e. Central Government, State Government, Union territory or a local authority) shall be liable to get registered and pay GST on intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by them to an unregistered person subject to the provisions of sections 22 and 24 of the CGST Act. [**Circular 76/2018, 31.12.2018**]

2. Where a conveyance carrying twenty-five consignments is intercepted and the person-in-charge of such conveyance produces valid e-way bills and/or other relevant documents in respect of twenty consignments, but is unable to produce the same with respect to the remaining five consignments, detention/confiscation can be made only with respect to the five consignments and the conveyance in respect of which the violation of the Act or the rules made thereunder has been established by the proper officer.

3. Manner of recovery of excess credit distributed by an Input Service Distributor (ISD) in contravention of the provisions contained in section 20 of the CGST Act. [Circular 71/2018, 26.10.2018]

1. According to Section 21 of the CGST Act where the ISD distributes the credit in contravention of the provisions contained in section 20 of the CGST Act 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 penalty if any.

2. The 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.

3. If the said recipient unit(s) does not come forward voluntarily, necessary proceedings may be initiated against the said unit(s) under the provisions of section 73 or 74 of the CGST Act as the case may be. FORM GST DRC-07 can be used by the tax authorities in such cases.

4. It is further clarified that the ISD would also be liable to a general penalty under the provisions contained in section 122(1)(ix) of the CGST Act

LIST OF TOPICS EXCLUDED FROM SYLLABUS FOR MAY 2020 EXAM

1. Rate of tax prescribed for supply of goods*

2. Rate of tax prescribed for supply of services*

[*Rates specified for computing the amount payable under composition levy/Notification No.2/2019, are included in the syllabus]

3. Exemptions for supply of goods

4. Value of supply in cases where Kerala Flood Cess is applicable

5. Manner of reversal of credit of additional duty of customs in respect of Gold dore bar

6. Manner of determination of ITC and reversal thereof in respect of real estate project.

7. Furnishing of GSTR-2, GSTR-1A, GSTR-3

8. Claim of input tax credit and provisional acceptance thereof

9. Matching, reversal & reclaim of input tax credit

10. Matching, reversal & reclaim of reduction in output tax liability

9. Categories of supply of goods, tax on which is payable on reverse charge basis u/s. 9(3)/5(3)

10. Transitional Provisions
