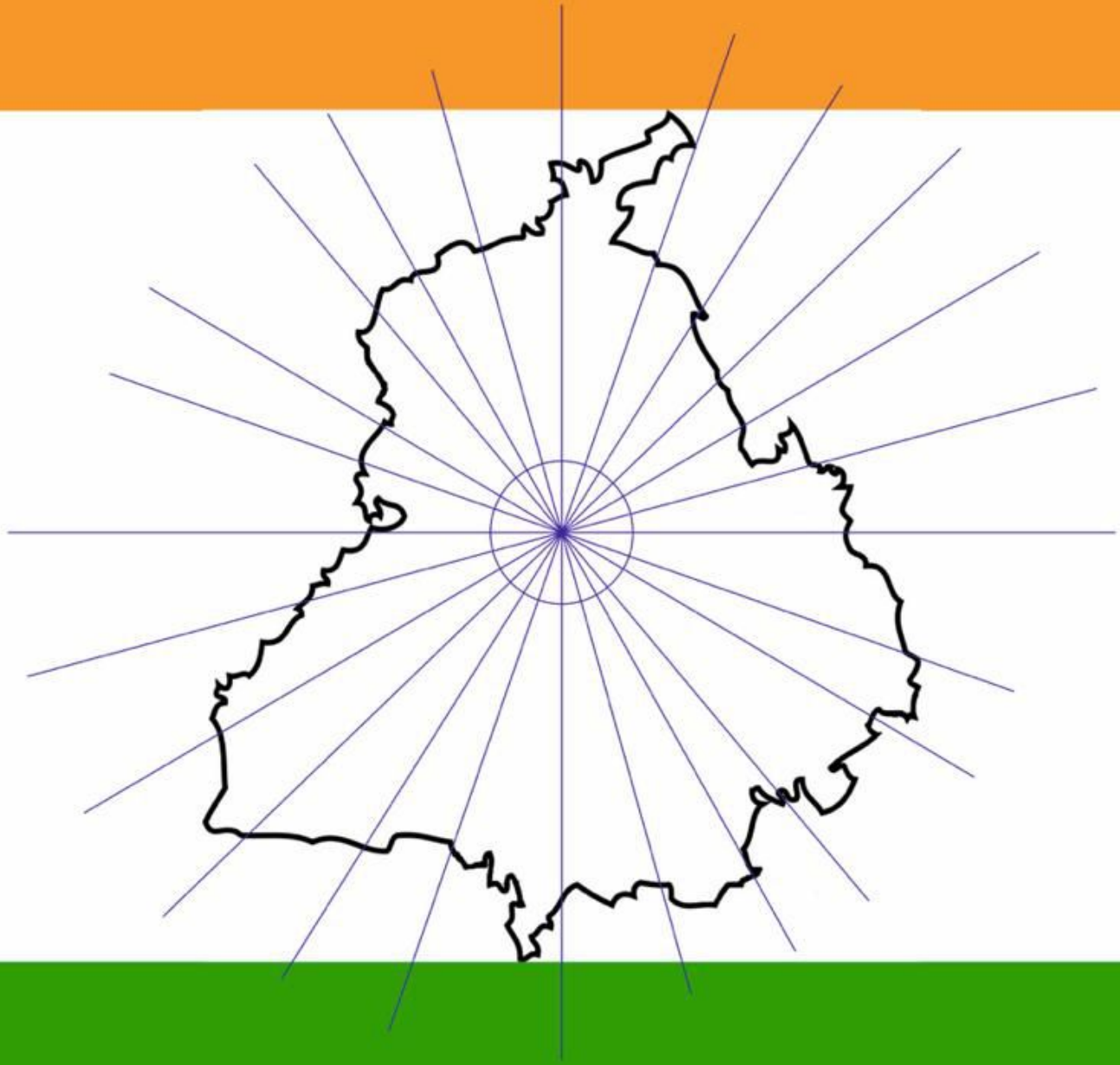


Nidhaan



A capacity building treasure of knowledge on
PGST Act and PGST Rules
Department of Excise and Taxation, Punjab

ਹਰਿ ਮੰਦਿਰ ਨਾਮ ਨਿਧਾਨ ਹੈ ਨਾ
ਬੁਝਿ ਮੁਗਧ ਗਵਾਰ ॥

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MESSAGE



I am glad to note that the department is bringing out a comprehensive handbook on GST. This handbook is expected to enhance the knowledge of our officials on GST Law and built their capacity for its effective implementation.

This handbook will bring about the much needed clarity on GST law and its interpretation and standardize its implementation. This, I believe will foster a new predictable tax regime for our taxpayers benefitting them immensely.

I compliment the team who have worked day and night to bring out this excellent handbook on GST law and procedures. I urge all officers to take advantage of this excellent resource.

Date: 11.08.2020

Place: SAS Nagar(Mohali)

(Nilkanth S Avhad)



FOREWORD

The introduction of GST has brought tectonic changes in the indirect tax regime requiring all stakeholders to adapt to the change. For the tax authorities, it has been all about reinventing themselves. The task has its fair share of challenges, more so as the law is still evolving. A need was thus felt for a resource that has all the legal provisions and departmental clarifications in one place.

It gives me great pleasure in presenting this handbook of statutory provisions and departmental clarifications on various issues related to GST. This handbook consolidates various statutory provisions and instructions at one place and provides all stakeholders with a single resource for various aspects related to GST. The handbook will serve as a guide for our officers to administer the GST law more effectively and efficiently. With this enhanced capacity, we, as tax authorities, will be able to discharge our twin responsibilities of taxpayer facilitation and improved enforcement.

I also take this opportunity to thank the officers who have worked tirelessly to bring out this handbook. Without their dedication, this would not have been possible.

While every effort has been made to ensure that the handbook is free from errors and inaccuracies, we request that, if any error or inaccuracy is noticed, the same be brought to our attention. Suggestions to improve this handbook are also welcome.

Date: 11.08.2020

Place: SAS Nagar(Mohali)

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DISCLAIMER

The topics are based on the PGST/CGST/IGST Act(s) and the respective rules. This booklet is for training and academic purposes only. The information is intended only to provide a general overview and is not intended to be treated as legal advice or opinion. For greater details, you are requested to refer to the respective PGST/CGST/IGST Acts. Comments and suggestions on handbook may please be sent to adlletcgst.audit@punjab.gov.in.

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CHAPTER - 1

SUPPLY

TABLE I - LEGAL PROVISIONS

SR. NO.	SECTION	DEFINITION / PARTICULARS
1	2 (5)	Agent
2	2 (17)	Business
3	2 (30)	Composite supply
4	2 (31)	Consideration
5	2 (32)	Continuous supply of goods
6	2 (33)	Continuous supply of service
7	2 (52)	Goods
8	2 (74)	Mixed supply
9	2 (78)	Non-taxable supply
10	2 (83)	Outward supply
11	2 (84)	Person
12	2 (85)	Place of business
13	2 (86)	Place of supply
14	2 (88)	Principal
15	2 (90)	Principal supply
16	2 (93)	Recipient
17	2 (102)	Services
18	2 (105)	Supplier
19	7	Scope of supply
20	Schedule – I	Activities to be treated as supply even if made without consideration
21	Schedule – II	Activities or transactions to be treated as supply of goods or supply of services
22	Schedule – III	Activities or transactions which shall be treated neither as a supply of goods nor a supply of services

Some important definitions:

Supply Sec - 7

(1) For the purposes of this Act, the expression “supply” includes:

- a) All forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.
- b) Import of services for a consideration whether or not in the course or furtherance of business.
- c) The activities specified in Schedule I, made or agreed to be made without a consideration.

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

(2) Notwithstanding anything contained in sub-section (1)—

- a) Activities or transactions specified in Schedule III; or
- b) Such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor supply of services.

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

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

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

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

Principal supply: Means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

Mixed supply: Means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person **for a single price** where such supply does not constitute a composite supply.

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

Exempt Supply: Means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply.

Non-Taxable Supply: Means a supply of Goods or Services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;

Related persons: For the purposes of this Act, Persons shall be deemed to be “related persons” if—

- i. Such persons are officers or directors of one another's businesses;
 - ii. Such persons are legally recognized partners in business;
 - iii. Such persons are employer and employee;
 - iv. Any person directly or indirectly owns, controls or holds twenty - five percent. or more of the outstanding voting stock or shares of both of them;
 - v. One of them directly or indirectly controls the other;
 - vi. Both of them are directly or indirectly controlled by a third person;
 - vii. Together they directly or indirectly control a third person; or
 - viii. They are members of the same family;
- a) The term “person” also includes legal persons;
 - b) Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, how so ever described, of the other, shall be deemed to be related.

Distinct Persons

- a) Where a person has obtained more than one registration, whether in one State or Union territory or more than one State or Union territory;
- b) Where a person who has obtained registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory;
- c) Where a person has establishment in India and any other establishment outside India.

Consideration in relation to the supply of goods or services or both includes: -

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

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

Business Includes:

- a) Any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit.
- b) Any activity or transaction in connection with or incidental or ancillary to sub-clause (a).
- c) Any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- d) Supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- e) Provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- f) Admission, for a consideration, of persons to any premises;
- g) Services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- h) Activities of a race club including by way of totalizator or a license to book maker or activities of a licensed book maker in such club; and
- i) Any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

(A) MEANING AND SCOPE OF SUPPLY

The taxable event under GST is supply of goods or services or both. Various taxable events like manufacture, sale, rendering of service, purchase, entry into a territory of State etc. have been done away with in favour of just one event i.e. supply. Constitutionally “Goods and Services Tax” has been defined as any tax on supply of goods, or services or both, except for taxes on the supply of the alcoholic liquor for human consumption. By virtue of Article 246A of the Constitution, both Central and State governments have concurrent powers to levy the GST on Intra-State supply. However, as per Article 269A of the Constitution the Parliament has exclusive power to make laws with respect to levy of GST on Inter-State supply.

The term, “supply” has been inclusively defined under section 7 of the Act. This implies that the definition is wide enough to cover within its ambit those activities or transactions that have not been specifically detailed therein. The meaning and scope of supply under GST can be understood in terms of following six parameters, which can be adopted to characterize a transaction as supply:

- a) Supply of anything other than goods or services does not attract GST;
- b) Supply should be made for a consideration;
- c) Supply should be made in the course or furtherance of business;
- d) Supply should be made by a taxable person;
- e) Supply should be a taxable supply;
- f) Supply should be made within the taxable territory.

While these six parameters describe the concept of supply, there are a few exceptions to the requirement of supply being made for a consideration and in the course or furtherance of business. Any transaction involving supply of goods or services without consideration is not a supply, barring few exceptions, in which a transaction is deemed to be a supply even without consideration. Further, import of services for a consideration, whether or not in the course or furtherance of business is treated as supply.

(a) Supply of Goods or Services or Both:

Both Goods as well as Services have been defined in the PGST Act, 2017. Securities as well as money have been excluded from the definition of goods as well as that of services. However, activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged are included in services. Similarly, activities facilitating or arranging transactions in securities falls within the purview of services. Actionable claims are included in the

definition of goods. However, Schedule-III provides that actionable claims other than lottery, betting and gambling shall be neither goods nor services.

(b) Supply for Consideration:

Any activity or transaction to fall within the ambit of “supply” requires the presence of consideration which has been specifically defined in the PGST Act, 2017. It can be in money or in kind.

It is immaterial whether the payment is made by the recipient or by any other person. The consideration for any supply may flow from recipient or any other person. However, the crucial test is that it should be in relation to that supply. Further, where there is barter of goods or services, the same activity constitutes supply as well as a consideration. When a barber cuts hair in exchange for a painting, hair cut is a supply of services by the barber as it is a consideration for the painting received. Any subsidy given by the Central Government or a State Government is not considered as consideration. A deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply. However, these are exceptions to the requirement of 'Consideration' as a pre - condition for a transaction to be called supply as per GST

As per Schedule I to PGST Act, 2017, activities as mentioned below shall be treated as supply even if made without consideration:

- i. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets;
- ii. Supply of goods or Services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both;

- iii. Supply of goods: -
 - a) By a principal to his agent where the agent under takes to supply such goods on behalf of the principal; or
 - b) By an agent to his principal where the agent under takes to receive such goods on behalf of the principal.
- iv. Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

The crucial points to be noted for each of the above activity or transaction are:

- 1) For the first activity the emphasis is on "permanent transfer" of "business assets" for which input tax credit has been availed. So, only those disposal or transfer of business assets is covered for which input tax credit has been availed by the transferor. If any business asset is being permanently disposed off for which no input tax credit has been availed, such disposal will not fall within ambit of supply if it is without consideration.
- 2) Activities or transactions between related person or distinct person have been brought within the ambit of supply even if without consideration. Both "related persons" and "distinct persons" have been defined in the Act and emphasis is on ensuring flow of tax along with credit for such transaction or activities.
- 3) Transaction or activities of goods between "Principal" and "Agent" have been brought within the ambit of supply even if they are without consideration. Through Circular No. 57/31/2018-GST dated 4th September, 2018, it has been clarified that such activity or transaction will only be treated as "supply" if the invoice to the customer is issued by the agent in his own name. Where the agent issues the invoice to the customer on behalf of the principal, such activity or transaction between principal and agent would not be covered within the ambit of supply.
- 4) Import of Services from outside India by taxable person from related person have been brought within ambit of supply even if the same is without consideration.

(c) Supply in the Course or Furtherance of Business

GST is essentially a tax only on commercial transactions. Hence, only those transactions that are in the course or furtherance of business qualify as supply under GST. Hence, any transactions made by an individual in his personal capacity do not come under the ambit of GST unless they fall within the definition of business as defined in the Act. Supply of goods or service even as a vocation is a supply under GST. Therefore, even if a famous politician makes paintings for charity and sells the paintings even as a one-time occurrence, the same would fall within the ambit of supply. However, there is one exception to the principle of 'in course or Furtherance of Business'. In case a person makes import of services for a consideration, he is required to pay GST on such import, whether or not such import of services was in the course or furtherance of business.

It is pertinent to mention here that the expression, "Business" has been defined in the Act and therefore the connotation of the terms, "in furtherance of" or "in course of" have to be drawn in reference to the said definition. It needs to be understood that these expressions have expanded the scope of the expression, "Business" and it therefore becomes important to understand the contextual positioning of the activity that is proposed to be taxed under GST. Any activity or transaction that has the character of either being in furtherance of or in course of business will have to be covered within the ambit of supply even though such transaction or activity might

singularly seem to be a non-commercial transaction or activity. For example, supply of scrap by a business establishment or supply of the business itself will also fall within the ambit of supply even though same might be construed as not in furtherance of business. Thus, it needs to be remembered that the both the expressions have given a wider horizon to the expression, “Business” and it requires an appreciation beyond the commercially or colloquially relevant understanding.

Furthermore, vide FAQ on Real Estate dated 07th May, 2019 it has been clarified that the activity of transfer of development rights by a land owner, whether an individual or not, to a promoter is a supply of service subject to GST and same will fall within the scope of , “Supply” as defined in Section 7 of the Act.

(d) Supply by a Taxable Person

A supply to attract GST should be made by a taxable person. Hence, a supply between two non-taxable persons does not constitute supply under GST. A “Taxable person” is a person who is registered or liable to be registered under section 22 or section 24 of the PGST Act, 2017. Hence, even an un-registered person who is liable to be registered is a taxable person. Similarly, a person not liable to be registered but has taken voluntary registration and got himself registered is also a taxable person. It should be noted that registration under GST in India is State-centric. Hence, a person making supplies from different States or Union Territories needs to take separate registration in each such State or Union Territory. Further, the person may take more than one registration within a State if the person has multiple places of business. A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of GST. Hence, a transaction between these entities would constitute supply under GST.

(e) Taxable Supply

For a supply to attract GST, the supply must be taxable. Taxable supply has been broadly defined and means any supply of goods or services or both which, is leviable to tax under the Act. Exemptions may be provided to the specified goods or services or to a specified category of persons / entities making supply. It needs to be juxtaposed against the definition of non-taxable supply which refer to the supplies which are not subject to tax under the Act. It may be noted that alcohol for human consumption is constitutionally outside the GST. Further, five petroleum products namely petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel, are legally outside GST. Similarly, money, securities and actionable claims except betting, gambling and lottery are legally outside the purview of GST.

(f) Supply in the Taxable Territory

For a supply to attract GST, it is important that the supply takes place within the taxable territory. The expression, “Taxable territory” means the territory to which the provisions of the Act apply. Sub-section (2) of section 1 of the CGST Act, 2017 provides that the Act extends to the whole of India. Further, sub-section (2) of section 1 of the PGST Act, 2017 provides that the Act extends to the whole of the State of Punjab. It may further be noted that by virtue of sub-section 5 of section 7 of the IGST Act, 2017, when the supplier is in India and the place of supply is outside India, even such supplies would be subject to GST.

(C) INTER/INTRA-STATE SUPPLY

Determination of the nature of supply is essential to ascertain whether Integrated tax or Central and State tax is to be levied on such supply.

The following are the key determinants for the ascertainment of the nature of supply:

- a) Location of the supplier; and
- b) Place of supply of goods and services.

Where the Location of the supplier and the Place of supply are in the same State or Union Territory it is an Intra-State supply and would be subject to CGST and SGST/UTGST, as the case may be. Where the Location of the supplier and the Place of supply are in the different State or Union Territory it is an inter-State supply and would be subject to IGST.

The place of supply of any goods or services is determined based on Sections 10,11, 12 and 13 of IGST Act 2017. Further, imports, exports and supplies from and to SEZ are treated as Inter-State supplies.

(D) ANALYSIS OF THE SCHEDULES APPENDED IN ACT(S)

Schedule I: Activities to be treated as supply even if made without consideration.

1. Permanent Transfer of Business Assets where ITC has been Availed on Such Assets

Permanent transfer of business assets on which ITC has been availed will also be treated as supply even if there is no consideration received. “Permanent transfer” means transfer without any intention of receiving the goods back. Goods sent on job work or goods sent for testing / certification will not qualify as supply as there is no permanent transfer. So, donation of business assets or scrapping or disposal in any other manner (other than as a supply— i.e., for a consideration) would also qualify as 'Supply', where ITC has been claimed on such assets.

2. Transactions between related persons or distinct person

Supplies between the related persons or distinct persons with consideration shall constitute as 'Supply' like any other transaction. Whereas, the supply made between related persons or distinct persons without consideration is covered under Schedule I of the PGST Act. Such transactions shall be treated as Supply only if it happens in course or furtherance of business. Further, where a person makes an import of service from a related person or establishment outside India (without consideration) but for furtherance of business, it shall be considered as supply.

Exception: Relief has been given in a case where an employer gifts his employee and the value of gift is less than Rs. 50,000. It is not considered as Supply.

3. Supply of Goods via Agent

In terms of Schedule I of the PGST, 2017, the supply of goods by an agent on behalf of the principal without consideration has been deemed to be a supply under the Act. However, in order to amplify the scope of Principal-agent relationship in the context of Schedule I of the PGST Act, 2017 **Circular no. 57/31/2018-GST dated 04th September, 2018 has been issued.** As per the said Circular the key ingredient for determining relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not. Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of the said entry. However, it may be noted that in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule I of the PGST Act, 2017 Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by the said entry. In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.

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

Import of services by a person from a related person or from any of his other establishments outside India, for business purposes, will be treated as supply. For example, ABC Inc. is incorporated in the USA by A Ltd. along with B Ltd. in India. Services are imported by B Ltd from ABC Inc. without any consideration. The import will be deemed to be a supply. GST will be paid by B Ltd. on reverse charge basis.

Schedule II: The purpose of this Schedule is to classify certain activities or transactions as either supply of goods or supply of services. It covers within its ambit such transactions or activities where there is scope of ambiguity regarding classification of such transactions or activities.

As per the said schedule following activities or transactions are considered as Supply of Goods:

- a) Transfer of title in goods;
- b) Any transfer of title in goods under an agreement which stipulates that the goods shall pass at a future date up on payment of full consideration;
- c) Transfer or disposal of any goods as assets of a business either with or without consideration;
- d) Where any person is no longer a taxable person or ceases to be taxable person, the goods which form part of the assets of his business shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—
 - the business is transferred as a going concern to another person; or
 - the business is carried on by a personal representative who is deemed to be a taxable person.
- e) Goods supplied by an unincorporated association or body of persons to any of its member for consideration either by immediate cash or deferred payment.

As per the said schedule following activities or transactions are considered as Supply of Services:

- a) Transfer of right in goods or of undivided share in goods without transfer of title of such goods;
- b) Lease, tenancy, easement, license to occupy land;
- c) Lease or letting out of any commercial, industrial building and also residential complex if it is let or lease out for commercial purpose, either wholly or partly;
- d) Carrying out of job-work on principal's goods;
- e) Where the goods held or used for the purpose of the business of a person are used for any purpose other than business purpose, with or without consideration;
- f) Renting of immovable property;
- g) Construction of building, civil structure including a complex or building intended for supply to a buyer, except where the entire consideration is received after issuance of completion certificate or after its first occupation whichever is earlier;
- h) Temporary transfer or permitting use of any intellectual property right;
- i) Agreeing to the obligation to refrain from an act, to tolerate an actor situation or to an act;
- j) Transfer of the right to use any goods for any purpose for immediate cash or deferred payment or other valuable consideration – whether or not for a specified period;
- k) Works contract services;

- l) Supply, by way of service, of food or any drink for human consumption other than alcoholic liquor for consideration.

Schedule III: Activities or transactions which shall be neither treated as supply of goods or supply of services.

There are certain activities or transactions which are not liable for GST in India. These transactions are kept out of purview of GST. Schedule - III contains such activities or transactions which shall be treated neither as a supply of goods nor a supply of services. These activities are listed below:

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services by any court or Tribunal established under any law for the time being in force.
Explanation: - For the purposes of paragraph 2, the term “Court” includes District Court, High Court and Supreme Court.
3. (a) The functions performed by: -
 - Members of Parliament,
 - Members of State Legislature,
 - Members of Panchayats,
 - Members of Municipalities and
 - Members of other local authorities;
3. (b) The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
- 3.(c) The duties performed by any person as a Chair person or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5. Supply of land and supply of building where entire consideration has been received after issuance of completion certificate from a competent authority (where such certificate required) or after its first occupation, **whichever is earlier.**
6. **Actionable claims, other than lottery, betting and gambling** [As per Section 3 of the Transfer of Property Act, 1882, Actionable Claim is a claim **to any debt, (other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property,) or to any beneficial interest** in movable property not in possession either actual or

constructive, of the claimant, which the civil courts recognize as affording grounds of relief whether such debt or beneficial interest be existent, accruing or conditional or contingent.]

Following clauses inserted by CGST Amendment Act 2018, applicable w.e.f. 01.02.2019

7. Merchant Trade Transactions: - Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory **without such goods entering in to India.**

8. (a) Supply of warehoused goods to any person before clearance for home consumption; {The expression “ware housed goods” shall have the same meaning as assigned to it in the Customs Act, 1962.}

(b) High Sea Supply: – Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

Further, vide **Notification No. 14/2017-Central Tax (Rate) dated 28th June, 2017**, it has been notified that, “*Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution*” by the Central Government or State Government or any local authority in which they are engaged as public authority, shall be treated neither as a supply of goods nor a supply of service. Moreover, vide **Notification No. 25/2019- Central tax (Rate) dated 30th September, 2019** it has been notified that “*Service by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called*” by the State Governments in which they are engaged as public authorities, shall be treated neither as a supply of goods nor a supply of service.

TABLE II: KEY POINTS

SR. NO.	KEY POINTS IN RELATION TO SCOPE OF SUPPLY	DESCRIPTION
1	Whether the kind of outward supplies like Taxable supply, Exempted supply, Zero-rated supply, NIL rated supply, Supplies to SEZ unit/developers, Deemed Export etc. are appropriately classified under GST law?	<p>As the supplies under the Act are of various kind and misclassification of such supplies can lead to evasion of Tax.</p> <p>ITC is liable to be reversed where the taxpayer is engaged in providing exempted supplies and if the registered person is making both taxable and exempted supplies then proportionate reversal has to be carried out for the common input tax credit used for making both these supplies. Hence, correct classification of supplies is essential for correct discharge of tax liabilities.</p>
2	Whether any activity or transaction which falls within the scope of supply has not been identified by the Registered Person?	All transactions made or activities carried out by the registered person must be judged on the touchstone of “business purpose” and “consideration”; for example free samples, gift to employees, supply to related person and other items listed in schedules of GST Act has to be verified to calculate the correct tax liability.
3	Whether supply have been correctly classified as Inter-State supply / Intra-State as per Section 7 (5) & 8 of the IGST Act2017?	The correct classification of supply as Inter-State or Intra-State has important ramifications for the revenue of the State.

4	What is treatment of promotional item given free to end consumers by FMCG companies?	Tax will be charged only on the total consideration charged for such supply.
5	Whether the Zero - rated supply is verified as per the provisions of the law?	Since the refund is provided U/s 54 of the PGST on account of zero rated supplies, therefore it is to be ascertained any taxable supplies have not been wrongly characterized as zero rated supply.
6	Whether supply of capital goods has been subjected to GST and as to whether the same has been included in the returns filed?	The disposal of capital goods and fixed assets has to be verified from books of account and to check whether inference of the same has been taken in the return or not.
7	Whether the transactions are correctly classified as supply of goods or supply of services as per Schedule-II of the PGST Act, 2017?	GST Act clarifies certain activities to be treated as supply of goods or supply of services in Schedule II. Since the rate of tax may vary for such goods or services correct classification is crucial for ascertainment of correct tax.
8	Are there any transactions wherein the goods sent for job-work are not received back within the specified period?	Inputs or capital goods sent for job-work but not received back within 1 year or 3 years respectively, is to be treated as supply from the date the goods were sent for job-work.
9	Whether any business asset has been permanently disposed off for which input tax credit had been availed?	As per schedule-I of the PGST Act, 2017, such disposal even without consideration would fall within ambit of supply
10	Whether "Related persons" or "Distinct persons" in relation to registered person have been identified and whether activities or transaction with them have been duly identified and accounted for as per law?	As per schedule-I of the PGST Act, 2017, such disposal even without consideration would fall within ambit of supply

11	Whether any "Agent" has been appointed by registered person and whether transaction with such agent has been duly accounted for as per law?	As per schedule-I of the PGST Act, 2017, such transaction even without consideration would fall within ambit of supply
12	Whether any foreign exchange has been remitted outside India for any import of services and whether tax on same has been paid as per law?	Import of services by registered persons is subject to tax under RCM by virtue of sub-section (3) of section 5 of the IGST Act, 2017.
13	Whether the goods for business use have been put to personal use?	As per section 17 of the PGST Act, 2017 the ITC in relation to such goods is required to be reversed by the taxpayers.
14	Whether any kind of activity or transaction has been carried out by registered person which has not been accounted for as supply under the Act! Such as: Sale of Scrap, used vehicle, business assets?	The definition of supply under the Act is inclusive one and therefore the scope and ambit of supply is wide enough to cover within its ambit various kinds of transactions.
15	Whether any goods or services are being supplied by employer to employee, with or without consideration, and whether same has been accounted for as supply?	Supply of goods or services by employer to employee fall within the ambit of supply. However, gifts upto Rs. 50,000/- given by employer to employee are excluded.

Relevant Advance Ruling in relation to Scope of Supply

GST would be applicable on cheque bouncing charges: AAR

<http://gstpanacea.com/2018/12/20/maharashtra-aar19/>

[Maharashtra v. Bajaj Finance Limited - [2018] (AAR)]

The applicant, a NBFC is engaged in providing various types of loans to the customers, such as auto-loans, loans against the property, personal loans, consumer durable goods loans, etc. It has entered into agreements with borrowers/customers for providing loans to them. The loan

agreements provide for repayment of the outstanding dues/EMI through cheque /ECS/NACH or any other electronic or clearing mandate. In case of dishonoring of payment instrument or instruction, the applicant collects the penal or bouncing charges. The applicant filed an application for Advance Ruling whether the bouncing charges should be treated as supply? It contended that bouncing charges collected from the customers are in the nature of penalty or liquidated damages. Therefore, same are not considerations for supply of services and, hence, not subject to GST levy. The Authority for Advance Ruling held that the receipt of cheque bouncing charges on dishonoring of cheques would be receipt of amounts for tolerating the act of their customers in dishonoring of cheque. Therefore, it would be treated as supply under GST as per S. No. 5 (e) of Schedule II of the CGST Act, 2017 and, hence, taxable under the GST Act

Supply of food items to employees for a consideration in canteen run by co. Is taxable under GST: AAAR.

<http://www.thegstmitra.com/gst-act/authority-for-advance-rulings-aar/kerala/in-re-ms-caltech-polymers-pvt-ltd>

Caltech Polymers (P.) Ltd., [2018] (AAAR-Kerala)

The applicant-company was engaged in manufacturing and supply of footwear. It was providing canteen services exclusively for the employees. It incurred the canteen running expenses for a month and recovered the same from its employees without any profit margin. The applicants submitted that the service provided to the employees was not being carried out as a business activity and it was rendered by virtue of provisions of Factories Act, 1948. Therefore, the applicant is of the view that this activity would not come under the scope of Supply. The Appellate Authority for Advance Ruling observed that the applicant recovers the amount from employees. Therefore, the supply of food items to the employees for a consideration in a canteen run by the appellant would come under the 'Supply' as per the GST Act.

GST is applicable on compensation received by tenant for delayed possession of new premises: AAR

<http://www.gstcouncil.gov.in/zaver-shankarlal-bhanushali>

[Zaver Shankar Lal Bhanushali], [2018] (AAR-Maharashtra)

The assessee is a tenant in building premises. The owner of said building premises entered into an agreement with a developer for re development to said premises. Consequent to the said agreement, the assessee is to vacate the premises to facilitate the re development of the building. The assessee filed an application for Advance Ruling for applicability of GST on the compensation received by it for facilitating an alternative accommodation for the tenant and for delay in delivery of possession of the new premises.

The Authority for Advance Ruling held that as assessee agrees to do an act, i.e., vacating the premises to facilitate the supply of service by the developer to the owner, the compensation received from the developer for vacating the said premises shall be subject to GST. Further, the amount received for delayed possession of new premises would be a receipt for tolerating the construction - cum-redevelopment work and for tolerating an act of not completing the redevelopment work within the prescribed time. The same would be covered under the 'supply' and, therefore, the GST would be leviable on the said amount.

GST to be levied on activities done by employees of corporate office for its units located in other states

[Columbia Asia Hospitals (P.) Ltd., [2018] (AAR-Karnataka)]

The employees of corporate office performed the activities in the course of or in relation to employment. The same activities are also performed for the units located in the other States. The assessee filed an application for Advance Ruling whether GST would be applicable on supplies made to other units located in other States by employees of corporate office?

The Authority for Advance Ruling held that the services provided by the employees to the employer, the corporate office, have the nature of the employee and employer relationship. The corporate office and the units are distinct persons. Therefore, activities performed by employees of corporate office for other units of company shall be treated as supplies as per Entry 2 of Schedule I of the CGST Act. Hence, GST would be applicable even if made without consideration.

<http://www.gstcouncil.gov.in/sites/default/files/appellateauthority/ColumbiaAsiaAppealOrder.pdf>

http://gstcouncil.gov.in/sites/default/files/ruling-new/Krntk%2015_2018%20CAHPL.pdf

GST would be applicable on free IPL tickets given on complimentary basis: AAR

<https://www.consultease.com/gst-litigation-in-india/original-copy-gst-aar-kph-dream-cricket-pvt-ltd/>

[K.P.H. Dream Cricket (P.) Ltd., [2018] (AAR-Punjab)]

The assessee filed an application for Advance Ruling whether it is required to pay GST on the 'Complimentary tickets' for the IPL matches? It contended that the activity of providing complimentary tickets without any consideration on account of business promotion would not fall under supply and, thus, would not be liable to GST.

The Authority for Advance Ruling decided that the activity of assessee of providing complementary cricket match tickets to some persons would be considered as supply of service. Therefore, all tickets supplied by assessee, including complementary tickets, would be taxable and, thus, liable to GST.

Circulars relevant for Section 7 of PGST Act:

1. Circular No. 1/1/2017-IGST dated 7th July, 2017 – clarifying Inter-state movement of various modes of conveyance, carrying goods or passengers or for repairs and maintenance.
<https://www.cbic.gov.in/resources//htdocs-cbec/gst/igst-circu-1.pdf>
2. Circular No. 10/10/2017-GST dated 18th October, 2017 – clarifying issues wherein the goods are moved within the State or from the State of registration to another State for supply on approval basis.
https://cbic-gst.gov.in/pdf/Circular10_2017_Goods-on-Approval-Basis.pdf
3. Circular No. 12/12/2017–GST dated 26th October,2017: Clarification regarding applicability of GST on the superior kerosene oil [SKO] retained for the manufacture of Linear Alkyl Benzene
<https://cbic-gst.gov.in/pdf/circularno-12-gst.pdf>
4. Circular No. 19/19/2017-GST dated 20th November 2017 – clarifying taxability of custom milling of paddy.
<https://cbic-gst.gov.in/pdf/circularno-19-cgst.pdf>
5. Circular No. 21/21/2017–GST dated 22nd November,2017 - Clarification regarding to IGST exemption of Inter-state a movement of Rigs, tools and spares, and all goods on wheels (like cranes).
<https://cbic-gst.gov.in/pdf/circularno-21-cgst.pdf>
6. Circular No. 22/22/2017-GST dated 21st December, 2017 – clarifying treatment of supply by an artist in various States and supply of goods by artists from galleries.
https://cbic-gst.gov.in/pdf/Circular_22_Artist.pdf
7. Circular No. 27/01/2018-GST dated 04th January,2018 – clarifying taxability of accommodation services, betting and gambling in casinos, horse racing, admission to cinema, homestays, printing, legal services etc.
<https://www.cbic.gov.in/resources//htdocs-cbec/gst/circularno-27-gst.pdf>
8. Circular No. 28/02/2018-GST dated 18th January, 2018 –clarifying GST on College Hostel Mess Fees.
<https://www.cbic.gov.in/resources//htdocs-cbec/gst/corrigendum-circularno-28-gst.pdf>
9. Circular No. 29/3/2018–GST dated 25th January, 2018: Clarification regarding applicability of GST on polybutylene feed stock and LPG retained for the manufacture of Poly - Isobutylene and propylene, di-butyl-para-cresol
<https://cbic-gst.gov.in/pdf/circularno-29-cgst.pdf>
10. Circular No. 30/4/2018-GST dated 25th January, 2018- clarifying supplies made to the Indian Railways classifiable under any chapter, other than Chapter 86.

- <https://cbic-gst.gov.in/pdf/circularno-30-cgst.pdf>
11. Circular No. 32/06/2018-GST dated 12th February, 2018 – clarifying taxability of various services.
<https://cbic-gst.gov.in/pdf/circularno-32-cgst.pdf>
12. Circular No. 34/8/2018-GST dated 1st March,2018 – clarifying the taxability of guarantee given by government for loans taken by Public Sector Undertakings.
<https://www.cbic.gov.in/resources//htdocs-cbec/gst/circularno-34-cgst.pdf>
13. Circular No. 35/09/2018–GST dated 05th March, 2018: Clarification regarding Joint venture (JV) – taxable services provided by the member of the JV to the JV and vice-versa and inter-se between the members of the JV
<https://cbic-gst.gov.in/pdf/circularno-35-cgst.pdf>
14. Circular No. 44/18/2018–GST dated 02nd May,2018:Clarification regarding tax ability of tenancy rights under GST.
<https://cbic-gst.gov.in/pdf/circularno-44-cgst.pdf>
15. Circular No. 3/1/2018-IGST dated 25th May, 2018 – clarifying applicability of Integrated Goods and Services Tax (integrated tax) on goods supplied while being deposited in a customs bonded warehouse.
<http://gstcouncil.gov.in/sites/default/files/Circular-dynamic/igst-circu-3.pdf>
16. Circular No. 46/20/2018-GST dated 6th June, 2018 – clarifying GST rate on Priority Sector Lending Certificates (PSLCs), Renewable Energy Certificates (RECs) and other similar scrips.
https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_No.46.pdf
17. Circular No. 47/21/2018–GST dated 08th June,2018: Clarification regarding certain issues under GST, like, mould and dies, owned by original equipment manufacturers sent F.O.C to a component manufacturer and others.
https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_No.47.pdf
18. Circular No.53/27/2018-GST dated 9th August, 2018 – clarifying applicability of GST on the petroleum gases retained for the manufacture of petrochemical and chemical products.
https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_No.53.pdf
19. Circular No. 54/28/2018-GST dated 9th August, 2018 – clarifying taxability of fertilizers supplied for use in the manufacture of other fertilizers at 5% GST rate.
<https://www.consultease.com/gst-compliances-in-india/circular-no-54282018-gst/#.XzLdpYgzbIU>
20. Circular No. 55/29/2018-GST dated 10th August, 2018 – clarifying taxability of services provided by Industrial Training Institutes.
https://www.cbic.gov.in/resources//htdocs-cbec/gst/Signed_Circular_on_Taxability_of_services_provided_by_Industrial_Training_Institutes.pdf
21. Circular No. 57/31/2018-GST dated 4th September, 2018- clarification regarding the scope of " principal-agent" relationship under GST.
https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_No.57.pdf

22. Circular No.62/36/2018-GST dated 12th September, 2018 – clarifying Levy of GST on Priority Sector Lending Certificates (PSLC).
https://www.cbic.gov.in/resources/htdocs-cbec/gst/Circular_No_62of_2018_on_PSLC.pdf
23. Circular No. 66/40/2018-GST dated 26th September 2018 – clarifying taxability of Residential programmes or camps meant for advancement of religion, spirituality or yoga by religious and charitable trusts.
<https://www.cbic.gov.in/resources/htdocs-cbec/gst/Circular-No-66.pdf>
24. Circular No. 72/46/2018-GST dated 26th October, 2018 – clarifying the procedure in respect of return of time expired drugs or medicines.
<http://gstbible.com/blog/tag/circular-no-72-46-2018-gst/>
25. Circular No. 82/01/2019- GST dated 1st January, 2019 – clarifying Applicability of GST on various programmes conducted by the Indian Institutes of Managements (IIMs).
<https://www.cbic.gov.in/resources/htdocs-cbec/gst/circular-cgst-82.pdf>
26. Circular No. 91/10/2019-GST dated 18th February, 2019 – clarifying tax payment made for supply of warehoused goods while being deposited in a customs bonded warehouse for the period July, 2017 to March, 2018.
<https://www.cbic.gov.in/resources/htdocs-cbec/gst/circular-cgst-91.pdf>
27. Circular No. 92/11/2019-GST dated 7th March, 2019 – clarifying treatment of sales promotion schemes under GST.
<https://www.cbic.gov.in/resources/htdocs-cbec/gst/circular-cgst-92.pdf>
28. Circular No. 93/12/2019-GST dated 8th March, 2019 – clarifying Nature of Supply of Priority Sector Lending Certificates (PSLC).
<https://www.cbic.gov.in/resources/htdocs-cbec/gst/circular-cgst-93.pdf>
29. Circular No. 116/35/2019-GST dated 11th October, 2019 – clarifying Levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organisations receiving donation or gifts from individual donors.
<https://www.cbic.gov.in/resources/htdocs-cbec/gst/circular-cgst-116.pdf>
30. Circular No. 119/38/2019-GST dated 11th October, 2019 – clarifying taxability of supply of securities under Securities Lending Scheme, 1997.
<https://www.cbic.gov.in/resources/htdocs-cbec/gst/circular-cgst-119.pdf>
31. Circular No. 121/40/2019-GST dated 11th October, 2019 – clarifying GST on license fee charged by the States for grant of Liquor licences to vendors.
<https://www.cbic.gov.in/resources/htdocs-cbec/gst/circular-cgst-121.pdf>
32. Circular No. 130/49/2019-GST dated 31st December, 2019 – clarifying RCM on renting of motor vehicles.
<https://www.cbic.gov.in/resources/htdocs-cbec/gst/circular-cgst-130-new.pdf>

CHAPTER – 2

COMPOSITE SUPPLY AND MIXED SUPPLY

Introduction:

The taxable event under GST is supply of goods or services or both. GST will be payable on every supply of goods or services or both unless otherwise exempted. The tax rate at which GST is payable for individual goods or services or both is also separately notified. Classification of supply (whether as goods or services) is essential to determine applicable rate of GST on the particular supply. The application of tax rate will pose no problem if the supply is of individual goods or services which are clearly identifiable and are subject to a particular rate of tax. But not all supplies will be such simple and clearly identifiable supplies. Some of the supplies will be a combination of goods or combination of services or combination of goods and services both. Each individual component in a given supply may attract different rate of tax. The rate of tax to be levied on such supplies may pose a problem in respect of classification of such supplies. It is for this reason, that the GST Law identifies composite supplies and mixed supplies and provides certainty in respect of tax treatment under GST for such supplies.

SR. NO.	SECTION (PGST ACT)	DESCRIPTION
1	SECTION 2 (30)	Definition of Composite supply
2	SECTION 2 (74)	Definition of Mixed supply
3	SECTION 8	Tax liability on composite and mixed supplies.

As per sub-section (30) of Section 2, composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

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

Works contract and restaurant services are classic examples of composite supplies. However, the PGST Act identifies both as supply of services and chargeable to specific rate of tax mentioned against such services. In respect of two or more supplies the need to determine whether the supply is composite one or mixed one will arise, so as to determine the appropriate tax rate. It will be

necessary to determine as to whether the supplies are naturally bundled in the ordinary course of business and if yes, then which supply is the principal supply.

The concept of composite supply under GST is similar to the concept of naturally bundled services prevailing in the erstwhile service tax regime. This concept has been explained in the Education Guide issued by CBIC in the year 2012 as under - *“Bundled service' means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services. An example of 'Bundled service' would be air transport services provided by airlines wherein an element of transportation of passenger by air is combined with an element of provision of catering service on board. Each service involves differential treatment as a manner of determination of value of two services for the purpose of charging service tax is different.*

The rule is- 'If various elements of a bundled service are naturally bundled in the ordinary course of business, it shall be treated as provision of a single service which gives such bundle its essential character'

Illustration: A hotel provides a 4-D/3-N package with the facility of breakfast. This is a natural bundling of services in the ordinary course of business. The service of hotel accommodation gives the bundle the essential character and would, Therefore, be treated as service of providing hotel accommodation.

TABLE II: EXAMPLE OF ACCOMMODATION SERVICES	
EXAMPLE	DESCRIPTION
<p>A 5-star hotel is booked for a conference of 100 delegates on a lump sum package with the following facilities:</p> <ul style="list-style-type: none"> ➤ Accomodation for the delegates ➤ Breakfast for the delegates ➤ Tea and coffee during conference ➤ Access to fitness room for the delegates ➤ Availabilty of conference room Business Centre. 	<p>As is evident a bouquet of services is being provided, many of them chargeable to different effective rates of tax. None of the individual constituents are able to provided the essential character of the service. However, if the service is described as convention service it is able to capture the entire essence of the package. Thus, the service may be judged as convention service and chargeable to full rate.</p>

Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. This takes us to the trade parlance theory where the business or industry practice plays an important role in determining the character of supply. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below—

1. The perception of the consumer or the recipient. If large numbers of recipients of such bundle of supplies reasonably expect such supplies to be provided as a package, then such a package could be treated as naturally bundled in the ordinary course of business.
2. Majority of suppliers in a particular area of business provide similar bundle of supplies. For example, bundle of catering on board and transport by air is a bundle offered by a majority of air lines.
3. The nature of the various supplies that are being provided together will also help in determining whether the supplies are bundled in the ordinary course of business. If one of the supply is the principal supply while other supplies are incidental or ancillary to it and help in better enjoyment of principal supply, then it would primarily be a composite supply. For example, service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.
4. Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are-
 - a) There is a single price or the customer pays the same amount, irrespective of how much of the package they actually receive or use.
 - b) The elements are normally advertised as a package.
 - c) The different elements are not available separately.
 - d) The different elements are integral to one over all supply—if one or more is removed, the nature of the supply would be affected.

(No fixed formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above.)

The above principles explained in the light of what constitutes naturally bundled service can be gainfully adopted to determine whether a particular supply constitutes a composite supply under GST and if so what constitutes the principal supply so as to determine the right classification and rate of tax of such composite supply.

Mixed Supply:

Under GST, a mixed supply means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

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

In order to identify if the particular supply is a Mixed Supply, the first requisite is to rule out that the supply is a composite supply. A combination of supplies can be a mixed supply only if it is not a composite supply. As a corollary it can be said that if the transaction consists of supplies not naturally bundled in the ordinary course of business then it would be a Mixed Supply. Once the amenability of the transaction as a composite supply is ruled out, it would be a mixed supply, classified in terms of a supply of goods or services attracting highest rate of tax.

The following illustration given in the Education Guide of CBIC referred to above can be a pointer towards a mixed supply of services:-

“A house is given on rent one floor of which is to be used as residence and the other for housing a printing press. Such renting for two different purposes is not naturally bundled in the ordinary course of business. Therefore, if a single rent deed is executed it will be treated as a service comprising entirely of such service which attracts highest liability of service tax. In this case renting for use as residence is a negative list service while renting for non-residence use is chargeable to tax. Since the latter category attracts highest liability of service tax amongst the two services bundled together, the entire bundle would be treated as renting of commercial property.”

Determination of tax liability of Composite and Mixed Supplies

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

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

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

Time of supply in case of Composite supply

If the composite supply involves supply of services as principal supply, such composite supply would qualify as supply of services and accordingly the provisions relating to time of supply of services would be applicable. Alternatively, if composite supply involves supply of goods as principal supply, such composite supply would qualify as supply of goods and accordingly, the provisions relating to time of supply of goods would be applicable.

Time of supply in case of mixed supplies

The mixed supply, if involves supply of a service liable to tax at higher rate than any other constituent supplies, it would then qualify as supply of services and accordingly the provisions relating to time of supply of services would be applicable Alternatively, the mixed supply, if involves supply of goods liable to tax at higher rate than any other constituent supplies, it would then qualify as supply of goods and accordingly the provisions relating to time of supply of goods would be applicable.

TABLE II: DIFFERENCE BETWEEN MIXED AND COMPOSITE SUPPLIES

SR.NO.	COMPOSITE	MIXED SUPPLY
1.	Consists of two or more supplies	Consists of two or more supplies
2.	Naturally bundled	Artificiaially bundled
3.	Supplied in conjunction with each other	Though can be supplied independently still supplied together
4.	Tax liability is the rate on principal supply	Tax liability shall be rate applicable to the supply that attracts highest rate of tax
5.	One of them is principal supply. e.g. charger supplied with a mobile phone.	No such bifurcation as supplies can be provided independently as well. e.g. Diwali gift pack comprising chocolates and sweets.

KEY POINTS:

1. Where two or more goods/services are supplied together, are they naturally bundled or not?
2. Where they are naturally bundled which is principal supply?
3. Where the supply is composite supply, what is the rate of tax being charged for the said supply?
4. Whether the goods/services, in case of a composite supply, are being supplied at rate of principal supply or different goods/services are being supplied at different tax rate?
5. If goods are separable, which item is taxed at a higher rate?
6. Whether the goods/services in mixed supply are being supplied at rate equal to item of highest tax rate or different goods/services are being supplied at different tax rate?

CIRCULARS:

1. **Circular 11/11/2017GST dated 20th October, 2017** in context of printing contracts with respect to books, pamphlets brochure etc.
<https://cbic-gst.gov.in/pdf/circularno-11-gst.pdf>

2. **Circular 32/06/2018 GST dated 12th February, 2018** in context of food supplied to in-patients while providing health care services by a clinical establishment.
<https://cbic-gst.gov.in/pdf/circularno-32-cgst.pdf>
3. **Circular 34/8/2018 GST dated 1st March, 2018**: Clarification regarding GST in respect of certain services.
<https://www.cbic.gov.in/resources//htdocs-cbec/gst/circularno-34-cgst.pdf>
4. **Circular 47/21/2018 dated 8th June, 2018**: Clarification on value of supply for servicing of cars.
https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_No.47.pdf
5. **Circular 92/11/2019 GST dated 7th March, 2019**: Clarification on various doubts related to treatment of sales promotion scheme under GST.
<https://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-92.pdf>

ADVANCE RULINGS:

1. Fermi Solar Farm Pvt. Ltd., Advance Ruling No. GST - ARA - 03/2017/B - 03 dated 03/03/2018 (Maharashtra).
http://gstcouncil.gov.in/sites/default/files/ruling-new/Maharashtra_GST-ARA-03_2017%20dt%203.3.18%20FSFPL.pdf
2. M/s Skill Tech Engineers & Contractors Private Limited, 29AACCS5478F1Z0, Advance Ruling No. KAR ADRG 03/2018 Dated: 21st March, 2018 (Karnataka).
<http://gstcouncil.gov.in/sites/default/files/ruling-new/03-Skilltech%20Engineers-AAR-order.pdf>
3. EMC Ltd, Advance Ruling No. 04/WBAAR/2018-19 dated 11/05/2018 (West Bengal).
<http://gstcouncil.gov.in/sites/default/files/ruling-new/WB%20AAR04%202018-19%20dt%2011-05-18%20EMC.pdf>
4. M/S Columbia Asia Hospitals Pvt. Ltd, Advance Ruling No. KAR ADRG/26/2018 dated 13/11/2018 (Karnataka).
http://gstcouncil.gov.in/sites/default/files/ruling-new/Krntk%2026_2018%20CAHPL.pdf
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CHAPTER – 3

LEVY & COLLECTION OF TAX

Section 9 (1) and 9 (2) of PGST Act,2017

Section 9 of the PGST Act,2017 encapsulates the power of levy of GST that is available with State Government. As per the said section the State Government has the power to impose state tax on any supply that is intra-State. Further, the expression, “taxable supply” refers to any supply of goods or services or both, which is leviable to tax under the said Act. The exception to this principle has been enumerated in the levy section itself which provides that GST would not be leviable on the supply of alcoholic liquor for human consumption. Further, the section specifies certain other goods on which the levy of GST has been deferred until such time the GST Council recommends the imposition of GST on the same. These goods are:

- a) petroleum crude;
- b) high speed diesel;
- c) motor spirit (commonly known as petrol);
- d) natural gas; and
- e) aviation turbine fuel.

Moreover, by virtue of exclusion by definition, "*Securities*" and "*Money*" are outside the purview of GST. Furthermore, except for certain actionable claims namely lottery, betting, gambling; actionable claims as such fall outside the purview of GST by virtue of inclusion in Schedule-III of the PGST Act, 2017. Also, there are certain goods or services that are either leviable to NIL rate of tax or have been exempted by the government under Section 11 of the said Act.

A. Tax payable: The nature of tax to be levied on a particular supply would depend upon the character of supply, viz., inter-State supply will be liable to IGST and intra - State supply will be liable to CGST and SGST / UTGST (i.e., UTGST in case intra - State supplies within a particular Union Territory). Every intra - State supply will attract CGST as well as SGST, as follows:

- a) Imposition of CGST by the Union Government of India
- b) Imposition of SGST by the respective State Government or (in case of UTGST, by the Central Government through the appointed Administrator)

B. Tax shall be payable by a taxable person: The tax shall be payable by a 'taxable person' i.e., a person who is liable to obtain registration, or a person who has obtained registration. It may be noted that there can be multiple taxable persons for a single person. It comprises of separate establishments of persons registered or liable to be registered under sections 22 or section 24 of

the PGST/CGST Act. (Please refer to the discussion under Section 25 for a thorough understanding of this concept)

Under the PGST Act, 2017, the person liable to pay the tax levied on a supply under the Statute would be one of the following:

a) The supplier, in terms of Section 9 (1) – Referred to as forward charge. This is ordinarily applicable in case of all supplies unless the supply qualifies under the other two categories, i.e., this would be the residual category of supply where in the supplier would be liable to pay tax. In this regard, it must be noted that the term 'supplier' is attributed to an establishment, and not to the PAN as a whole. Therefore, if the supply is effected from an establishment in Karnataka, the establishment of the same entity located in Delhi cannot discharge the tax liability for the same:

b) The recipient – Referred to as tax under reverse charge mechanism. In such a case, all the provisions of the Act as are applicable to the supplier in a normal case, would apply to the recipient of supply (being a taxable person, and not the PAN as explained above). A supply would be subjected to tax in the hands of the recipient only in the following cases:

- i. **Supplies notified under sub-section (3) of Section 9** : The supply of goods or services which would be subjected to reverse charge under the above section have been notified under Notification No. 4/2017- Central Tax (Rate) in case of goods and Notification No. 13/ 2017-Central Tax (Rate) in case of services, as amended from time to time. The supplier of such supplies would not be liable to discharge the tax liability as the law imposes the obligation on the recipient.
- ii. **Supplies notified under sub-section (4) of Section 9** : The supply of goods or services which would be subjected to reverse charge under the above section would be basically those supplies that have been received by a registered person from an unregistered supplier. In this regard, it may be noted that the levy under this clause applies (as amended) only in respect of (a) 'class of registered persons ' and (b) ' categories of goods or services', which the government may notify by way of notification.

c) E-commerce operator: Vide sub-section (5) of section 9 of the Act, it has been specifically laid down that the Government may, on the recommendations of the council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services

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

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

C) Analysis of Reverse Charge Mechanism (RCM) under GST

Reverse charge is a mechanism under which the recipient of the goods or services is liable to pay the tax instead of the supplier of the goods and services. Under the normal taxation regime, the supplier collects the tax from the buyer and deposits the same after adjusting the output tax liability with the input tax credit available. But under **(RCM)**, liability to pay tax shifts from supplier to recipient.

C.1 As per clause (98) of section 2 of the PGST Act' 2017, “reverse charge” means the liability to pay tax by the recipient of the supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9; or under sub-section (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act.

TABLE I- LIST OF GOODS THAT HAVE BEEN SUBJECTED TO RCM UNDER SECTION 9(3) OF PGST ACT, 2017

Sr. No.	Description of Goods	Supplier of Goods	Recipient of Goods	Notification No.	Effective From
1.	Cashew nuts, not shelled or peeled	Agriculturist	Any registered person	Notification No. 4/2017 Central Tax (Rate)	01-Jul-17
2.	Bidi wrapper leaves (tendu)	Agriculturist	Any registered person		
3.	Tobacco Leaves	Agriculturist	Any registered person		
4.	Silk yarn	Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn.	Any registered person		
5.	Supply of lottery	State Government, Union Territory or any local authority	Lottery distributor or selling agent.		
6.	Used vehicles, seized and confiscated goods, old and used goods, waste and scrap	Central Government, State Government, Union territory or a local authority	Any registered person	Notification No. 36/2017-Central Tax (Rate)	13-Oct-17
7.	Raw Cotton	Agriculturist	Any registered person	Notification No. 43/2017 Central Tax (Rate)	15-Nov-17
8.	Priority Sector Lending Certificate	Any registered person	Any registered person	Notification No. 11/2018 Central Tax (Rate)	28-May-18

Table II- List of services that have been subjected to RCM under section 9(3) of PGST/CGST Act, 2017: (Notification No. 13/2017 Central Tax (Rate) wef July 1, 2017)

S.No	Description of services	Supplier	Recipient of service
I	<p>Supply of Services by a goods transport agency (GTA) *who has not paid central tax (CGST) at the rate of 6 percent in respect of transportation of goods by road to:</p> <p>(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948); or</p> <p>(b) any society registered under the Societies Reg. Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or</p> <p>(c) any co-operative society established by or under any law; or</p> <p>(d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or</p> <p>(e) anybody corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under</p>	<p>Goods Transport - Agency (GTA)</p>	<p>(a) Any factory registered under or governed by the Factories Act, 1948 (63 of 1948); or</p> <p>(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or</p> <p>(c) any cooperative society established by or under any law; or</p> <p>(d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or</p> <p>e) anybody corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person; located in the taxable territory.</p>

	<p>any law including association of persons & includes Limited Liability Partnership Firm ; or</p> <p>(g) any casual taxable person.</p> <p>* Inserted by Notification No. 22/2017 Central Tax (Rate) dated 22nd August,2017.</p>		
II	<p>Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly.</p> <p>Explanation. - “legal service” means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority</p> <p>* As per Corrigendum issued on 25-Sept-2017</p>	<p>An individual advocate including a senior advocate or firm of advocates</p>	<p>Any business entity located in the taxable territory</p>
III	<p>Services supplied by an arbitral tribunal to a business entity</p>	<p>An arbitral tribunal</p>	<p>Any business entity located in the taxable territory</p>
IV	<p>Services provided by way of sponsorship to anybody corporate or partnership firm</p>	<p>Any Person</p>	<p>Anybody corporate or partnership firm located in the taxable territory</p>

V	<p>Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding services specified below –</p> <p>(i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority;</p> <p>(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) transport of goods or passengers.</p>	<p>Central Government, State Government, Union territory or local authority</p>	<p>Any business entity located in the taxable territory</p>
VI	<p>Services supplied by a director of a company or a body corporate to the said company or the body corporate.</p>	<p>A director of a company or a body corporate</p>	<p>The company or a body corporate located in the taxable territory</p>
VII	<p>Services supplied by an insurance agent to any person carrying on insurance business</p>	<p>An insurance agent</p>	<p>Any person carrying on insurance business, located in the taxable territory</p>
VIII	<p>Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company</p>	<p>A recovery agent</p>	<p>A banking company or a financial institution or a non-banking financial company, located in the taxable territory</p>

IX	Supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer. (this entry has been modified vide Notification No. 22/2019- Central Tax (Rate) dated 30th September, 2019)	Author or music composer, photographer, artist, or the like	Publisher, music company, producer or the like, located in the taxable territory
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B Notification No. 33/2017- Central Tax (Rate) Effective from 13-Oct-2017

I.	Supply of services by the members of Overseeing Committee to Reserve Bank of India	Members of Overseeing Committee constituted by the Reserve Bank of India	Reserve Bank of India
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C Notification No. 3/2018- Central Tax (Rate) Effective from 25-Jan-2018

I.	Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017	Central Government, State Government, Union territory or local authority	Any person registered under the Central Goods and Services Tax Act, 2017
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D Notification No. 15/2018- Central Tax (Rate) dated 26th July, 2018

I.	Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm to bank or non-banking financial company (NBFCs)	Individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm	A banking company or a non-banking financial company, located in the taxable territory
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E Notification No. 29/2018- Central Tax (Rate) dated 31st December, 2018, Effective from 01-Jan-2019

1.	Services provided by business facilitator (BF) to a banking company	Business facilitator (BF)	A banking company, located in the taxable territory
2.	Services provided by an agent of business correspondent (BC) to business correspondent (BC)	An agent of business correspondent (BC)	A business correspondent, located in the taxable territory

3.	<p>Security services (services provided by way of supply of security personnel) provided to a registered person – Provided that nothing contained in this entry shall apply to,—</p> <p>(i) (a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority ; or (c) Governmental agencies; which has taken registration under the Central Goods and Services Tax Act, 2017 for the purpose of deducting tax under section 51 of the said Act and not for making a taxable supply of goods or services; or</p> <p>(ii) a registered person paying tax under section 10 of the said Act. .</p>	Any person other than a body corporate	A registered person, located in the taxable territory
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F Notification No. 05/2019- Central Tax (Rate) dated 29th March, 2019

1.	Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.	Any person	Promoter
2.	Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter.	Any person	Promoter

G Notification No. 22/2019- Central Tax (Rate) dated 30th September, 2019

1.	Supply of services by a music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original dramatic, musical or artistic works to a music company, producer or the like.	Music composer, photographer, artist, or the like	Music company, producer or the like, located in the taxable territory.
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2.	Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub -section (1) of section 13 of the Copyright Act, 1957 relating to original literary works to a publisher.	Author	<p>Publisher located in the taxable territory:</p> <p>Provided that nothing contained in this entry shall apply where, -</p> <p>(i) the author has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017), and filed a declaration, in the form at Annexure I, within the time limit prescribed therein, with the jurisdictional CGST or SGST commissioner, as the case may be, that he exercises the option to pay central tax on the service specified in column (2), under forward charge in accordance with Section 9 (1) of the Central Goods and Service Tax Act, 2017 under forward charge, and to comply with all the provisions of Central Goods and Service Tax Act, 2017 (12 of 2017) as they apply to a person liable for paying the tax in relation to the supply of any goods or services or both and that he shall not withdraw the said option within a period of 1 year from the date of exercising such option;</p> <p>ii. the author makes a declaration, as prescribed in Annexure II on the invoice issued by him in Form GST Inv-I to the publisher.</p>
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3.	<p>Services provided by way of renting of a motor vehicle provided to a body corporate.</p> <p>(This entry amended by Notification No. 29/2019-Central Tax (Rate) dated 31st December, 2019)</p>	<p>Any person other than a body corporate, paying central tax at the rate of 2.5% on renting of motor vehicles with input tax credit only of input service in the same line of business</p>	<p>Any body corporate located in the taxable territory.</p>
4.	<p>Services of lending of securities under Securities Lending Scheme, 1997 (“Scheme”) of Securities and Exchange Board of India (“SEBI”), as amended.</p>	<p>Lender i.e. a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the Scheme of SEBI</p>	<p>Borrower i.e. a person who borrows the securities under the Scheme through an approved intermediary of SEBI.</p>

H Notification No. 29/2019- Central Tax (Rate) dated 31st December, 2019

1.	<p>Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.</p>	<p>Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging central tax at the rate of 6 per cent. to the service recipient.</p>	<p>Any body corporate located in the taxable territory.</p>
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I Services imported from outside India: (Notification No. 10/2017- Integrated Tax (Rate) dated 28th June, 2017)

1.	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient	Any person located in a non-taxable territory	Any person located in the taxable territory other than nontaxable online recipient
2.	Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India	A person located in non-taxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962 , located in the taxable territory

Table III- List of services that have been subjected to RCM under section 9(4) of PGST Act,2017

Sr. No.	Description of Supply of Services	Recipient of Service
1	Supply of such goods and services or both [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI)] which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier) as prescribed in notification No. 11/ 2017- Central Tax (Rate), dated 28th June, 2017, at items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, published in Gazette of India vide G.S.R. No. 690, dated 28th June, 2017, as amended.	Promoter

Sr. No	Description of Supply of Services	Recipient of Service
2	Cement falling in chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 (51 of 1975).	Promoter
3	Capital goods falling under any chapter in the first schedule to the Customs Tariff Act, 1975 (51 of 1975) supplied to a promoter for construction of a project on which tax is payable or paid at the rate prescribed for items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, in notification No. 11/ 2017- Central Tax (Rate), dated 28th June, 2017, published in Gazette of India vide G.S.R. No. 690, dated 28th June, 2017, as amended.	Promoter

C.3 The Manner of Payment of GST under the Reverse Charge Mechanism

As per sub - section (4) of section 49 of PGST Act, 2017, ITC can be used for payment of output tax only. Since the supplies that are subject to reverse charge have been taken outside the ambit of Output tax, therefore, tax under reverse charge can be paid through cash only. The supplier must mention in his tax invoice whether the tax is payable on reverse charge or otherwise.

C.4 Availment of ITC for RCM supplies:

In the hands of the supplier the RCM supplies have the character of exempted supply as per sub-section (3) of section 17 of the PGST Act,2017. Thus, the supplier will not be eligible to avail ITC in relation to such supplies and would be liable to reverse the corresponding ITC. As far as the recipient is concerned, he can avail ITC of the tax paid under reverse charge on supply of goods or services. However, where the recipient is a taxpayer who has opted for composition scheme, he would be ineligible to claim any credit of tax paid under reverse charge. Also, it may be noted that taxpayers under composition scheme would be liable to pay tax on such supplies at the normal applicable rates and not at the composition rates.

C.5 Registration Requirement under Reverse Charge Mechanism (RCM) :

As per Section 24 of PGST Act, 2017, a person liable to pay tax under the reverse charge mechanism has to compulsorily get registered even if the turnover is below the threshold limit.

C.6 Applicability of GST Compensation Cess:

GST Compensation Cess will be applicable on tax paid under reverse charge mechanism also.

C.7 Important Points to be Taken Care Under RCM:

- a) Goods or services notified under section 9(3) or section 9(4) would be subject to RCM;
- b) The Act provides for compulsory registration of person who are liable to pay tax under RCM;
- c) RCM liability can only be discharged through cash and has to be discharged along with the filing of return;
- d) The supplier will not be eligible to avail ITC that is corresponding to supplies subjected to RCM;
- e) The recipient would be eligible to avail ITC for the tax paid under RCM;
- f) There will be no auto-population of details of the GST paid under the RCM in GSTR 2A, but it will be subjected to the manual furnishing of details;
- g) Where ever the RCM is applicable u/s 9(4) of the Act, the invoice must be arranged by the recipient on itself;
- h) Payment voucher must be issued by the recipient at that at the time of supplier's payment;
- i) The registered tax payers availing composition scheme would also be liable to pay tax under the reverse charge, although they would not be eligible to avail ITC of the same;
- j) The reverse charge mechanism is applicable to payments made in advance for supply of services.

D. Section 9(4)-Reverse Charge Mechanism

The provisions of section 9 (4) of the PGST Act, 2017 deals with the applicability of reverse charge mechanism, where in, the goods or services or both are being procured by the registered person from an un-registered person. Due to its wide implication, the said provision had a chequered history of applicability and has finally been substituted by the Punjab Goods & Services Tax Amendment **Act, 2018** which is effective from 1st February 2019. As per the earlier provisions of section 9 (4) of the PGST Act, 2017, the registered person would be liable to pay state tax (on reverse charge basis) in respect of a supply of taxable goods or services received from an unregistered person.

However, the said provisions and the effective date of the provisions has undergone various amendments, which is tabulated hereunder–

Table IV: [Amendments in earlier provisions]	
RELEVANT NOTIFICATION	RELEVANT AMENDMENTS
Notification No. 8/2017 Central Tax (Rate) dated 28 th June, 2017	Central tax payable on reverse charge basis on Intra-state supplies of goods or services or both received by the registered person from the un registered person is exempted till an aggregate value of INR 5000 per day.
Notification No. 38/2017-Central Tax (Rate) dated 13 th October, 2017	Entire central tax payable on reverse charge basis on Intra- state supplies of goods or services or both received by the registered person from an unregistered person is exempted (i.e. exemption up to INR 5000 replaced and the entire transaction was exempted) till 31 st March, 2018.
Notification No. 10/2018-Central Tax (Rate), dated 23 rd March, 2018	The above exemption was extended till 30 th June, 2018
Notification No. 12/2018-Central Tax (Rate), dated 29 th June, 2018	The above exemption was extended till 30 th September, 2018
Notification No. 22/2018-Central Tax (Rate), dated 06 th August, 2018	The above exemption was extended till 30 th September, 2019.

In nut-shell as per the earlier provisions, the said tax was payable by the registered person on **reverse charge basis** on all supply of taxable goods or services or both received by him from the un-registered person. However, the said applicability of reverse charge on registered person was deferred from 13th October, 2017 till 30th September, 2019.

Vide the **Punjab Goods and Service Tax (Amendment) Act, 2018** effective from **1st February, 2019**, entire **section 9 (4) of the PGST Act, 2017** was substituted. Now, let us understand what the substituted provisions of section 9 (4) says–

"The Government may, on recommendations of the Council, by notification, specify the class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay tax on reverse charge basis as a recipient of such supply of goods or services or both, and all the provisions of this Act

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

The outcome of the substituted section 9 (4) is detailed hereunder –

- Class of registered person who shall be liable to pay tax on a reverse charge would be specified i.e. not all the registered person would be liable to pay tax on reverse charge. Only the specified registered person would be liable to pay the tax;
- Supply of only specified goods or services or both would be covered i.e. only specified transaction of taxable supply of goods or services or both received by the registered person from the unregistered person would be covered.

It may be noted that in pursuance of this sub-section Government has issued **Notification No. 07/2019- Central Tax (Rate) dated 29th March, 2019.**

E. Analysis of Section 9 (5) - This section deals with taxability of supply of services, the output tax on which shall be discharged by the electronic commerce operator. The intent of this sub-section is to empower the government to notify certain services, tax on which will not be paid by the supplier but will be discharged by the e-commerce operator through which they are being supplied. Thus, in case of such supplies the person responsible for payment of taxes would neither be the supplier nor the recipient of supply, but the e - commerce operator through which the supply is effected. It is important to note that, in case of such supplies, the e-commerce operator is neither the supplier nor the recipient of the services. The e - commerce operator is merely the person who owns, operates or manages digital or electronic facility or platform for e-commerce purposes. Under the erstwhile service tax law, the e - commerce operator in such an arrangement was referred to as an 'aggregator'.

Table V- List of services that have been notified under section 9 (5) of the PGST/CGST Act, 2017:				
Sr. No.	Description of supply of Service	Supplier of service	Person Liable to Pay GST	Notification No.
1	Transportation of passengers by a radio-taxi, motor cab, maxi cab and motor cycle	Any person	E-commerce Operator	17/2017-Central Tax (Rate) dt 28 th June, 2017.
2	Providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes	Any person except who is liable for registration under sub-section (1) of section 22 of the said PGST/CGST Act	E-commerce Operator	—do—
3	Services by way of house-keeping, such as plumbing, carpentering etc	Any person except who is liable for registration under sub-section (1) of section 22 of the said PGST/CGST Act	E-commerce operator	Inserted vide Notification No. 23/2017-Central Tax(Rate) dated 22 nd August, 2017.

It may be noted that where the e – commerce operator does not have a physical presence in the taxable territory, any person representing him in the taxable territory would be liable to pay the taxes. If no such representative exists, the e-commerce operator is liable to appoint a person in order to discharge this obligation. Further, it has been provided that all other provisions of the Act will apply to the e - commerce operator or his representative (as the case may be) in respect of such services, as if he is the supplier liable to pay tax on the services.

In this regard it may be noted that liability to pay tax on the supply by the e-commerce operator is not another provision imposing tax on the reverse charge basis. Reference to the reverse charge in section 2 (98) makes it clear that reverse charge is limited to tax payable under section 9 (3) and 9 (4). It is very important to note that the language employed in Section 9(5) makes it clear that the liability to pay tax on the supply is placed on the e-commerce operator, “as if” the e-commerce operator was the “supplier liable to tax”. The marked departure of the language from that used in case of the reverse charge provisions suggests that:-

- (a) The tax that is applicable on the supply is to be paid by the e - commerce operator "as if" such e- commerce operator was the supplier liable to tax. The provisions require the e-commerce operator to step in to the shoes of the actual supplier, for the limited purpose of discharging his liability. However, the supply by the e-commerce operator to the actual supplier (facilitation services, commission services or by any service *inter se*) will be taxed separately in the hands of the e-commerce operator.
- (b) The actual supplier is not liable to pay tax on such supplies.

TABLE VI- KEY POINTS IN RELATION TO LEVY & COLLECTION

1	Whether the classification of goods/services is in conformity with Schedules/Notifications?	Applicable tax rate on supply has to be in confirmation with changes in the tax rates by respective notifications.
2	Whether the SAC code/HSN code is as per the law?	Classification change may lead to change in tax rate and possible loss to revenue.
3	Whether Reverse charge tax is paid under 9(4) of the PGST Act 2017 up to 12 th October, 2017?	ITR, Trading account and balance sheet have to be checked for unaccounted expenses on which reverse charge may be applicable.
4	Whether Reverse charge tax on notified supplies under Section 9 (3) of the PGST Act 2017 is duly paid?	ITR, Trading account and balance sheet have to be checked for unaccounted expenses on which reverse charge may be applicable.
5	Whether correct tax rate has been applied on supply of goods or Services.	
6	Whether Input tax credit has been reversed for supplies subject to RCM	
7	Whether Tax under RCM has been discharged in cash?	
8	Whether Profit and Loss account has been checked for any expenses that are liable to RCM.	
9	Whether any Foreign exchange remittance has been shown in profit and loss account which can be linked to import of goods/services from outside India.	

Relevant Advance Ruling in relation to Levy & Collection

1. Where a taxi aggregation service provider was providing a IT services i.e. mobile application and billing related services, to both customers and taxi operators, it would be liable to tax on amounts billed by it on behalf of taxi drivers for service provided through it i.e. Transportation of passengers. **Opt a Cabs (P.) Ltd. AAR, KARNATAKA (2018)**

<http://www.gstcouncil.gov.in/sites/default/files/appelate-authority/OPTACABS.pdf>
http://gstcouncil.gov.in/sites/default/files/ruling-new/Krntk%2014_2018%20OCPL.pdf

Section 9 of the Central Goods and Services Tax Act, 2017, read with section of the Karnataka Goods and Services Tax Act, 2017 - Levy and collection of tax - General (NR) - Applicant operated a taxi aggregation service where in it provided IT services i.e. mobile application and billing related services, to both customers and taxi operators - Applicant was not collecting any charges including trip commission, but only collected service charges for use of IT services - According to applicant billing was done in name of taxi driver who provides said service for particular trip and taxi driver would collect amount from customer on completion of trip - As per Notification No. 17 / 2017 - Central Tax (Rate), dated 28-6-2017, electronic commerce operator shall be liable to pay tax on services provided by a motor cab or maxi cab or motor cycle or radio - taxi, by way of transportation of passengers, if such services are supplied through it - Whether since in instant case services of transportation of passengers were supplied to consumers through applicant, it would be deemed to be supplier of said service and thus, liable to pay tax - Held, yes

Provisions relating to payment of GST on reverse charge basis (RCM) under section 9 of CGST Act are applicable, irrespective of any threshold limit, right from 1-7-2017 to 12-10-2017. Thus, benefit of exemption from payment of tax on RCM as provided under section 9 (4) of GST Act is not applicable from 1-7-2017 as claimed by applicant **Famous Studios Ltd., AAR MAHARASHTRA (2019)**

Notifications/ Circulars relevant for Section 9 of PGST Act

1. Notification no. 65/2017 – CT – dated 15th November, 2017: Exemption from obtaining registration to persons making supplies of services other than supplies specified u/s 9(5) through an e-commerce operator.
<http://gstcouncil.gov.in/sites/default/files/Notifications-dynamic/notfctn-65-central-tax-english.pdf>
2. Circular No. 44/18/2018–GST 2nd May, 2018: Clarification regarding taxability of tenancy rights under GST.
<https://cbic-gst.gov.in/pdf/circularno-44-cgst.pdf>
3. Circular No. 76/50/2018–GST dated 31st December, 2018: Clarification on sale by government departments to un-registered person.
<https://www.cbic.gov.in/resources/htdocs-cbec/gst/Circular-No-76.pdf>

4. Circular No. 130/49/2019-GST dated 31st December, 2019 – clarifying RCM on renting of motor vehicles.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-130.pdf>

INDIAAN

CHAPTER 4

COMPOSITION LEVY

TABLE I- SECTIONS OR RULES:

SR. NO.	Section/ Rule	PGST Act/Rule 2017	Description
1	Section 2(6)	PGST Act	Aggregate turnover
2	Section 10	PGST Act	Composition levy
3	Section 18	PGST Act	Availability of credit in special circumstances
4	Section 140	PGST Act	Transitional Arrangements for Input Tax Credit
5	Rule 3	PGST Rules	Intimation for composition levy
6	Rule 4	PGST Rules	Effective date for composition levy
7	Rule 5	PGST Rule	Conditions & restrictions for Composition Levy
8	Rule 6	PGST Rule	Validity of composition levy
9	Rule 7	PGST Rule	Rate of tax of the composition levy
10	Rule 62	PGST Rule	Form & Manner of submission of statement & monthly return

Composition Levy Scheme under GST law: Composition levy scheme is a very simple, hassle free compliance scheme for small tax payers. It is a voluntary and optional scheme.

Benefits of composition scheme

- Easy compliance as no elaborate accounts and records to be maintained.
- Return for a financial year or a part thereof (After Third amendment 2019 in Rule 62 vide Notification 20/2019-Central Tax, dated 23rd April,2019).
- Quarterly payment of tax.

LEGAL PROVISIONS:

Provisions related to composition levy have been provided under section 10 of the PGST Act, 2017.

1. Turnover:-

As per Section 10(1) of PGST Act, 2017, a registered person whose aggregate turnover in the previous financial year does not exceed **Rs 1.5 crore** (As amended by the **Notification No. 14/2019 – Central Tax, dated 7th March, 2019**) may opt for this scheme. The limit for special category states [(i) Arunachal Pradesh (ii) Uttarakhand (iii) Manipur (iv) Meghalaya (v) Mizoram (vi) Nagaland (vii) Sikkim (viii) Tripura] is Rs 75 lakhs.

TABLE II: AGGREGATE TURNOVER

Time period	Criteria	Notification
01/07/2017 to 12/10/2017	Aggregate turnover in the preceding year not exceeding Rs 75 Lakh (Rs 50 Lakh in 9 Special Category States)	Notification No. 8/2017-Central Tax dated 27 th June, 2017
13/10/2017 to 31/03/2019	Aggregate turnover in the preceding year not exceeding Rs 1 crore (Rs 75 Lakh in Special Category States)	Notification No. 46/2017-Central Tax, dated 13 th October, 2017
01/04/2019 up to present	Aggregate turnover in the preceding year not exceeding Rs 1.5 Crore (Rs 75 Lakh in Special Category States)	Notification No. 14/2019 – Central Tax, dated 7 th March, 2019

Aggregate turnover is computed on all-India basis for a person having same Permanent Account Number (PAN). It is sum of value of all outward supplies falling in the following four categories:

- a) Taxable supplies;
- b) Exempt supplies;
- c) Exports of goods or services or both;
- d) Inter-state supplies.

But excludes

- e) The value of inward supplies on which tax is payable by a person on reverse charge basis;
- f) Taxes including cess paid under GST law.

CBIC vide Order No. 01/2017-Central Tax dated 13th October, 2017 as superseded by **Order No. 01/2019 - Central Tax, dated 1st February, 2019** has clarified the value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is

represented by way of interest or discount, shall not be taken into account while determining the eligibility for composition scheme or for computing the aggregate turnover in order to determine the eligibility for composition scheme.

2. Conditions & restrictions under the scheme:

A person opting for the scheme has to adhere to the following conditions:

- a) Issue bill of supply in the prescribed manner as he is not eligible to issue taxable invoice under GST;
- b) The words “**Composition taxable person, not eligible to collect tax on supplies**” at the top of every bill of supply issued by him;
- c) Pay all taxes on purchases including taxes to be paid on reverse charge basis;
- d) Cannot claim input tax credit of purchases;
- e) Mention the words “Composition Taxable Person” on every notice board or sign board displayed at the prominent place at his every place of business;
- f) Wherever a person, registered under any of the existing laws, and who has opted for the Composition Scheme under GST on migration, he shall not be allowed the composition scheme in case:
 - The goods held in stock by him on the appointed day have been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State.
 - The goods held in stock by him have not been purchased from an unregistered supplier and where purchased, he pays the tax under the reverse charge mechanism.

3. Persons who are not eligible for the scheme:

List of taxable persons who are not eligible for the scheme is as below:

- a) A **casual taxable person** i.e. a person who occasionally undertakes supplies in a State or Union Territory where he has no fixed place of business.
- b) A **non-resident Taxable person** i.e. a person who occasionally under takes supplies but has no fixed place of business or residence in India.
- c) A supplier of services except a person engaged in supply of restaurant service and those as per amended proviso to section 10 of PGST Act 2017.
- d) A person engaged in inter-State supply of goods.
- e) A person engaged in supply of non-taxable goods i.e. goods which are not taxable under GST law.

- f) A person engaged in supply of goods through an Electronic Commerce Operator (ECO) who is required to collect Tax at source under section 52 of the PGST Act.
- g) A person engaged in manufacturing of goods notified under section 10 (2) (e) of the PGST Act during the preceding financial year. Following goods have been notified for which composition scheme is not available.

TABLE III: GOODS NOT ELIGIBLE FOR COMPOSITION SCHEME

S.No.	Classification (Tariff item / Chapter)	Description
1	2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2	2106 90 20	Pan masala
2A	22021010	Aerated Water (Notification No.43/2019-Central Tax dated 30 th September, 2019)
3	24	Tobacco and manufactured tobacco substitutes

TABLE IV- OPTING IN & OUT OF COMPOSITION SCHEME & ITC

OPTION	ITC AVAILMENT
Switching from Normal to Composition-Section 18(4)	Tax payer shall be liable to pay an amount equal to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of such switch over. The balance of input tax credit after payment of such amount, if any lying in the credit ledger shall lapse.

<p>Switching from Composition to Normal - Section 18(1)(c)</p>	<p>When a taxpayer moves out of the composition scheme and enters the main taxation regime, the taxpayer is eligible to avail input tax credit in respect of inputs held in stock, inputs contained in semi-finished and finished goods and on capital goods as on the day immediately preceding the date on which he becomes liable to pay tax under section 9. Input tax credit is available subject to following conditions:</p> <p>a) The stock of inputs, semi-finished goods or finished goods on which input tax credit is claimed are going to be used in making taxable supplies.</p> <p>b) The invoices/documents on the basis of which input tax credit has been claimed should be available.</p> <p>c) The date of invoice should be within 12 months from the Appointed date.</p> <p>d) Credit on capital goods shall be reduced by such percentage points as may be prescribed.</p>
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- Further such person has to furnish a statement containing details of stock including the inward supply of goods received from unregistered persons, held by him on the day preceding the date from which he opts for the scheme, in **FORM GST CMP-03**, with in 90 days (amended by **Notification no. 22/2017 – Central tax dated 17th August, 2017**) or as extended by the Commissioner, of the date from which the option for composition levy is exercised. As per **Order No. 11/2017-CGST dated 21st December, 2017**, the period for intimation of details of stock in FORM GST CMP - 03 was extended till 31st January, 2018.
- A person who is not registered under existing law but applies for fresh registration under Rule 8 of the PGST Rules, 2017 may opt for the scheme by providing necessary information under part B of **FORM GST REG - 01**.
- Any registered person who wants to opt for composition levy has to file an electronic intimation in the **FORM GST CMP-02** prior to the commencement of financial year for which the option to pay tax under composition levy is exercised and also has to furnish a statement in **FORM GST ITC-03** in accordance with the sub rule (4) of Rule 44 of PGST Rules, 2017, within 60 days from the commencement of the relevant financial year.
- A person having a single PAN and registered in more than one State under GST can opt for the scheme, provided he meets all the conditions of the scheme, only if all such registered persons opt for the Composition scheme.

- A registered person cannot choose to opt for the Composition scheme in one state and not in other States.
- Further, an intimation for withdrawal from the scheme or denial of the scheme with respect to any one registered person under the same PAN will be applicable for all such registered persons.

4. Withdrawal from the composition levy scheme and procedure thereafter.

- a) A registered person who intends to withdraw from the scheme has to file an intimation for withdrawal from the scheme in the **FORM GST CMP-04**, before the date of such withdrawal.
- b) A registered person who ceases to satisfy any provision of the scheme has to file an intimation for withdrawal from the scheme in the **FORM GST CMP- 04**, within 7 days of occurrence of such event. After opting out of the scheme, he has to pay tax as normal tax payer and issue tax invoice for every taxable supply made thereafter.
- c) Subsequently he has to forward a statement in **FORM GST ITC-01** containing details of the stock of the inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn. The said statement has to be submitted on the common portal with in 30 days from the date of withdrawal.
- d) He shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax as normal taxpayer under section 9 of the PGST Act, 2017.

TABLE V- EFFECTIVE DATE FOR COMPOSITION LEVY

Situation	Intimation (FORM)	Effective date of composition levy
Person intimates about opting for the scheme either before the Appointed day (01/07/2017) or within 30 days (or as extended) of the Appointed day	FORM CMP-01	The Appointed date
Persons opting for Composition Levy at the time of making application for new registration in the same registration application (Intimation under Rule 3(2))	FORM REG-01 Option to pay tax under section-10 shall be effective from the date fixed under sub-rule (2) or (3) of	Intimation shall be considered only after the grant of registration

	Rule 10	and his option to pay tax under section 10 shall be effective from the effective date of registration
Persons opting for composition after obtaining registration (Intimation under Rule 3(3))	<p>FORM CMP-02</p> <p>Any registered person who opts to pay tax under section 10 prior to the commencement of the financial year for which the option to pay tax under the aforesaid section is exercised and shall furnish the statement in FORM GST ITC-03 in accordance with the provisions of sub-rule (4) of rule 44 within a period of sixty days from the commencement of the relevant financial year.</p>	The beginning of the Financial Year

5. Return to be filed under composition scheme:

Such tax payer does not have to maintain elaborate accounts and records and has to file a simple return:

- a. Quarterly return in FORM GSTR-04
- b. Annual return in GSTR 9A.

However vide **Notification 21/2019- Central Tax dated 23rd April, 2019** it has been notified that composition taxpayers are required to furnish a quarterly statement in **FORM GST CMP-08**, containing the details of payment of self-assessed tax, till the 18th day of the month succeeding such quarter. Further, they have to furnish a return for every financial year in **FORM GSTR-4** on or before the 30th day of April following the end of such financial year.

TABLE VI- MANNER OF SUBMISSION OF RETURN

Notification	Manner of submission of return
Notification No. 45/2017-Central Tax dated 13 th October, 2017	GSTR 4(Quarterly Return)
Notification No. 21/2019 Central Tax dated 23 rd April,2019	CMP 08(Quarterly statement of self-assessed tax) GSTR 4(Return of financial year)

6. Eligibility of supplier of services for composition scheme:

In order to provide relief to taxpayers who were primarily engaged in supply of goods but also had certain supply of services and were therefore not eligible to avail the benefit of composition scheme, following provisions was added in section 10(1), by PGST Amendment Act, 2018 and **supplier of services** was made eligible for composition scheme:

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

Thus, the manufacturer and traders can opt for composition scheme even if they supply services, provided that the value of such service **should not exceed 5 lakh or 10% of turnover in the preceding FY**, whichever is higher.

7. Rate of tax under composition scheme (as per Notification 05/2019- Central Tax, dated 29th January,2019)

TABLE VII- RATE OF TAX UNDER OPTION OF COMPOSITION LEVY

Category of registered persons	Rate of Tax	CGST	SGST
Manufacturers, other than manufacturers of such goods as may be notified by the Government.	half per cent. of the turnover in the State or Union territory.	0.5%	0.5%

Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II (Restaurant & catering services related to food & drink other than alcoholic liquor for human consumption)	two and a half per cent of the turnover in the State or Union territory.	2.5%	2.5%
Any other supplier eligible for composition levy under section 10.	half per cent. of the turnover of taxable supplies of goods and services in the State or Union territory.	0.5%	0.5%

Note: Traders who have opted for composition scheme are required to pay tax only on their taxable supplies while excluding the value of their exempt supplies.

TABLE VIII- ILLUSTRATION

What will be the rate of tax for bakery items supplied where eating place is attached - manufacturer for the purpose of composition levy	Any service by way of serving of food or drinks including by a bakery qualifies under section 10 (1) (b) of PGST Act and hence GST rate of composition levy for the same would be 5%.
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Composition scheme (other than under Section 10):

In order to enlarge the availability of composition scheme for other taxpayers who were otherwise ineligible to opt for the same under section 10 of the PGST Act, 2017, the government has issued **Notification No. 2/2019 - Central Tax Rate dated 7th March,2019:**

TABLE IX- COMPOSITION SCHEME FOR SUPPLIERS WITH AGGREGATE TURNOVER UP TO 50 LAKH

Category	CGST	SGST	Conditions
First supplies of goods or services or both upto an aggregate turnover of fifty lakh rupees made on or after the 1st day of April in any financial year, by a registered person.	3%	3%	1. Supplies are made by a registered person, - (i) whose aggregate turnover in the preceding financial year was fifty lakh rupees or below; (ii) who is not eligible to pay tax under sub-section (1) of section 10 of the said Act; (iii) The registered person shall mention the

Category	CGST	SGST	Conditions
			<p>following words at the top of the bill of supply, namely: - 'taxable person paying tax in terms of notification No. 2/2019-Central Tax (Rate) dated 07.03.2019, not eligible to collect tax on supplies'.</p> <p>iv) The registered person opting to pay central tax at the rate of three percent under this notification shall be liable to pay central tax at the rate of three percent on all outward supplies specified in column (1) notwithstanding any other notification issued under sub-section (1) of section 9 or under section 11 of said Act.</p> <p>v) The registered person opting to pay central tax at the rate of three percent under this notification shall be liable to pay central tax on inward supplies on which he is liable to pay tax under sub-section (3) or, as the case may be, under subsection (4) of section 9 of said Act at the applicable rates.</p> <p>vi) other conditions as specified for the taxpayers opting for composition scheme under section 10 of the PGST Act,2017.</p> <p>Explanation.- “first supplies of goods or services or both” shall, for the purposes of determining eligibility of a person to pay tax under this notification, include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the said Act but for the purpose of determination of tax payable under this notification shall not include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the Act.</p>

It may be noted that the provisions of above notification have been made part of law vide PGST Amendment Act, 2019.

ACTION FOR WRONGLY OPTING THE SCHEME OR FOR CONTRAVENTION OF ANY PROVISION OF THE SCHEME:

- a) In the scenario, when the Proper Officer has reason to believe that the registered person has **wrongly opted for the scheme** or he has **contravened the provisions of the scheme**, then he will seek a reply by issuing a **show cause notice** to such person in the **FORM GST CMP-05**.
- b) This notice is to be replied within 15 days of receipt of the same.
- c) Thereafter within 30 days of receipt of reply, officer has to issue an order in **FORM GST CMP-07**, either accepting the reply or denying the option to pay tax under the scheme.
- d) Subsequently the registered person who has been denied the option to pay tax under the scheme has to forward a statement in **FORM GST ITC-01** containing details of the stock of the inputs and inputs contained in semi- finished or finished goods held in stock by him on the date on which the option is denied.
- e) The said statement has to be submitted on the common portal within 30 days from the date of denial order passed in the **FORM GST CMP-07**.
- f) The delinquent tax payer will be liable to pay the due tax and penalty. However, no adverse action will be taken without following the principles of natural justice.

KEY POINTS:

1. The option of composition scheme has been exercised as per the effective date of levy.
2. The person availing the option should not be a manufacturer of ineligible goods i.e. Ice cream and other edible ice, whether or not containing cocoa, Pan masala, All goods, i.e. Tobacco and manufactured tobacco substitutes, and Aerated Water.
3. Verify that the person does not violate the conditions for eligibility for composition scheme.
4. Verify the aggregate turnover of the preceding financial year and supplies which are to be included to determine the eligibility for scheme.
5. Check that the after opting for composition scheme, the registered person has not violated the conditions in section 10 of PGST Act, 2017 and Rule 3 to 5 of PGST Rules, 2017.
6. Verify the above from bills of supply, books of account and other documents related to Composition dealer.
7. In case of withdrawal from the scheme, check the statement of stock of inputs and inputs contained in semi-finished or finished goods held in stock by the registered person on the date of withdrawal. The same may be tallied with GST ITC-01 which is to be filed within a period of thirty days of withdrawal.

8. Supplies to SEZ from domestic tariff area will be treated as inter - State supply. A person paying tax under composition scheme cannot make inter - State outward supply. Thus, for making supplies to an SEZ unit, a person needs to take registration as a regular taxpayer.
9. Check the reversal on ITC on inputs held, inputs contained in semi-finished goods, finished goods & capital goods while opting for composition levy. Tally the data furnished in FORM GST ITC 03 with available account books.
10. Verify the details given in Annual return FORM GSTR 9A.
11. Verify that no tax has been collected by the composition taxpayer from the buyer.

NOTIFICATIONS:

1. Notification-43/2019 dated 30th September, 2019-Manufacturer of Aerated Water (S.No 2(A), tariff item 2202 10 10) not eligible for composition levy scheme.
<https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-43-central-tax-english-2019.pdf>
2. Notification 20/2019-Central Tax, dated 23rd April, 2019:- Seeks to make Third amendment, 2019 to the CGST Rules (Amendment in Rule 62 - Form and manner of submission of quarterly return by the composition supplier).
<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-20-central-tax-english-2019.pdf>
3. Notification No. 14/2019 – Central Tax dated 07th March, 2019, Seeks to supersede notification No. 08/2017 - Central Tax dated 27.06.2017 in order to extend the limit of threshold of aggregate turnover for availing Composition Scheme u/s 10 of the CGST Act, 2017 to Rs 1.5 crores.
<https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-14-central-tax-english-2019.pdf>
4. Notification 09/2019-Central Tax (Rate), dated 29th March, 2019:- Seeks to amend notification No. 02/2019- Central Tax (Rate) so as to provide for application of Composition rules to persons opting to pay tax under notification no. 2/2019- Central Tax (Rate).
<https://cbic-gst.gov.in/pdf/central-tax-rate/notfctn-9-2019-cgst-rate-english.pdf>
5. Notification No. 05/2019 – Central Tax dated 29th January, 2019: Seeks to amend notification No. 8/2017-Central Tax dated 27.06.2017 so as to align the rates for Composition Scheme with CGST Rules, 2017.
<https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-05-central-tax-english-2019.pdf>
6. Notification 02/2019-Central Tax (Rate), dated 7th March, 2019: To give composition scheme for supplier of services with a tax rate of 6% having annual turnover in preceding year upto Rs 50 lakhs
<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-2-2019-cgst-rate-english.pdf>

7. Notification 01/2018-Central Tax, dated 1st January, 2018: Seeks to further amend notification No. 8/2017 - Central Tax so as to prescribe effective rate of tax under composition scheme for manufacturers and other suppliers.
https://www.cbic.gov.in/resources/htdocs-cbec/gst/Notification-1-2018-central_tax-English.pdf
8. Notification 46/2017-Central Tax, dated 13th October, 2017: Seeks to amend notification No. 8/2017-Central Tax.
<https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-46-cgst-english.pdf>
9. Notification No. 8/2017-Central Tax dated 27th June, 2017: seeks to notify the turnover limit for Composition Levy for CGST as Rs 75 lakh
<https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-8-central-tax-english.pdf>
10. Notification No. 3 /2017 - Central Tax dated 19th June, 2017: Notifying the CGST Rules, 2017 on registration and composition levy.
<https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-3-central-tax-english.pdf>

ORDERS:

1. The CGST (Removal of Difficulties) Order No. 3/2019-Central Tax dated 8th March, 2019: To clarify that a Bill of supply shall be issued by a person paying tax under Notification No. 2/2019 Central Tax (Rate) dated 07th March, 2019.
https://www.cbic.gov.in/resources/htdocs-cbec/gst/ROD3_2019_CT.pdf
2. The CGST (Removal of Difficulties) Order No. 01 / 2019 - Central Tax, dated 1st February, 2019: To remove difficulties in implementing provisions of composition scheme.
https://cbic-gst.gov.in/pdf/ROD1_2019_CT.pdf
3. Order No. 11/2017-CGST dated 21st December, 2017: Extension of time limit for intimation of details in Form GST CMP-03.
<https://www.cbic.gov.in/resources/htdocs-cbec/gst/order11-cgst.pdf>
4. Order No. 05/2017-CGST dated 28th October, 2017: Extension of time limit for intimation of details in FORM GST CMP-03.
<https://www.cbic.gov.in/resources/htdocs-cbec/gst/order5-cgst.pdf>
5. The CGST (Removal of difficulties) Order No. 01/2017-Central Tax dated 13th October, 2017 To remove difficulties in implementing provisions of composition scheme.
<https://www.cbic.gov.in/resources/htdocs-cbec/gst/order1-cgst-central-tax.pdf>
6. Order No. 04/2017-CGST dated 29th September, 2017: Extension of time limit for intimation of details in FORM GST CMP-03.

<https://www.cbic.gov.in/resources/htdocs-cbec/gst/order4-cgst.pdf>

7. Order No. 01/2017-CGST, dated 21st July 2017, Extension of date for filing option for composition scheme.

<http://gstcouncil.gov.in/sites/default/files/Order-dynamic/order1-gst.pdf>

ADVANCE RULINGS:

1. Shyam Singh Champawat, M/s Laxmi Machinery Store (GSTIN: 09AMFPC8542A1ZG), ADVANCE RULING NO: RAJ/AAR/2018-19/33/31.01.2019 (Rajasthan)

CIRCULARS:

1. Circular No. 77/51/2018-GST dated 31st December, 2018: Denial of composition option by tax authorities and effective date thereof.

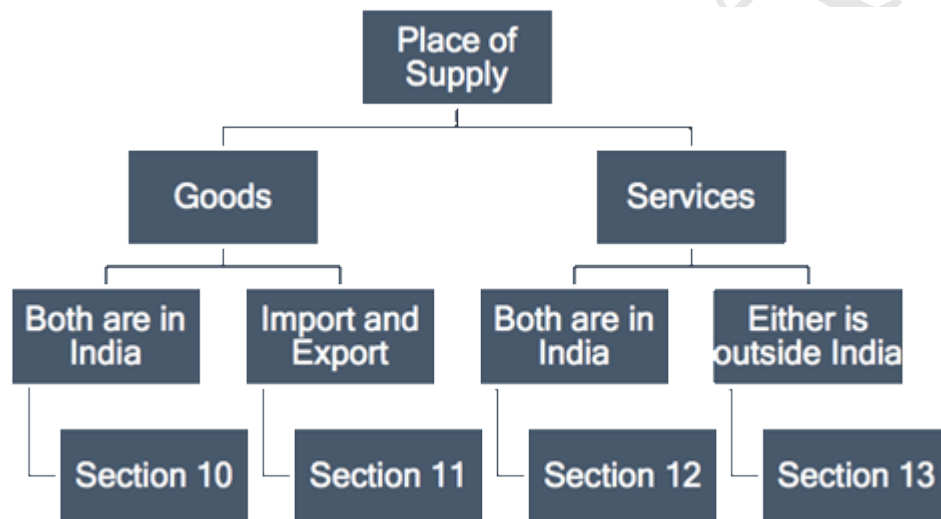
<https://www.cbic.gov.in/resources/htdocs-cbec/gst/Circular-No-77.pdf>

2. Circular No. 97/16/2019-GST dated 5th April, 2019: Clarifying the exercise of option to pay tax under notification No. 2/2019- CT(R) dated 07th March, 2019.

<https://www.cbic.gov.in/resources/htdocs-cbec/gst/circular-cgst-97.pdf>

CHAPTER 5
PLACE OF SUPPLY

GST is a destination based consumption tax, i.e., the goods, services or both will be taxed at the place where they are consumed and not at the origin. So, the State or Union Territory in which the goods or services are consumed will have the right to appropriate GST. Place of supply under GST determines whether the transaction will be treated as intra-State or inter-State and accordingly SGST and CGST (UTGST in case of Union Territory) or IGST will be levied. So the determination of place of supply has direct impact on the tax being appropriated to a particular State or Union Territory. The scenario of the place of supply can easily be understood section wise as depicted hereunder: -



However, it may be noted that there are certain supplies which will always have the character of inter-State supply irrespective of location of the supplier or place of supply. The same have been elaborated in proviso to sub-section (1) of section 8 of IGST Act,2017. Such supplies are detailed hereunder:

- a) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;
- b) goods imported into the territory of India till they cross the customs frontiers of India; or
- c) supplies made to a tourist referred to in section 15 of IGST Act,2017.

(A) PLACE OF SUPPLY OF GOODS

TABLE I- WHERE THERE IS MOVEMENT OF GOODS

Supply	Place of supply
Involves movement of goods, whether by the supplier or the recipient or by any other person	Location of the goods when the movement of goods terminates for delivery to the recipient
Goods are delivered by supplier to recipient on the direction of a third person(whether agent or not) before or during movement of goods, by way of transfer of documents of title to the goods or some other way	It is assumed that the third party has received the goods and the place of supply of such goods will be the principal place of business of third person.

Illustration 1- Intra-State Supply

Mr. A of Ludhiana, Punjab sells 10 TV sets to Mr. B of Mohali, Punjab. The place of supply is Mohali in Punjab. Since, it is the same State CGST & SGST will be charged.

Illustration 2-Inter-State Supply

Mr. C of Mumbai, Maharashtra sells 30 TV sets to Mr. D of Bangalore, Karnataka. The place of supply is Bangalore in Karnataka. Since it is a different State IGST will be charged.

Illustration 3- Bill to Ship to

Mr X in Lucknow buys goods from Mr. Y in Mumbai (Maharashtra). The buyer requests the seller to send the goods to Nagpur (Maharashtra) to Mr Z. In this case, it will be assumed that the buyer in Lucknow has received the goods & IGST will be charged.



Illustration 4- Recipient takes the delivery of goods ex-factory

Mr. Raj of Mumbai, Maharashtra gets an order of 100 TV sets from Sales Heaven Ltd. of Chennai, Tamil Nadu. Sales Heaven mentions that it will arrange its own transportation and take TV sets from Mr. Raj ex-factory. Although the goods are received ex-factory i.e. in Maharashtra by the recipient, the movement of the goods terminates for delivery to the recipient only at Chennai, Tamil Nadu. Irrespective of whether the supplier or the recipient is actually undertaking the movement of goods, the place of supply is the location of goods where movement of goods terminates for delivery to the recipient which is at Chennai. Hence, IGST is applicable.



Illustration 5 – E-commerce sale

Mr. Raj of Mumbai, Maharashtra orders a mobile from Amazon to be delivered to his mother in Lucknow (UP) as a gift. M/s ABC (online seller registered in Gujarat) processes the order and sends the mobile accordingly and Mr. Raj is billed by Amazon. Similar to Illustration 3, it will be assumed that the buyer in Mumbai has received the goods & IGST will be charged.

TABLE II – SUPPLY OF GOODS WITH NO MOVEMENT OF GOODS

Supply	Place of supply
No movement of goods, either by the supplier or the recipient	Location of such goods at the time of the delivery to the recipient(at the time of transfer of ownership)
Goods assembled or installed at site.	Place of such installation or assembly

Illustration 1-A in Mumbai has given his goods on lease basis to B in Delhi. After some time, the lessee B decides to purchase the goods. The supply takes place by way of change of title and no movement is required as the goods are already with the buyer. The place of supply is Delhi, the location of goods at the time of delivery and accordingly IGST will be charged.

Illustration 2- Installation of goods

M/s Strong Iron & Steel Ltd. (Jharkhand) asks M/s SAAS Constructions (West Bengal) to build a blast furnace in their Jharkhand steel plant. Although M/s SAAS is in West Bengal, the goods (blast furnace) is being installed at site in Jharkhand which will be the place of supply and accordingly IGST will be charged.

Table III - GOODS SUPPLIED ON A VESSEL/CONVEYANCE

Supply	Place of supply
Goods supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle.	Location at which such goods are taken on board.

Illustration 1- Travel by Air

Mr. Ajay is travelling from Mumbai to Delhi by air. He purchases coffee and snacks while on the plane. The airlines are registered in both Mumbai and Delhi. The food items were loaded into the plane at Mumbai. So, place of supply becomes Mumbai and accordingly CGST & SGST will be charged.

Illustration 2- Travel by Air- for Business Purpose

Mr. Ajay is travelling from Mumbai to Chennai by air on behalf of his company M/s Ram Gopal and Sons (registered in Bangalore, Karnataka). In the plane he purchases lunch. The airline is registered in Mumbai & Chennai. The food items were loaded into the plane at Mumbai. So, place of supply becomes Mumbai and accordingly CGST & SGST will be charged.

(B) IMPORTS & EXPORTS

The concept of Place of supply is more crucial when the goods are getting exported out of India or being imported inside Indian Territory. The place of supply of goods in these cases are illustrated as under: -

- imported into India will be the location of the importer.
- exported from India shall be the location outside India.

TABLE IV- IMPORT AND EXPORT

Supply	Place of supply	GST
Goods imported into India	Location of the importer	Always IGST on imports
Exported from India	Location outside India	Exports are Zero-rated

Illustration 1- Import

Ms. Malini imports school bags from China for her shop (registered in Mumbai). The place of supply will be Maharashtra and therefore IGST will be charged.

Illustration 2- Export

Ms. Anita (Kolkata) exports Indian perfumes to UK. The place of supply will be outside India and therefore IGST will be leviable.

(C) PLACE OF SUPPLY FOR SERVICES

For understanding Place of Supply for Services the following two concepts are very important to comprehend, namely:

- a) location of supplier of services; and
- b) location of recipient of services.

There is a need to understand these concepts clearly as they form the basis for determining the place of supply in case of supply of services.

TABLE V - LOCATION OF SUPPLIER OF SERVICES

S. No.	Scenario	Location of Supplier of Services
A	Where a supply is made from a place of business for which the registration has been obtained	The location of such place of business
B	Where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere)	The location of such fixed establishment;

C	Where a supply is made from more than one establishment, whether the place of business or fixed establishment,	The location of the establishment most directly concerned with the provision of the supply
D	In absence of such places	The location of the usual place of residence of the supplier.

TABLE VI -LOCATION OF RECIPIENT OF SERVICES

S. No.	Scenario	Location of Recipient of Service
A	Where a supply is received at a place of business for which the registration has been obtained	Such registered place of business
B	Where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere)	Such fixed establishment
C	Where a supply is received at more than one establishment, whether the place of business or fixed establishment	The location of the establishment most directly concerned with the receipt of the supply
D	In absence of such places	The location of the usual place of residence of the recipient;

The transactions in terms of supply of services can be broadly categorized as below:

(A) DOMESTIC TRANSACTIONS: Where both the supplier and recipient are located within India.

a. General Rule:

Place of supply for services supplied to **registered person** except for certain specified services, shall be the **location of the service recipient**.

Place of supply of services supplied to **unregistered person**, except for certain specified services shall be the **location of the recipient where the address on record exists**. However, where the address of unregistered recipient is not available on the record of the supplier, then the place of supply shall be the **location of the supplier of service**.

b. Specific Rule:

i) Immovable Property [Sec 12(3)]:

Place of supply of services provided directly in relation to an immovable property including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or coordination of construction shall be the **location at which the immovable property is located** or intended to be located.

Place of supply of service by way of accommodation in an immovable property including a house boat or any other vessel shall also be location of such immovable property. However, where the immovable property is located outside India the place of supply shall be the location of the recipient.

Illustration: M/s Easy Life Limited, Noida a real estate company intends to redevelop a housing society in Mumbai. In this regard, it procured services of an Architect Mr. Ravi based at Mumbai. Place of supply for the Architect services would be Mumbai as immovable property is located in Mumbai and the supplier is also in Mumbai. Therefore, the transaction will be an intra-State supply and will be subject to levy of CGST & SGST.

Illustration: M/s Easy Life Limited, Noida a real estate company intends to redevelop a housing society in Dubai. In this regard, it procured services of an Architect Mr. Ravi based at Mumbai. Place of supply in this case would be Noida as immovable property is located outside India and therefore the transaction will be an inter-State supply and will be subject to levy of IGST.

ii) Place of supply of Services of restaurant and catering, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery shall be the location where these services are actually performed. [Sec 12 (4)]

Illustration: Mr. A of Delhi hired a Caterer of Ghaziabad to render services in a function at Delhi then the place of supply be at Delhi only.

Illustration: Mr. Shyam, a resident of Patna visits Kolkata for 3 days and during his stay, he went to restaurants, Gym and Men's parlor. Place of supply of all the services is in Kolkata (Place where these services are performed).

iii) Training and Performance Appraisal Services: [Sec 12(5)]

- a) If provided to a registered person, place of supply shall be the location of registered person.
- b) If provided to unregistered person, place of supply shall be the location where such services are performed.

Illustration: M/s ABC Company of Mumbai organized a training session at Lucknow for the employees of XYZ construction Company (registered at Delhi). The place of Supply will be Delhi as the recipient is a registered person and the location of his principal place of business is at Delhi.

Illustration: M/s Consortium Company of Mumbai organized a training session at Lucknow for Mr. A, an individual. The place of Supply will be Uttar Pradesh as recipient of service is unregistered person and the training is being performed at Lucknow.

iv) Admission or entry to an event and services ancillary to organization of such events or amusement park: [Sec 12(6) & (7)]

- a) Place of supply of services for admission or entry to an event shall be the place where such artistic, cultural, entertainment etc. event held.

Illustration: Mr. Shyam, a resident of Patna, buys a ticket of an Aquatic (Water Park) in Kolkata. In this case, place of supply of service of admission is in Kolkata (location of the park).

- b) Place of supply in respect of services ancillary to organization of such events shall be the location of registered person (in case service recipient is registered) otherwise the place where event actually held (in case the service recipient is unregistered). However, where the event is outside India then place of supply shall be the location of such service recipient.

Illustration: M/s XYZ Ltd, a company registered in Kolkata, hires an event management company M/s ABC Ltd. registered at Chennai to organise its AGM at Chennai. In this case, place of supply of Service for the organization of AGM is Kolkata, being the location of Recipient. Location of event is irrelevant in case of a registered recipient. Accordingly, M/s ABC Ltd. will charge IGST on this supply.

Illustration: Mr. Ravi, a resident of Kolkata, hires an event management company M/s ABC Ltd. registered at Chennai to organise his birthday party at Chennai. Mr. Ravi is not registered under GST. In this case, place of supply of service for the organization of birthday party is Chennai, being the location of Event. Accordingly, M/s ABC Ltd. will charge CGST and SGST on this supply.

Illustration: Mr. Ravikant, a resident of Kolkata, hires an event management company M/s ABC Ltd. registered at Chennai to organise his birthday party at Dubai. Mr. Ravikant is not registered under GST. In this case, place of supply of service for the organization of birthday party is Kolkata, being the location of recipient. Accordingly, M/s ABC Ltd. will charge IGST on this supply.

v) Transportation of goods, including by mail or courier: [Sec 12(8)]

- a) Place of supply of services by way of transportation of goods including by way of mail or courier, if provided to registered person, shall be the location of such person. In case provided to unregistered person then place of supply shall be the place where goods are handed over for their transportation.

Illustration: M/s Meteoroid, an e-commerce located in Asansol (West Bengal) contracted FedEx Courier for delivering goods. Meteoroid is registered under GST. FedEx's office is located in Dhanbad (Jharkhand). In this case, Place of supply of courier services is in Asansol, being the location of Recipient. Accordingly, FedEx will charge IGST on this supply.

Illustration: Mr. Mohan, a resident of Asansol (West Bengal) went to Dhanbad (Jharkhand) and from there he couriered a document through FedEx courier. Mr. Mohan is not registered under GST. Office of FedEx is located in Dhanbad (Jharkhand). In this case, Place of supply of courier services is in Dhanbad (Place where the document was handed for transportation).

- b) However, where the goods are being transported outside India, the place of supply shall be the place of destination of such goods.

vi) Passenger transportation service: [Sec 12(9)]

- a) Place of supply of services by way of transportation of passengers, if provided to registered person, shall be the location of such person. In case provided to unregistered person then place of supply shall be the place where the passenger embarks (onboard) on the conveyance for a continuous journey.

Illustration: M/s XYZ Ltd, registered in Kolkata, hires a bus from a transport company M/s ABC Limited, registered in Chennai for a site visit of its officers to Chennai. In this case, place of supply of passenger transport service is Kolkata (location of Recipient) and accordingly IGST will be charged.

Illustration: Mr. Anand, a resident of Patna, visits Kolkata via bus. He begins his journey from Dhanbad (Jharkhand). Mr. Anand is not registered under GST. In this case, place of supply of passenger transport service is Dhanbad, being the place from where Mr. Anand begins the journey.

- b) However, it may be noted that the return journey has to be treated as separate journey even if the the same is booked along with the original journey.

Illustration: Mr. Anand, a resident of Patna, visits Kolkata via flight. He also books the return journey ticket at the same time. Now, for his journey from Patna to Kolkata, the place of supply shall be Patna (Bihar) and for his return journey the place of supply shall be Kolkata.

vii) Services provided on board a conveyance: [Sec 12(10)]

- a) Place of supply of services provided on board a conveyance (i.e. while travelling in bus, train car, aircraft etc.) shall be the first scheduled departure location of that conveyance for the journey.

Illustration: Mr. Anand, a resident of Patna visits Kolkata via Flight. He boards the flight at Mumbai. During the flight, he purchases a movie to watch. In this case, place of supply of Services on board is Mumbai, being the location of 1st scheduled departure of the flight.

viii) Telecommunication services: [Sec 12(11)]

- a) In case of services provided by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, the place of supply shall be the location where the

telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services.

Illustration: M/s You Broadband, Ahmedabad is providing Internet Telecommunication Services to a subscriber in Mumbai from the leased lines installed in Mumbai. Place of supply shall be Mumbai and accordingly IGST shall be chargeable.

- b) In case of mobile connection for telecommunication and internet services provided on post-paid basis, the place of supply shall be the location of billing address of the recipient of services on the record of the supplier of services;
- c) In case of prepaid services for mobile/dish antenna etc. provided through a voucher through a selling agent, reseller, distributor the place of supply shall be the address of agent/distributor selling such prepaid vouchers on the records of supplier (Telecom co./Dish TV service provider).
- d) In case of prepaid services for mobile/dish antenna etc. provided through a voucher by any person to final subscriber, the place of supply shall be the place where such vouchers are sold.

Illustration: Airtel customer of Delhi circle went to Mumbai and recharges his mobile at Mumbai from a local retailer there. Place of supply shall be Mumbai being the place where voucher was sold. CGST and SGST applicable on such transaction.

- e) In case of prepaid services where payment is made by online mode (via internet banking, mobile wallets), place of supply shall be the location of the recipient of services on the record of the supplier of services shall be the place of supply of such services.

ix) Banking & Financial Services and Stock Broking: [Sec 12(12)]

- a) The place of supply of banking and other financial services, including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services.
- b) If the location of service receiver is not available, then place of supply shall be the location of the supplier of services.

x) Insurance Services: [Sec 12(13)]

Place of supply shall be location of service recipient if provided to a registered person. Otherwise place of supply shall be the location of the recipient of services on the records of the supplier of services.

xi) Common Advertisement for Central and State Governments/UTs: [Sec 12(14)]

Place of supply shall be treated in each State or Union Territory in proportion to the amount attributable to services provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

Illustration: An advertisement released by Ministry of Women & Children Health Development – “Beti Bachao, Beti Padahao”. Hello Publicity, New Delhi was hired to advertise the same in various places across India in all the states. As per the contract, states and UTs will bear the 75% costs equally whereas Centre will bear remaining 25%. Hello Publicity to charge CGST and SGST to Central Government and State Government of Delhi as it is located in New Delhi whereas it will charge IGST to other State Governments/UTs as place of supply will be in each State/UT in proportion to the share attributable to them as per the terms of contract.

(B) INTERNATIONAL TRANSACTION: Where either the supplier or recipient is outside India: (Sec 13)

General Rule:

Place of supply, unless otherwise covered by specific rule, shall be the location of service recipient. If the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

Specific Rule:

i) Services by way of work performed on goods made available to supplier of service or to a person acting on behalf of the supplier of service: [Sec 13(3)(a)]

- a) Place of supply shall be the place where goods are made available to supplier of services.
- b) Where such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services.

Illustration: Computer repaired by connecting remotely, place of supply shall be the location of computer (place where computer is kept) where it is being repaired remotely.

- c) However, the above provision is not applicable to goods which are temporarily imported into India for repairs and are exported after repairs without being put to any other use in India, then that which is required for such repairs. Therefore, for such a case general rule shall apply *which will take place of supply out of India i.e.* being the location of service recipient.
- d) Further, vide **Notification No. 04/2019- Integrated Tax dated 30th September, 2019** it has been notified that for Supply of certain research and development services related to pharmaceutical sector, place of supply of services shall be the location of the recipient of services subject to fulfillment of following conditions:
 - Supply of services from the taxable territory are provided as per a contract between the service provider located in taxable territory and service recipient located in non-taxable territory;
 - Such supply of services fulfills all other conditions in the definition of export of services, except sub- clause (iii) provided at clause (6) of Section 2 of IGST Act, 2017.
- e) It may be further noted that vide **Notification No. 02/2020- Integrated Tax dated 26th March, 2020** it has been notified that for Supply of maintenance, repair or overhaul service in respect of aircrafts, aircraft engines and other aircraft components or parts supplied to a person for use in the course or furtherance of business, the place of supply shall be location of the recipient of service.

ii) Place of supply of services which require physical presence of service recipient or a person acting on behalf of service recipient shall be the location where the services are actually performed. (Performance based services) [Sec 13(3)(b)]

Place of Supply determination exactly similar to Sec 12(4)

iii) Services supplied directly in relation to immovable property: [Sec 13(4)]

Place of Supply shall be the place where the immovable property is located or intended to be located.

iv) Service by way of admission to or organization of event etc.: [Sec 13(5)]

Place of supply shall be the place where such event is held.

v) Banking & Financial, Intermediary and Hiring of means of transport: [Sec 13(8)]

- a) Services supplied by banking company to account holders (where accounts mean account bearing interest to the depositor and includes NRE/NRO accounts which means current account, loan accounts not covered here);
- b) Intermediary services (i.e. services proved by agent, brokers etc.);
- c) Services by way of hiring of means of transport, including yacht but excluding aircraft and vessel, up to 1 month.

For the above 3 type of services, place of supply shall be the location of service provider.

vi) Transportation of goods other than by mail or courier: [Sec 13(9)]

- a) Place of supply in respect of transportation of goods other than by mail/courier shall be the destination of goods.
- b) For transportation of goods by mail/courier place of supply shall be the location of service recipient.

vii) Passenger transportation: [Sec 13(10)]

Place of supply shall be the place where the passenger embarks (onboard) on the conveyance for a continuous journey.

viii) Supply of service on board a conveyance: [Sec 13(11)]

Place of supply of services provided on board a conveyance (i.e. while travelling in bus, train car, aircraft etc.) shall be the first scheduled point of departure of that conveyance for the journey.

ix) Online information and database access or retrieval services: [Sec 13(12)]

- a) The place of supply of online information and database access or retrieval services shall be the location of the recipient of services.
- b) The location of person receiving such services shall be deemed in taxable territory if any of the two following conditions are satisfied:
 - The credit card or debit card or any mode of payment through which payment has been made by receiver has been issued in India.
 - The billing address of recipient is in India
 - The IP address of the recipient of services is in India
 - The bank of the recipient of services in which the account used for payment is maintained is in India.
 - The country code of the subscriber identity module card used by the recipient of services is of taxable territory.
 - The location of the fixed land line through which the service is received by the recipient is in the taxable territory.

FAQs on Place of Supply

Q 1. Why is place of supply provisions different in respect of goods and services?

Ans. Goods being tangible do not pose any significant problems for determination of their place of consumption. Services being intangible pose problems w.r.t determination of place of supply mainly due to following factors:

- (i) The manner of delivery of service could be altered easily. For example, telecom service could change from mostly post-paid to mostly pre-paid; billing address could be changed, billers address could be changed, repair or maintenance of software could be changed from onsite to online; banking services earlier required the customer to go to the bank, now the customer could avail service from anywhere;
- (ii) Service provider, service receiver and the service provided may not be ascertainable or may easily be suppressed as nothing tangible moves and there would hardly be a trail;

- (iii) For supplying a service, a fixed location of service provider is not mandatory and even the service recipient may receive service while on the move. The location of billing could be changed overnight;
- (iv) Sometime the same element may flow to more than one location, for example, construction or other services in respect of a railway line, a national highway or a bridge on a river which originate in one state and end in the other state. Similarly, a copy right for distribution and exhibition of film could be assigned for many states in single transaction or an advertisement or a programme is broadcasted across the country at the same time. An airline may issue seasonal tickets, containing say 10 leafs which could be used for travel between any two locations in the country. The card issued by Delhi metro could be used by a person located in Noida, or Delhi or Faridabad, without the Delhi metro being able to distinguish the location or journeys at the time of receipt of payment;
- (v) Services are continuously evolving and would thus continue to pose newer challenges. For example, 15-20 years back no one could have thought of DTH, online information, online banking, online booking of tickets, internet, mobile telecommunication etc.

Q 2. What would be the place of supply where movement of goods is involved?

Ans. The place of supply of goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient. (Section 10 of IGST Act)

Q3. A film star from Mumbai gets his cosmetic surgery done in a Hospital in Delhi. What should be the place of supply?

Ans. The place of supply shall be based on the principle of place of performance and shall be in Delhi. (Section 12(4) of IGST Act) Other such similar services requiring physical presence of natural person (recipient) like restaurant and catering services, personal grooming, fitness, beauty treatment, health services including cosmetic and plastic surgery shall be the location where the services are actually performed.

Q 4 A person in Goa buys shares from a broker in Delhi on NSE (in Mumbai). What will be the place of supply?

Ans. The place of supply shall be the location of the recipient of services on the records of the supplier of services. So Goa shall be the place of supply.

Q 5 . A person from Mumbai goes to Kullu - Manali and takes some services from ICICI Bank in Manali. What will be the place of supply?

Ans. If the service is not linked to the account of person, place of supply shall be Kullu i.e. the location of the supplier of services. However, if the service is linked to the account of the person, the place of supply shall be Mumbai, the location of recipient on the records of the supplier.

Q 6.. Who is an intermediary?

Ans. “Intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.

Q 7. Whether the launch service provided by ANTRIX Corporation qualifies to be considered as export of services?

Ans. In terms of Section 13(9) of IGST Act, 2017, the place of supply of satellite launch service by ANTRIX Corporation to international customers would be outside India and wherever such supply qualifies all conditions specified under Section 2(6) of the IGST Act, 2017, would constitute as export of service and shall be zero rated. Where satellite service was provided to a person in India, the place of supply of satellite launch service would be location of the recipient of services, provided the recipient is registered. In case where the recipient is not registered then place of supply is the place where such goods are handed over for their transportation. **(CBIC Circular No. 02/1/2017-IGST dated 27th September, 2017)**

Q 8. How will the place of supply be determined wherein the goods are supplied from the premises of job worker?

Ans. The principal may supply, from the place of business/premises of a job worker on payment of tax within India. The place of supply would have to be determined in the hands of the principal irrespective of the location of the job worker’s place of business/premises. Illustration: The principal is located in State A, the job worker in State B and the recipient in State C. In case the supply is made from the job worker’s place of business/premises, the invoice will be issued by the supplier (principal) located in State A to the recipient located in State C. The said transaction will be an inter-State supply. In case the recipient is also located in State A, it will be an intra-State supply.

Circulars:

1. Circular No. 2/1/2017-IGST dated 27th September 2017 – clarifying place of supply of satellite launch services by ANTRIX Corporation Ltd.
<https://cbic-gst.gov.in/pdf/circular-antrix.pdf>
2. Circular No. 93/12/2019-GST dated 8th March, 2019 – clarifying Nature of Supply of Priority Sector Lending Certificates (PSLC).
<https://cbic-gst.gov.in/pdf/circular-cgst-93.pdf>
3. Circular No. 103/22/2019-GST dated 28th June, 2019 – clarifying determination of place of supply in case of certain cases.
<https://cbic-gst.gov.in/pdf/circular-cgst-103.pdf>
4. Circular No. 118/37/2019-GST dated 11th October 2019 – clarifying determination of place of supply in case of software/design services related to Electronics Semi-conductor and Design Manufacturing (ESDM) industry.
<https://cbic-gst.gov.in/pdf/circular-cgst-118.pdf>

CHAPTER 6

TIME OF SUPPLY

TABLE I: RELATED SECTIONS OR RULES

Sr. No.	Section/Rule of PGST Act/Rule 2017	CGST/PGST/IGST Act/Rule 2017	Description
1	Section 12	PGST/CGST	Time of supply of goods
2	Section 13	PGST/CGST	Time of Supply of Services.
3	Section 14	PGST/CGST	Change in rate of tax in respect of supply of goods or services.
4	Section 20 of IGST Act, 2017	IGST	Application of provisions of CGST Act.
5	Section 31	PGST/CGST	Tax invoice
6	Rule 47	PGST/CGST	Time limit for issuing tax invoice

LEGAL PROVISIONS:

Time of Supply

In order to calculate and discharge tax liability it is important to know the date when the tax liability arises i.e. the date on which the charging event has occurred. In GST law, it is known as Time of Supply. GST law has provided separate provisions to determine the time of supply of goods and time of supply of services. Sections 12, 13 & 14 of the PGST Act, 2017, deals with the provisions related to time of supply. It may be noted that by virtue of section 20 of the IGST Act, 2017, these provisions, as enshrined in the PGST/CGST Act, 2017, are also applicable to inter-State supplies.

Time of issuance of invoice for supply

As per section 31 of the PGST Act, 2017 an invoice for supply of goods needs to be issued before or at the time of removal of goods for supply to the recipient where the supply involves movement of goods. However, in other cases, invoice needs to be issued before or at the time of delivery of goods or making available goods to the recipient.

Similarly, an invoice for supply of services needs to be issued before or after the provision of service but not later than thirty days from the date of provision of service. Further **Rule 47** of PGST

Rules, 2017 provides that in the case of the taxable supply of services, invoice shall be issued within a period of thirty days from the date of the supply of service.

However, where the supplier of services is an insurer or a banking company or a financial institution, including a non-banking financial company, the said time period is forty five days from the date of the supply of service.

Moreover, where such suppliers make taxable supplies of services to distinct persons as specified in section 25, invoice may be issued before or at the time such supplier records the same in his books of account or before the expiry of the quarter during which the supply was made.

(A) Time of supply of goods (Default Rule)

Earliest of the following dates:

- a) Date of issue of invoice by the supplier. If invoice is not issued, then the last date on which supplier is legally bound to issue the invoice with respect to the supply; or
- b) Date on which supplier receives the payment.

The phrase “the date on which supplier receives the payment” or “the date of receipt of payment” means the date on which payment is entered in books of accounts of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

Section 148 of the PGST Act, 2017, confers powers on the Government (on the recommendation of the GST Council) to notify certain class of registered persons and the special procedures to be followed by them. In exercise of powers conferred by this section, the Government on the recommendations of the GST Council has notified the registered persons (who have not opted for composition levy) as the class of persons who shall pay GST on outward supply of goods at the time of issuance of invoice.

Thus, in respect of supply of goods by registered persons (other than composition taxpayers), the time of supply will be the issue of invoice or the last date by which invoice has to be issued in terms of Section 31. Therefore, suppliers of goods not required to pay GST at the time of receipt of advance in relation to such supply. The entire GST shall be payable only when the invoice is issued for such supply. The special procedure will be applicable even in situations governed by Section 14 of the Act (change in rate). Thus, for the supply of goods effected after 15th November 2017 the date of payment has become immaterial for the purpose of the determination of the time of supply. However, supply of goods effected before this period will be continued to be governed with original default rule. **Notification no. 66/2017-Central Tax dated 15th November 2017 may be referred.**

(B) Time of supply of services (Default Rule)

Earliest of the following dates:

- a) If the invoice is issued within the legally prescribed period under section 31 of the PGST Act, 2017 read with Rule 47 of PGST Rules, 2017 (which is thirty days from the date of the supply of service), then the date of issue of invoice by the supplier or date of receipt of payment, whichever is earlier.
- b) If the invoice is not issued within the legally prescribed period then the date of provision of service or date of receipt of payment, whichever is earlier.
- c) Date on which recipient shows the receipt of service in his books of account, in a case aforesaid two provisions do not apply.

Illustration: Firm 'A' receives an advance of Rs. 2500/- on 29.07.2017 for provision of services worth Rs. 10000/- to be supplied in the month of September, then it is deemed that firm 'A' has made a supply of Rs. 2500/- on 29.07.2017 and tax liability on Rs. 2500/- is to be discharged by 20.08.2017.

It may be noted that although tax is payable on any advance received for a supply of services, however, for the convenience of trade it is provided that if a supplier of taxable services receives an amount up to Rs. 1000/- in excess of the amount indicated on the tax invoice, then the supplier has an option to take the date of issue of invoice in respect of such supply as time of supply.

Illustration: If a supplier has received an amount of Rs. 1500/- against an invoice of Rs.1100/- on 25.07.2017 and date of invoice of next supply to the said recipient is 14.08.2017, then he has option to treat the time of supply w.r.t Rs. 400/- either as 25.07.2017 or 14.08.2017.

(C) Time of supply of goods when tax is to be paid on reverse charge basis

Earliest of the following dates:

- a) Date of receipt of goods;
- b) Date on which payment is entered in the books of accounts of the recipient or the date on which the payment is debited in his bank account, whichever is earlier;
- c) Date immediately following 30 days from the date of issue of invoice or any other legal document in lieu of invoice by the supplier.

However, if it is not possible to determine the time of supply in aforesaid manner then the time of supply is the date of entry of the transaction in the books of accounts of the recipient of supply.

Question	Answer
<p>Mr. A, a registered taxpayer received cotton from Mr. B, an unregistered person (subject to RCM). Mr. B issues invoice on 1st July,2017. Now, determine time of supply of goods in following cases:</p> <p>a) Mr. A received goods on 15th July,2017, payment of which is not made yet.</p> <p>b) Mr. A received goods on 3rd August,2017 and made payment for the same on 4th August, 2017.</p> <p>c) Mr. A made payment on 8th July,2017 and received goods on the same date.</p> <p>d) Mr. A received goods on 10th July 2017 and made payment for the same on 9th July, 2017.</p>	<p>a) 15th July,2017 will be the time of supply of goods. Earliest of the following: Receipt of Goods = 15th July,2017 Date of Payment = NA 30 days from the date of invoice = 30th July,2017.</p> <p>b) 30th July, 2017 will be the time of supply of goods. Earliest of the following: Receipt of Goods = 3rd August, 2017 Date of Payment = 4th August,2017 30 days from the date of invoice = 30th July,2017</p> <p>c) 8th July 2017 will be the time of supply of goods. Earliest of the following: Receipt of Goods = 8th July,2017 Date of Payment = 8th July,2017 30 days from the date of invoice = 30th July,2017</p> <p>d) 9th July,2017 will be the time of supply of goods. Earliest of the following: Receipt of Goods = 10th July,2017 Date of Payment = 9th July,2017 30 days from the date of invoice = 30th July,2017</p>

(D) Time of supply of services when tax is to be paid on reverse charge basis

Earliest of the following dates:

- a) Date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- b) Date immediately following 60 days from the date of issue of invoice or any other legal document in lieu of invoice by the supplier.

However, if it is not possible to determine the time of supply in aforesaid manner then the time of supply is the date of entry of the transaction in the books of accounts of the recipient of supply.

Question	Answer
<p>ABC Ltd., a registered firm received GTA services from PQR Ltd., an unregistered firm. PQR Ltd. issued invoice to ABC Ltd. on 1st July 2017. Determine the time of supply of services:</p> <p>a) ABC Ltd. made the payments to PQR Ltd. on 15th August, 2017.</p> <p>b) ABC Ltd. made the payments to PQR Ltd. on 11th September, 2017.</p>	<p>a) 15th August, 2017 will be the time of supply of services as payment made earlier than the date immediately following 60 days from date of issue of invoice.</p> <p>b) 30th August, 2017 will be the time of supply of services as payment made after the date immediately following 60 days from date of issue of invoice.</p>

(E) Time of supply of services in case of supply by Associated Enterprises located outside India

As per Section 2(12) of the PGST Act, 2017 the term “associated enterprises” has been defined, as under:

“associated enterprises” shall have the same meaning as assigned to in section 92A of the Income-tax Act, 1961.

In this case, the time of supply is the date of entry in the books of account of the recipient or the date of payment, whichever is earlier.

Question	Answer
<p>XYZ Ltd. & MNT Ltd. is associated enterprises. XYZ Ltd., a registered firm received the services of MNT Ltd., a unregistered firm. Determine the time of supply in following cases:</p> <p>a. XYZ Ltd. recorded the liability in the books on 15th July 2017 and payment will be made in the next month.</p> <p>b. XYZ Ltd. made advance payment to MNT Ltd. on 10th July and recorded liability in the books on 15th July 2017.</p>	<p>a. 15th July 2017 will be the time of supply of services as the date of entry in the books is prior to the date of payment.</p> <p>b. 10th July 2017 will be the time of supply of services as the payment is made earlier to the date of entry in the books.</p>

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(F) Time of supply in case of supply of vouchers

Voucher has been defined in the PGST Act, 2017 as an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument.

Vouchers are commonly used for transaction in the Indian economy. A shopkeeper may issue vouchers for specific supply i.e. supply is identifiable at the time of issuance of voucher. In trade parlance, these are known as single purpose vouchers. For example, vouchers for pressure cookers or Television or for spa or haircut. Similarly, a voucher can be general purpose voucher which can be used for multiple purposes. For example, a Rs. 1000/- voucher issued by Shoppers' Stop store can be used for buying any product at any Shoppers' Stop store.

Time of supply is different in case of single purpose voucher and in the case of general purpose voucher. Time of supply in the case of single purpose voucher i.e. case where supply is identifiable at the time of issuance of voucher is date of issue of voucher. However, in all other cases of supply of vouchers, time of supply is date of redemption of voucher.

(G) Time of supply of goods or services (Residual provisions)

In case it is not possible to determine the time of supply under aforesaid provisions, the time of supply is, -

- a) Due date of filing of return, in case where periodical return has to be filed
- b) Date of payment of tax in all other cases.

(H) Time of supply of goods or services related to an addition in the value of supply by way of interest, late fees or penalty

Time of supply related to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which suppliers receives such addition in value. For example a supplier receives consideration in the month of September instead of due date of July and for such delay he is eligible to receive an interest amount of Rs. 1000/- and said amount is received on 15.12.2017. The time of supply of such amount (Rs. 1000/-)

will be the 15.12.2017 i.e. the date on which it is received by the supplier and tax liability on this is to be discharged by 20.01.2018.

Question	Answer
<p>Mr. A, a manufacturer, sold goods to Mr. B, wholesaler, and issued invoice for the sale on 01st August 2018. The time of supply of goods for the following cases:</p> <p>a. Mr. A removes the goods for delivery to Mr. B on 16th August 2018.</p> <p>b. Mr. B collects the goods from premises of Mr. A on 10th August 2018.</p> <p>c. Mr. B made full payment on 26th July 2018.</p>	<p>a. 1st August 2018 is the time of supply of goods i.e. Earlier of the following: Date of Invoice – 1st August 2018 or Date on which invoice is required to be issued – 16th August 2018.</p> <p>b. 1st August 2018 is the time of supply of goods i.e. Earlier of the following: Date of Invoice – 1st August 2018 or Date on which goods is delivered – 10th August 2018.</p> <p>c. 1st August 2018 is the time of supply of goods as the date of payment is immaterial.</p>
<p>ABC Consultancy services issued invoice for services rendered to Mr. P on 5th August 2017. The time of supply in following cases:</p> <p>a. The provisions of services were completed on 1st July 2017.</p> <p>b. The provisions of services were completed on 15th July 2017.</p> <p>c. P made the payment on 3rd August 2017, where provisions of services were remaining to be completed.</p> <p>d. P made the payment on 15th August 2017, where provisions of services were remaining to be completed.</p>	<p>a. 1st July 2017 will be the time of supply of services as invoice is not issued within the time frame of 30 days.</p> <p>b. 5th August 2017 will be the time of supply of services as invoice is issued within the time frame.</p> <p>c. 3rd August 2017 will be the time of supply of services as payment received before invoice date.</p> <p>d. 5th August 2017 will be the time of supply of services as invoice is issued before the completion of provisions of services.</p>

Question	Answer

(I) Time of supply when there is change in rate of tax in respect of supply of goods or services

Where there is a change in rate of tax of supply of goods or services, time of supply has to be determined in the following manner: -

a) Table I: Supply is completed before the change in rate of tax

Invoice issued before /after date of change in tax rate	Payment received before/after date of change in tax rate	Time of supply	Applicable rate of tax
After	After	earliest of the date of invoice or payment	New rate of tax
Before	After	Date of issue of invoice.	Old tax rate
After	Before	Date of receipt of payment	Old tax rate

b) Table II: Supply is completed after the change in rate of tax

Invoice issued before/after date of change in tax rate	Payment received before/after date of change in tax rate	Time of supply	Applicable rate of tax
Before	After	Date of receipt of payment	New rate of tax
Before	Before	Earliest of date of invoice of payment.	Old rate of tax
After	Before	Date of issue of invoice	New rate of tax

However, the special procedure for payment of tax by suppliers of goods (other than composition dealers) notified by Government vide **Notification No. 66/2017-Central Tax dated 15th November, 2017 under section 148 of the CGST Act, 2017**, will continue to govern even in the above situation. In a nutshell, suppliers of goods other than composition dealers will have to pay tax at the time of issue of invoice only even in case of change in the rate of tax.

Date of receipt of Payment in case of change in rate of tax

Normally the date of receipt of payment is the date of credit in the bank account of the recipient of payment or the date on which the payment is entered into his books of account, whichever is earlier. Further, the date of credit in the bank account is relevant if such credit is after four working days from the date of change in rate of tax.

Illustration on change in rate of tax: -

Question	Answer
<p>Mr. A supplied goods to Mr. B on 28th December 2017. The GST rate on goods is changed from 12% to 5% w.e.f. 1st January 2018. Mr. A issued invoice on 28th December 2017 and payment is credited in his bank account on 30th December 2017. What is the time of supply in this case?</p>	<p>Following events have taken place before change in effective rate of tax:</p> <ul style="list-style-type: none"> ➤ Goods Supplied ➤ Invoice Issued ➤ Payment Received <p>Time of supply will be 28th December 2017 as the date of payment is irrelevant for determination of time of supply of goods after 15-11-2017.</p>

(J) Time of supply in case of Composite supply

If the composite supply involves supply of services as principal supply, such composite supply would qualify as supply of services and accordingly the provisions relating to time of supply of services would be applicable. Alternatively, if composite supply involves supply of goods as principal supply, such composite supply would qualify as supply of goods and accordingly, the provisions relating to time of supply of goods would be applicable.

(K) Time of supply in case of mixed supplies

The mixed supply, if involves supply of a service liable to tax at higher rates than any other constituent supplies, such mixed supply would qualify as supply of services and accordingly the provisions relating to time of supply of services would be applicable. Alternatively, the mixed supply, if

involves supply of goods liable to tax at higher rates than any other constituent supplies, such mixed supply would qualify as supply of goods and accordingly the provisions relating to time of supply of goods would be applicable.

Table III: SECTOR SPECIFIC ILLUSTRATIONS

(Real estate FAQ dated 07th May and 14th May, 2019)

Sr. No.	Question	Answer
(a)	At what point of time, the promoter should discharge its tax liability on TDR.	<p>The liability to pay GST on development rights shall arise on the date of completion or first occupation of the project, whichever is earlier.</p> <p>Therefore, promoter shall be liable to pay tax on reverse charge basis, on supply of TDR on or after 01-04-2019, which is attributable to the residential apartments that remain un-booked on the date of issuance of completion certificate, or first occupation of the project.</p>
(b)	At what point of time, the promoter should discharge its tax liability on FSI (including additional FSI).	<p>On FSI received on or after 1.4.2019, the promoter should discharge his tax liability on FSI as under:</p> <p>(i) In case of supply of FSI wherein consideration is in form of construction of commercial or residential apartments, liability to pay tax shall arise on date of issuance of Completion Certificate.</p> <p>(ii) In case of supply of FSI wherein monetary consideration is paid by promoter, liability to pay tax shall arise on date of issuance of Completion Certificate only if such FSI is relatable to construction of residential apartments. However, liability to pay tax shall arise immediately if such FSI is relatable to construction of commercial apartments.</p>

(c)	At what point of time, the promoter should discharge its tax liability on supply of long term lease.	<p>On long term lease received on or after 1.4.2019, the promoter should discharge his tax liability on long term lease as under:</p> <p>In case of supply of long term lease of land for construction of commercial apartments, tax shall be paid by the promoter immediately. However, for construction of residential apartment, liability to pay tax on the upfront amount payable for long term lease shall arise on the date of issuance of Completion Certificate.</p>
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KEY POINTS:

1. Whether tax liability has been discharged as per time of supply of goods and services.(section 12, 13 & 14).
2. Whether in case of supply of goods tax has been discharged on the date of issue of an invoice.
3. The date of payment shall be earlier of date on which payment has been entered into books or credited in the bank.
4. In case of supply of goods, when invoice is not issued, time of supply to be the last date when supplier is legally bound to issue invoice.
5. The time of supply of service is date of issue of invoice or date of receipt of payment, whichever is earlier.
6. In case of service, when invoice is not issued in prescribed time, time of supply to be the date of provision of service or date of receipt of payment, whichever is earlier.
7. In case of supply of goods subject to reverse charge, time of supply shall be earlier of date of receipt of goods or date of payment or the date immediately after 30days from the date of issue of invoice by the supplier.
8. In case of supply of services subject to reverse charge, time of supply shall be earlier of date of payment as entered in the books of account of recipient or date when payment is debited in his bank account or date immediately following 60 days from the date of issue of invoice.
9. Whether the invoice has been issued in accordance with provisions of section 31 of the Act:
10. Invoice in case of supply of goods has to be issued before or at the time of removal of goods for supply to recipient where movement of goods is involved. In other cases, invoice needs to be issued at the time of delivery of goods or making goods available to the recipient.

11. In case of services, invoice needs to be issued before or after the provision of service but not later than 30 days from the provision of service.
12. Whether taxpayer has correctly determined time of supply in case of supply of vouchers.
13. Whether taxpayer has received any interest, late fee or penalty for delayed payment of considerations and whether time of supply has been correctly determined.
14. Whether there has been any change in rate of tax for goods/services being supplied by taxpayer and whether correct tax rate has been applied as per Section 14.
15. Whether taxpayer is engaged in any composite or mixed supply and whether time of supply has been correctly determined.

CIRCULARS/NOTIFICATIONS/FAQs OF TIME OF SUPPLY:-

1. **Notification no. 40/2017-Central Tax dated 13th October, 2017:-** Seeks to make payment of tax on issuance of invoice by registered persons having aggregate turnover less than Rs 1.5 crores.
<https://cbic-gst.gov.in/pdf/central-tax-rate/notfctn-40-cgst-rate-english.pdf>
2. **Notification no. 66/2017-Central Tax dated 15th November, 2017:-** Seeks to exempt all taxpayers from payment of tax on advances received in case of supply of goods
<http://gstcouncil.gov.in/sites/default/files/Notifications-dynamic/notfctn-66-central-tax-english.pdf>
3. **Notification 04/2018-Central Tax (Rate) , dated 25th January, 2018:-** Seeks to provide special procedure with respect to payment of tax by registered person supplying service by way of construction against transfer of development right and vice versa.
<http://gstcouncil.gov.in/sites/default/files/Notifications-2018/notfctn-04-2018-cgst-rate-english.pdf>
4. **Notification No- 04/2019- Central Tax dated 29th March, 2019:-** Seeks to amend notification No. 12/2017- Central Tax (Rate) so as to exempt certain services as recommended by Goods and Services Tax Council for real estate sector.
<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-4-2019-cgst-rate-english.pdf?jsessionid=EB7AB70EC0F7DB774CC83ADEEEEC4C264>
5. **Notification No- 06/2019- Central Tax dated 29th March, 2019:** Seeks to notify certain class of persons by exercising powers conferred under section 148 of PGST/CGST Act, 2017.
<https://cbic-gst.gov.in/pdf/central-tax-rate/notfctn-6-2019-cgst-rate-english.pdf>
6. **FAQs on real estate, F. No. 354/32/2019-TRU, 7th May 2019.**
<https://www.cbic.gov.in/resources//htdocs-cbec/gst/FAQ-Real-estate-sector-0705.pdf>

7. **FAQs (Part II) on real estate, F. No. 354/32/2019-TRU, 14th May 2019**

[https://www.cbic.gov.in/resources//htdocs-cbec/gst/FAQ\(II\)-Real-estate-sector-1405.pdf](https://www.cbic.gov.in/resources//htdocs-cbec/gst/FAQ(II)-Real-estate-sector-1405.pdf)

INDIAAN

CHAPTER-7

VALUATION

TABLE I- RELEVANT SECTIONS AND RULES

Sr. No.	Section or Rule (PGST)	Description
1.	SECTION -2(31)	Consideration
2.	SECTION-15	Value of Taxable Supply
3.	RULE 27	Value of supply of goods or services where the consideration is not wholly in money
4.	RULE 28	Value of supply of goods or service or both between distinct or related persons, other than through an agent
5.	RULE 29	Value of supply of goods made or received through an agent
6.	RULE 30	Value of supply of goods or services or both based on cost
7.	RULE 31	Residual method for determination of value of supply of goods or services or both
8.	RULE 31-A	Value of supply in case lottery, betting, gambling & horse racing
9.	RULE 32	Determination of value in respect of certain supplies
10.	RULE 33	Value of supply of services in case of pure agent
11.	RULE 34	Rate of exchange of currency, other than Indian rupees, for determination of value
12.	RULE 35	Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax

As per clause (31) of section 2 of the PGST Act, "**Consideration**" in relation to the supply of goods or services or both includes-

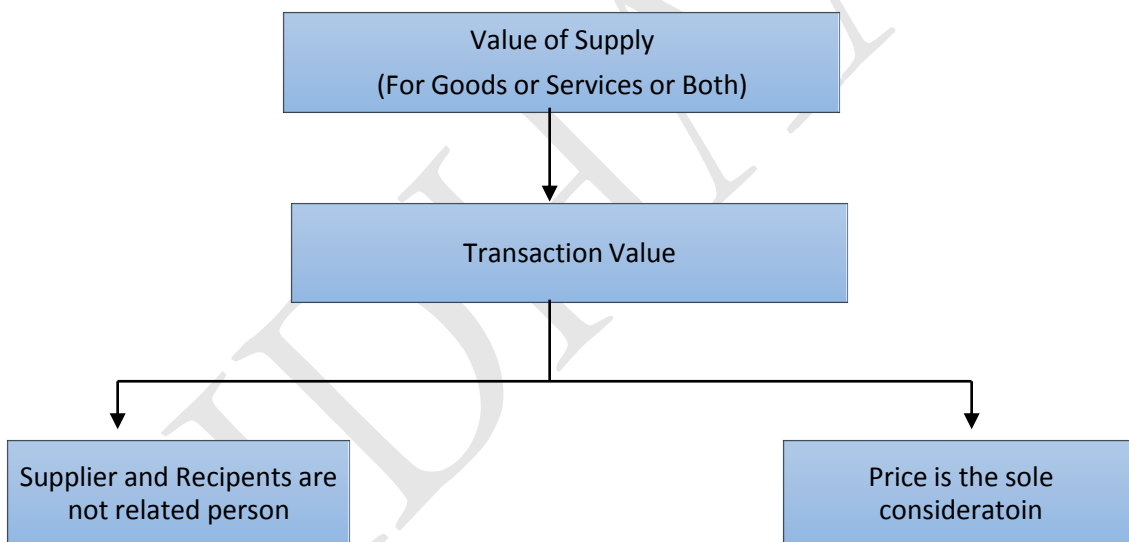
(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or [a] State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or [a] State Government:

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

INTRODUCTION:

Valuation is one of the key attributes of taxation framework. It provides the base on which the edifice of tax is established. It is therefore essential that supply of goods and services is valued correctly taking into account various facts associated with valuation such as terms of contract, nature of relationship between parties, any special consideration flowing etc.



Section 15(1) of the PGST Act,2017 encapsulates the provision for valuation and provides that,

“Transaction value ” is the price actually paid or payable for the supply of goods or services or both where the supplier and the recipient of the supply are **not related** and the **price is the sole consideration** for the supply. Contract price is normally co-terminus with 'transaction value' and that is the basis for computing tax. However, where the price is influenced by factors like relationship of parties or where certain transactions are deemed to be supply, which do not have a price, the value has to be determined in accordance with the GST Valuation Rules.

It may be noted that as per proviso to Sec. 5 (1) of IGST Act, 2017 valuation of imported goods will be governed by Customs Act, 1962. However, valuation of import of services will be governed by section 15 of the PGST Act, 2017 read with rules there under.

Section-15(2):

Inclusions in the value of Supply:

- a) Any Taxes, Duties, Cesses, Charges, Fees levied under any other law other than IGST, CGST, PGST and compensation cess, if any charged separately by the supplier. This implies that any other levies, taxes, duties, cesses even though having the backing of a statute would be included in the value of supply of goods or services under GST. However, as noted above, taxes or cesses levied under GST statute need not be included in valuation of such supply. For example in case of supply of aerated beverages where the tax rate is 28%, the beverage having the price of Rs.100, the compensation cess @ 12 % shall be levied on Rs.100 only and not on Rs.128 (100+ 28).

Note: As per **Notification No.31/2019 Central tax dated 28th June 2019**, the Rule 32A has been inserted as per which value of supply of goods or services or both on which Kerala Flood Cess is applicable under Clause 14 of the Kerala Finance Bill, 2019 shall be deemed to be the value determined in terms of Section 15 of the Act, but shall not include the said cess.

- b) The expense if any incurred by the recipient on behalf of the supplier and not included in the price paid or payable by the recipient for the supply of such services or goods.

Note: As per **Circular No. 47/21/2018-GST dated 8th June, 2018** clarification has been given that if the contract between OEM and component manufacturer was for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis, the amortised cost of such moulds/dies shall be added to the value of the components.

- c) Incidental expenses if any incurred by the supplier to make the goods/service available to the recipient before or at the time of delivery of goods to the supplier. Ex: Packaging charges, Commission etc.

Illustration: Mr. Mohan located in Manipal purchases 10,000 Hero ink pens worth 4,00,000 from Lekhana Wholesalers located in Bhopal. Mr. Mohan's wife is an employee in Lekhana Wholesalers. The price of each Hero pen in the open market is 52. The supplier additionally charges `5,000 for delivering the goods to the recipient's place of business.

Ans. Mr. Mohan and Lekhana Wholesalers would not be treated as related persons merely because the spouse of the recipient is an employee of the supplier, although such spouse and the supplier would be treated as related persons. Therefore, the transaction value will be accepted as the value of the supply. The transaction value includes incidental expenses incurred by the supplier in respect of the supply up to the time of delivery of goods to the recipient. This means, the transaction value will be: 4,05,000 (i.e., 4,00,000 + 5,000).

- d) Interest, Penalty, Late fees if any charged by the Supplier from the recipient for delayed payment of consideration.

It is a normal business practice to provide credit period to the recipient for payment of any supply. Such credit period is extended with the condition that in case of failure by recipient to adhere to the said time period there would be levy of interest, penalty etc, then such interest, penalty is to be included in the value of supply.

Illustration: X supplied goods to P on 01.09.2017 with two months' credit. The value of goods supplied is Rs 10 lakhs and GST charged is Rs.1 lakh. The amount is paid on 01.01.2018 along with interest at 18% for the period 01.11.2017 to 31.12.2017 i.e. Rs.33,000/-. The transaction value of supply of goods shall be 10,33,000/-

- e) Subsidies directly linked to the price of the product other than subsidies given by Central Government and State Government.

Illustration: Mr. XYZ supplies biscuits to the Government School for Rs 10 lacs. The support provided by the State Government in the form of subsidy is Rs 1 lac and subsidy provided by the trade association is Rs 50,000/-. Here the transaction value will be Rs 10,50,000/- The subsidy provided by the Government will not be included in the transaction value.

Section - 15 (3) :

Discounts like trade discount, quantity discount etc. are part of the normal trade and commerce. Therefore, pre-supply discounts i.e. discounts recorded in the invoice have been allowed to be excluded while determining the taxable value. However, discounts provided after the supply can also be excluded while determining the taxable value provided two conditions are met, namely –

- a) Discount is established in terms of a pre supply agreement between the supplier and the recipient and such discount is linked to relevant invoices.
- b) Input tax credit attributable to such discount has been reversed by the recipient.

Illustration: M/s XYZ engaged into a contract with M/s PQR Ltd. to supply cement bags (Rs 300 per bag). As per the terms of the agreement, if M/s PQR Ltd. purchases more than 300 bags, discount of 20% will be given per bag for all of the purchase. The ITC impact shall be reversed by the recipient as per the table below.

TABLE II:ILLUSTRATION

Date of Purchase	Quantity	Price Charged	GST Paid	Revised Price	Discount	ITC Impact
1/11/2017	125	37,500/- (125*300)	3750	30,000	7,500	750
5/12/2017	75	22,500/- (75*300)	2250	18,000	4,500	450
18/1/2017	100	30,000/- (100*300)	3000	24,000	6,000	600
2/2/2017	150	36000 (150*240)	3600	-	-	-

Section-15(5): It focuses on the definition of 'related persons' for the purpose of Valuation of Supply. The following are “related persons”:

(a) person shall be deemed to be "related persons" if-

- such persons are officers or directors of one another's businesses;
- such persons are legally recognized partners in business;
- such persons are employer and employee;
- any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;
- one of them directly or indirectly controls the other;
- both of them are directly or indirectly controlled by a third person;
- together they directly or indirectly control a third person; or
- they are members of the same family.

(b) the term “person” also includes legal persons;

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

The valuation in such related person cases is provided under rule 28, which is discussed below.

Rule - 28 : Value of supply between distinct and related persons (excluding Agents).

As per the Act “distinct persons” is given under sub-section (4) & (5) of section 25 which is;

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

(5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishment of distinct person for the purpose of this act.”

In such cases of supply between distinct and related persons (excluding Agents), following values have to be taken sequentially to determine the taxable value:

- Open Market Value;
- Value of supply of like kind and quality;
- Value of supply based on cost i.e. cost of supply plus 10% mark-up;
- Value of supply determined by using reasonable means consistent with principles and general provisions of GST law. (Best Judgement method)

However, **if the recipient is eligible for full input tax credit**, the invoice value will be deemed to be the open market value. This basically implies that the valuation of supply between related or distinct persons cannot be questioned where the recipient is eligible to avail full input tax credit of the tax charged on such supply. It has also been provided that where the goods being supplied are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to 90% of the price charged for the supply of goods of like kind and quality by the recipient to his unrelated customer.

OTHER RELEVANT RULES:

Rule 27 of PGST Rules, 2017

In some cases, where consideration for a supply is not solely in money, taxable value has to be determined as per the prescribed rules. In such cases following values have to be taken sequentially to determine the taxable value: -

- a) Open Market Value of such supply;
- b) Total money value of the supply i.e. monetary consideration plus money value of the non-monetary consideration;
- c) Value of supply of like kind and quality;
- d) Value of supply based on cost i.e. cost of supply plus 10% mark-up;
- e) Value of supply determined by using reasonable means consistent with principles & general provisions of GST law. (Best Judgement method).

Open Market Value(OMV) means the **full value in money** excluding taxes under GST laws, payable by a person to obtain such supply at the time when supply being valued is made, provided such supply is between unrelated persons and price is the sole consideration for such supply.

Supply of like kind & quality means any other supply made under similar circumstances that is **same or closely resembles** in respect of characteristics, quality, quantity, functionality, reputation to the supply being valued.

Illustration:

- a) Where a new phone is supplied for Rs. 20000/- along with the exchange of an old phone and if the price of the new phone without exchange is Rs.24000/-, the open market value of the new phone is Rs 24000/-.
- b) Where a laptop is supplied for Rs. 40000/- along with a barter of printer that is manufactured by the recipient and the value of the printer known at the time of supply is Rs. 4000/- but the open market value of the laptop is not known, the value of the supply of laptop is Rs. 44000/-.

Rule-29: Value of supply of goods made or received through an agent

- a) **Open market value of goods** being supplied, or, at the option of the supplier, 90% of the price charged for the supply of goods of like kind and quality by the recipient to his unrelated customer.

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

- b) In case value cannot be determined under (a) then following values have to be taken sequentially to determine the taxable value: -

- Value of supply based on cost i.e. cost of supply plus 10% mark-up;
- Value of supply determined by using reasonable means consistent with principles & general provisions of GST law. (Best Judgement method).

Value of supply in case of a del-credere agent (DCA):

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

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

If the DCA being an agent under Para 3 of Schedule I of the PGST/CGST Act, the temporary short-term transaction based credit being provided by DCA to the buyer no longer retains its character of an independent supply and is subsumed in the supply of the goods by the DCA to the recipient. The activity of extension of credit by the DCA to the recipient would not be considered as a separate supply as it is in the context of the supply of goods made by the DCA to the recipient. Therefore, the value of the interest charged for such credit would be required to be included in the value of supply of goods by DCA to the recipient as per section 15(2)(d) of the PGST/CGST Act. **(CBIC Circular No. 73/47/2018- GST dated 5th November, 2018)**

Rule 30: Value of supply of goods or services or both based on cost. This rule is to be applied where the value is not determined under preceding rules. Value stated as 110% of Cost of Production or Cost of acquisition of such goods or Cost of provision of such service. Here the crucial point is to determine the cost of production or cost of acquisition or cost of provisioning. In this regard it would be helpful if the cost sheet is obtained from the taxpayer detailing the various expenses that are part of the cost. However, where serious doubts persist about the veracity of cost data, it would be fruitful to obtain a CAS-4 report from a cost auditor

Rule 31: Residual method for determination of value of supply of goods or services or both. If in case value cannot be determined under rules 27 to 30, then, value will be determined using reasonable means consistent with the principles and general provisions of section 15. However, in *case of Services instead of Rule 30, Rule 31 can be directly applied.*

Rule - 31 - A: Value of supply in case of lottery, betting, gambling and horse racing

Valuation in the case of supply of lottery

Originally, value of supply of lottery was to be 100/112 of the face value or the price notified in the Official Gazette by the organizing State, whichever is higher, in case of lottery run by State Government and 100/128 of the face value or the price notified in the Official Gazette by the organizing State, whichever is higher, in case of lottery authorized by State Government as issued by **Notification No. 3/2018-CT dated 23rd January, 2018**. However, as per the recent **Notification No. 1/2020-Central Tax (Rate) dated 21st February, 2020 effective from 1st March, 2020**, there is no distinction of tax rate for lottery authorized by State Government and lottery run by State Government for the purpose of taxability and, hence, the standard rate of 28% shall apply.

Further, the value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be 100% of the face value of the bet or the amount paid into the totalizator. The prize money shall not be deducted for the purposes of valuation.

Rule 32: Determination of value in respect of few specific supplies

Methods to determine Taxable value of following five specific supplies have also been prescribed under valuation Rules. These can be used by the supplier if he so desires.

- a) Purchase or sale of foreign currency including money changing;
- b) Booking of tickets for air travel by an air travel agent;
- c) Life insurance business;
- d) Value of supply of Second hand goods and value of goods repossessed from a defaulting borrower
- e) Value of redeemable vouchers/Stamps/Coupons/tokens.

The special provisions related to determination of these supplies are as below :-

(A) Special provision related to determination of value of service of purchase or sale of foreign currency including money changing:

Option-1

Case 1: Transaction where one of the currencies exchanged is Indian Rupees: Taxable value is difference between buying rate or selling rate of currency and RBI reference rate for that currency at the time of exchange multiplied by total units of foreign currency. However, if RBI reference rate for a currency is not available then taxable value is 1% of the gross amount of Indian Rupees provided/received by the person changing the money.

Illustration: On 20th September 2018, Mr. A converted USD 100 into INR 6,500 (INR 65 per USD). RBI's reference rate at the time of exchange was Rs. 64. Now the value of supply will be: $(65-64)*100 = \text{INR } 100$. GST will be levied on INR 100. If the RBI reference rate for a currency is not available the value shall be 1% of the gross amount of INR provided or received by the person who is changing the money.

Case 2: Transaction where neither of the currencies exchanged is Indian Rupees: Taxable value will be 1% of the lesser of the two amounts the person changing the money would have received by converting (at RBI reference rate) any of the two currencies in Indian Rupees.

Illustration: USD 9000 is converted into 4500 POUNDS. RBI reference rate at that time for USD is INR 63 per dollar, and INR 82 per POUND. In this case, neither of the currencies exchanged is Indian Rupee.

The value of supply is determined as 1% of the least amount on converting to INR. That is,

1. US Dollar converted into Indian Rupees = $9000\$ * 63 = 5,67,000$
2. UK Pound converted into Indian Rupees = $\text{£}4500 * 82 = 3,69,000$

Value of taxable service = $1\% * 3,69,000 = 3,690/-$

Option-2

The person supplying the service may also exercise the following option to ascertain the taxable value. However once opted, then he cannot withdraw during the remaining part of the financial year:

- One percent of the gross amount of currency exchanged for an amount up to one lakh rupees, subject to minimum amount of two hundred and fifty rupees;
- One thousand rupees and half of a percent of the gross amount of currency exchanged for an amount exceeding one lakh rupees and up to ten lakh rupees;
- Five thousand rupees and one tenth of a percent of the gross amount of currency exchanged for an amount exceeding ten lakhs rupees subject to a maximum amount of sixty thousand rupees.

(B) Special provision related to determination of value of service of booking of tickets for air travel by an air travel agent:

Taxable value is 5% of basic fare in case of domestic travel and 10% of basic fare in case of international travel. Basic fare means that part of the air fare on which commission is normally

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

(C) Special provision related to determination of value of service in relation to life Insurance business:

Taxable value varies with nature of insurance policy. The details are as follows:

Where policy has dual benefits of risk coverage and investment – Taxable value is gross premium charged less amount allocated for investments or savings if such allocation is intimated to the policy holder at the time of collection of premium.

Illustration: If the gross premium is Rs.60,000, of which Rs. 55,000 is invested in funds, then the value of supply shall be Rs. 5,000.

Single premium annuity policy where allocation for investments and savings is not intimated to the policy holder – taxable value is ten percent of the single premium charged from the policy holder.

Other cases- Twenty five percent of premium charged from the policy holder in the first year and twelve and a half percent of premium charged for subsequent years.

However, where insurance policy has benefit of risk coverage only, then taxable value is entire premium charged from the policy holder.

(D) Special provision related to determination of value of second hand goods:

The taxable value of supply of second hand goods i.e. used goods as such or after such minor processing which does not change the nature of goods shall be the difference between the purchase price and the selling price, provided no input tax credit has been availed on purchase of such goods. However, if the selling price is less than purchase price, that negative value will be ignored. Persons who purchase second hand goods after payment of tax to supplier of such goods will be governed by this valuation rule only when they do not avail input tax credit on such input supply. If input tax credit is availed, then such supply will be governed by normal GST valuation.

Notification No.10/2017-Central Tax (Rate) New Delhi, dated 28th June, 2017 exempts intra-State supplies of second hand goods received by a registered person, dealing in buying and selling of second hand goods and who pays the central tax on the value of outward supply of such second hand goods as determined under sub-rule (5) of rule 32 of the CGST/PGST Rules, 2017, from any unregistered supplier, from the whole of the central tax levied under the CGST/PGST Act, 2017.

Similar exemptions is also there under PGST Act,2017. Similar notification has not been issued under IGST Act as there is requirement for mandatory registration in case of inter-State supplies of goods. Thus in case of inter-State supply, there cannot be any supply from an unregistered person.

Illustration: For instance, M/s First Source Ltd, which deals in buying and selling of second hand cars, purchases a second hand Maruti Celerio Car of March, 2018 make (Original price Rs. 5 lakh) for Rs. 3 lakhs from an unregistered person and sells the same after minor refurbishing in July, 2018 for Rs. 3,50,000/-. The supply of the car to the company for Rs. 3 lakh shall be exempted and the supply of the same by the company to its customer for Rs. 3.5 lakh shall be taxed and GST shall be levied. The value for GST purpose shall be Rs. 50000/-, i.e. the difference between the selling and the purchase price of the company.

In case any other value is added by way of repair, refurbishing, reconditioning etc., the same shall also be added to the value of goods and be part of the margin. If margin scheme is opted for a transaction of second hand goods, the person selling the car to the company shall not issue any taxable invoice and the company purchasing the car shall not claim any ITC.

(E) Value of supply of goods repossessed from a defaulting borrower:

If the defaulting borrower is not a registered person, the purchase value will be purchase price in the hands of such borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and date of disposal by the person making such repossession. However, if the defaulting borrower is registered, the repossessing lender agency will discharge GST at the transaction value.

(F) Special provisions related to determination of value of redeemable vouchers/stamps/coupons/tokens:

The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods or services or both shall be equal to the money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.

Illustration: Mr. X had been provided a gift voucher by M/s XYZ Ltd. which was redeemable against purchase of a wallet worth Rs. 500 from XYZ Store. Here, the valuation of voucher shall be the redemption value i.e. of Rs. 500.

(G) Valuation of certain works contract services:

Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. In case of supply of service mentioned above, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

“Total amount” means the sum total of,

- a) consideration charged for aforesaid service; and
- b) amount charged for transfer of land or undivided share of land, as the case may be

How to determine value of construction services provided by the promoter to land owner in lieu of transfer of development rights, when land owner is not registered?

As per FAQs (Part II) on real estate- reg. dated 14th May 2019 Value of construction services provided by the promoter to land owner in such cases shall be determined based on the total amount charged by the promoter for similar apartments in the project from independent buyers, other than the land owner, nearest to the date on which such development right etc. is transferred to the promoter, less the value of transfer of land, if any.

Rule-33: Value of supply of services in case of a Pure Agent

Subject to fulfilment of certain conditions, the expenditure and costs incurred by the supplier as a pure agent of the recipient of supply of service has to be excluded from the value of supply.

Illustration: Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to Registrar of the Companies. The fees charged by the Registrar of the companies registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

RULE 34: Rate of exchange of currency, other than Indian rupees, for determination of value.

The rate of exchange for determination of value of taxable goods or services or both shall be the applicable RBI reference rate for that currency on the date of time of supply as determined in terms of section 12 or section 13 of the PGST Act, 2017

RULE 35: Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax.

Where the value of supply is inclusive of GST, the tax amount shall be determined in the following manner:

Tax amount = (Value inclusive of taxes X GST tax rate in %)/(100+ sum of GST tax rates in %)

Illustration: If the value inclusive of tax is Rs. 100/- and applicable GST tax rate is 18% then. Tax amount = $(100 \times 18) / (100 + 18) = 1800 / 118 = \text{Rs. } 15.25$.

ADVANCE RULINGS:

HP India Sales Pvt. Ltd. – 2018, Order No. GST-ARA-38/2017-18/B-45, dtd. 8 June, 2018 : Electro Ink supplied with consumables being a mixed supply with the nature of supply as continuous supply for a single price, therefore, value of supply of goods as per Section 15 of CGST, 2017, shall be the transaction value as reflected in the invoice issued by the applicant under Section-31(4) ibid.

http://gstcouncil.gov.in/sites/default/files/ruling-new/Maha_ARA-38_03.06.18%20_HP.pdf

CIRCULARS:

1. Circular 47/21/2018 dated 8th June, 2018: Clarification regarding Free of Cost supplies by OEMs to Component manufacturers.
https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_No.47.pdf
2. Circular No. 73/47/2018- GST dated 5th November, 2018: clarifying the Scope of principal and agent relationship under Schedule I of CGST/PGST Act, 2017 in the context of del-credere agent.
<https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular-No-73.pdf>
3. Circular No. 86/05/2019- GST dated 1st January, 2019 – clarifying valuation of Services of Business Facilitator (BF) or a Business Correspondent (BC) to Banking Company.
<https://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-86.pdf>
4. Circular No. 92/11/2019-GST dated 7th March, 2019 – clarifying treatment of sales promotion schemes under GST.
<https://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-92.pdf>
5. Circular No. 102/21/2019-GST dated 28th June, 2019 – clarifying applicability of GST on additional / penal interest.

<https://cbic-gst.gov.in/pdf/Corrigendum-Circular-102-21-2019.pdf>

6. Circular No. 115/34/2019-GST dated 11th October 2019 –clarifying GST on Airport levies.

<https://cbic-gst.gov.in/pdf/circular-cgst-115.pdf>

Flyer: Flyer number- 29 and 30(issued by CBIC)

KEY POINTS:

1. Whether the transaction value is in accordance with the terms of the contract?
2. Whether the discounts allowed are in accordance with regular practice of the taxpayer and the purchaser has paid the sum originally charged less the discount?
3. Whether any amount, that the supplier is liable to pay but incurred by the purchaser has been included in the value of supply?
4. Whether interest or late fee or penalty for delayed payment of any consideration for any supply collected from the purchaser is included in the value of supply?
5. Whether there are supporting documents for the credit notes issued for supplies made?
6. Whether there are supporting documents for the debit notes issued for supplies made?
7. Whether terms of contract detail any consideration flowing from the third party?
8. Whether taxpayer has engaged in any supplies to related persons as defined in section 15? If so, check whether there is significant variation in the value in comparison to similar transactions with unrelated buyers.
9. Whether taxpayer has made any supplies where money is not the sole consideration?
10. Whether any exchange offer or scheme has been offered by the tax payer?

CHAPTER - 8

INPUT TAX CREDIT

TABLE I- RELEVANT PROVISIONS – DEFINITIONS

Sr. No.	Section (PGST Act,2017)	Particulars
1	Sec 2(19)	<p>Meaning of term 'capital goods'</p> <p>means goods ,the value of which is capitalized in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;</p>
2	Sec 2(59)	<p>Meaning of term 'input'</p> <p>means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;</p>
3	Sec 2(60)	<p>Meaning of term 'input service'</p> <p>means any service used or intended to be used by a supplier in the course or furtherance of business ;</p>
4	Sec 2(61)	<p>Meaning of term 'input service distributor'</p> <p>means an office of the supplier of goods or service or both which receives tax invoices issued under Section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax ,state tax ,integrated tax or union territory tax paid on the said services to a supplier of taxable goods or services or both having the same permanent account number as that of the said office</p>

5	Sec 2(62)	<p style="text-align: center;">Meaning of term 'input tax'</p> <p>"input tax" in relation to a registered person, means the central tax, State tax ,integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—IGST paid on import of goods,tax paid on reverse charge basis, and <i>does not</i> include tax paid under composition;</p>
6	Sec 2(63)	<p style="text-align: center;">Meaning of term 'input tax credit' means the credit of input tax;</p>

A. ELIGIBILITY & CONDITIONS FOR AVAILING ITC

A registered person in order to avail ITC must satisfy the following conditions detailed in sub-section (2) of section 16 of the PGST Act, 2017:

1. Possession of a tax invoice or debit note or any other tax paying document;

For satisfaction of this clause we have to look at Rule 36 of the PGST Rules, 2017 which provides the documentary requirements & conditions for claiming input tax credit. Further proviso to sub-rule (2) of rule 36 has been added vide **Notification No. 39/2018 – Central Tax dated 4th September, 2018** wherein it has been clarified that if the said document does not contain all the specified particulars but contains the details of:

- a) the amount of tax charged;
- b) description of goods or services;
- c) total value of supply of goods or services or both;
- d) GSTIN of the supplier and recipient; and
- e) place of supply in case of inter-State supply,

input tax credit may be availed by such registered person.

It may be noted that vide **Notification No. 49/2019-CT dated 09th October, 2019**, sub-rule (4) has been added to Rule 36 of the CGST Rules, 2017 which provides that ITC to be availed by registered person shall not exceed **20%** of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37. This basically implies that the registered person cannot avail ITC more than 120% of the inward supplies that have been reflected in his **FORM GSTR-2A**. This limit of **20%** has been further reduced to **10%** vide **Notification No. 75/2019 – CT dated 26th December, 2019**.

Illustration: Mr. A, a registered taxpayer has received invoices for inward supply of goods and services for Rs, 10,00,000/- in the month of January, 2020 with tax paid to the tune of Rs. 1,00,000/-. However, at the time of filing of his return for the month of January, 2020 it is seen that the inward supplies reflected in his **FORM GSTR-2A** is only Rs. 6,00,000/- with tax of Rs. 60,000/-. So, as per the rule he cannot avail ITC more than Rs. 66,000/- in the return for the month of January (i.e. 110% of Rs. 60,000).

2. Received the goods or services or both;

Although the above condition is pertinent for availment of ITC, the Act specifically provides for scenario wherein the said condition may be adjusted in accordance with business practice. It has

been provided that a registered person shall be deemed to have received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise. Similarly, in case of services it has been provided that a registered person shall be deemed to have received the services where the services are provided by the supplier to any person on the direction of and on account of such registered person. Further more, "principal" shall be entitled to avail ITC in relation to goods sent directly to the premises of job-worker. Moreover, first proviso to sub section (2) of section 16 provides that where the goods are being received in lots or installments, the registered person shall be entitled to take credit upon receipt of the last lot or installment.

3. Tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit;

4. Return has been furnished under section 39.

B. PAYMENT FOR VALUE OF GOODS OR SERVICES RECEIVED:

Although the above conditions do not link the availment of ITC with payment of the value of goods or services received, it has been specifically provided in 2nd provision to sec16(2) that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of **one hundred and eighty days** from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest.

Illustration: An invoice dated 15.07.2017 of INR 1,00,000/- along with tax of INR 18,000/- is received by the recipient on 25.07. 2017. He enters the said invoice in his books of accounts on 25.07.2017 and credits the tax amount in the receivable account. He files the return (GSTR – 3B) for the month of July availing ITC on the referred invoice on 20.08.2017. He has failed to make the payment by 11.01.2018 (i.e.180 days from date of invoice). Hence as per second proviso to Sec. 16(2), he is required to reverse the ITC availed earlier. However, interest under rule 37(3) shall be calculated from 20.08.2017 i.e. the date of filing of return for the month of July in which the ITC was availed.

It may be noted that Second proviso to Sec. 16(2) provides that in the scenario enumerated above, the registered person is liable for interest on account of reversal of ITC “availed” earlier. Rule 37(3) provides that the interest shall be calculated from the date of availing the ITC. Hence, even if

the ITC availed earlier is not utilized, interest is required to be paid. However, certain supplies have been specifically excluded from the ambit of such reversal which are detailed here under:

- a) Supplies on which tax is payable on reverse charge basis;
- b) Supplies made without consideration as specified in Schedule I of the said Act;
- c) Such amount which has been added to the value of supplies on account of clause (b) of sub-section (2) of section 15.

Further, as per 3rd proviso to sub-section (2) of section 16 of the PGST Act, 2017, a registered recipient shall re-avail ITC reversed earlier on making the payment of the value of supply along with the tax thereon. It is pertinent to mention here that as per sub-rule (4) of Rule 37 of PGST Rules, 2017 that the time limit prescribed u/s 16(4) for availing ITC (i.e. before the due date for furnishing return for the month of September of the succeeding year or annual return, whichever is earlier) shall not apply for re-availing the credit which was reversed earlier. Hence, it can be availed anytime in future when the payment is made.

C. NO ITC WHERE DEPRECIATION CLAIMED ON TAX COMPONENT OF COST OF CAPITAL GOODS:

As per sub-section (3) of section 16 of the PGST Act, 2017, a registered person cannot claim ITC on the tax component of capital goods if he has claimed depreciation on the same under the provisions of the Income-tax Act, 1961.

Illustration:

Cost of machinery : Rs.10,00,000/-

GST @ 18%: Rs.1,80,000/-

Total value of machinery: Rs.11,80,000/-

- If depreciation charged on Rs. 10,00,000/- ITC is available to the Registered person;
- If depreciation charged on Rs.11,80,000/- (i.e. Including the tax component)– No ITC is available to the Registered person

D. TIME PERIOD FOR AVAILMENT OF ITC:

As per sub-section (4) of section 16 of the PGST Act, 2017, a registered person cannot avail ITC beyond the month of September following the end of Financial Year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is

earlier. However, it may be noted that for the supplies received during the period i.e. from 1st July, 2017 to 31st March, 2018, the time period for availment of ITC has been extended till 31st March, 2019 [CGST (ROD) Order No. 2/2018- Central tax dated 31st December,2018].

Illustration: M/s ABC Ltd. purchased goods worth Rs. 50000/- from M/s XYZ Ltd. on 21st July, 2018. They filed annual return for the financial year 2018-19 on 30th November, 2019 and return for September, 2019 on 20th October, 2019. M/s ABC Ltd. can avail ITC for same till 20th October, 2019.

E. APPORTIONMENT OF CREDIT AND BLOCKED CREDITS

1. BUSINESS AND NON-BUSINESS PURPOSE:

As per sub-section (1) of section 17 of the PGST Act, 2017 read with rule 42 of the PGST Rules, 2017, ITC is available only to the extent of use in furtherance of business. It implies that where the goods or services are used by the registered tax payer partly for utilization in his business activities and partly for any other purposes, then the ITC will be restricted to an amount which is attributable for business purposes. In such a scenario, the taxpayer has to reverse the proportionate ITC related to non-business use as per Rule 42 of the said rules.

2. TAXABLE AND EXEMPT SUPPLIES:

As per sub-section (2) of section 17 of the PGST Act, 2017 read with rule 42 of the PGST Rules, 2017, ITC is available only to the extent of use in furtherance of taxable supplies. It implies that where the goods or services are used by the registered tax payer partly for utilization in taxable supplies and partly for exempt supplies, then the ITC will be restricted to an amount which is attributable for taxable supplies (including zero-rated supplies). In such a scenario, the taxpayer has to reverse the proportionate ITC related to exempted supplies as per Rule 42 of the said rules.

The exempt supply has been defined in the Act as supply of any goods or services or both:

- a. which attracts nil rate of tax; or
- b. which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act; and
- c. includes non-taxable supply.

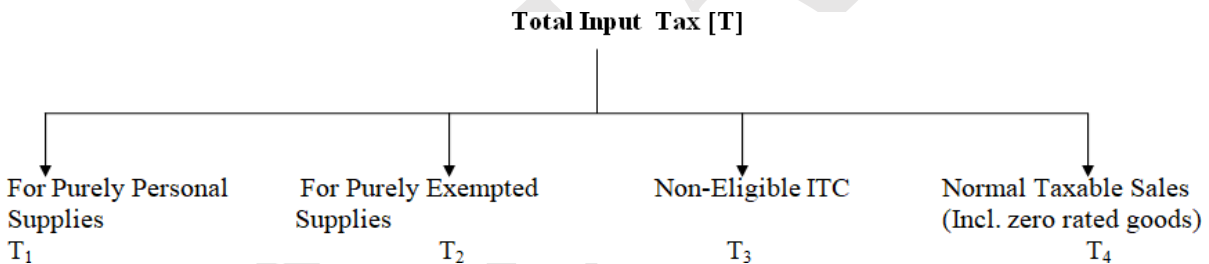
Thus, any supply that has been exempted by the government by notification or any Nil rated Supply or supply of non-GST goods such as petrol, diesel will fall within the ambit of exempt supply. Further, as per sub-section (3) of section 17 of PGST Act,2017 supplies under RCM,

transaction in securities, sale of land and sale of building subject to clause 5(b) of schedule II are also covered within the ambit of exempt supplies.

Illustration: Ms. Anita, a registered tax payer has the following details for the month of May, 2018:

- Total ITC availed during the tax period–1,00,000(**T**)
- Value of taxable supplies –3,00,000
- Value of exempted supplies –2,00,000
- Input Tax for inputs exclusively for personal purpose –5,000(**T1**)
- Input Tax for inputs exclusively for exempt supplies – 20,000(**T2**)
- Input Tax for inputs on which ITC is not eligible (Purchase of Motor vehicle)- 10,000(**T3**)
- Input Tax for input services exclusively (transporting charges)for taxable supplies – 10,000 (**T4**)

So, Ms. Anita’s total input tax will have 4 parts:



Step 1: Finding out total eligible ITC

Available Credit C1 = Total ITC – [ITC exclusively for personal supplies + ITC exclusively for exempted supplies + Non-eligible ITC]

$$= T - (T1 + T2 + T3)$$

$$= 1,00,000 - (5,000 + 20,000 + 10,000)$$

$$= 65,000$$

This step calculates the available credit, i.e., the total eligible credit. This is derived by removing ITC which is exclusively related to personal inputs, exempted supplies and non-eligible ITC.

Step 2: Finding out Common credit for taxable & exempt supplies

CommonCreditC2= Available Credit(C1)– Input Tax exclusively for taxable supplies(T4)

$$= 65,000 - 10,000$$

$$= 55,000$$

This shows the common credit which has to be shared between taxable supplies and exempt supplies.

Step 3: Finding out ITC to be reversed for exempt supplies

$$D1 = \frac{\text{Exempted Turnover}}{\text{Total Turnover}} \times \text{Common Credit}$$

So by our example,

$$D1 = \frac{2,00,000}{5,00,000} \times 55,000$$
$$= 22,000$$

The formula calculates the amount by the proportionate method. The amount of Rs. 22,000 is the amount of ITC pertaining to exempted supplies which is required to be reversed by the taxpayer.

Step 4: Finally, calculating total ITC that can be claimed

Total eligible ITC for the month= ITC exclusive for taxable supplies + Common credit proportionate for taxable supplies i.e. 10,000 + 33,000=43,000.

It may be noted that similar dispensation has been provided for ITC in respect of capital goods.

Types of ITC for Capital Goods

1. Capital Goods used only for Personal Use or for Exempted Supply

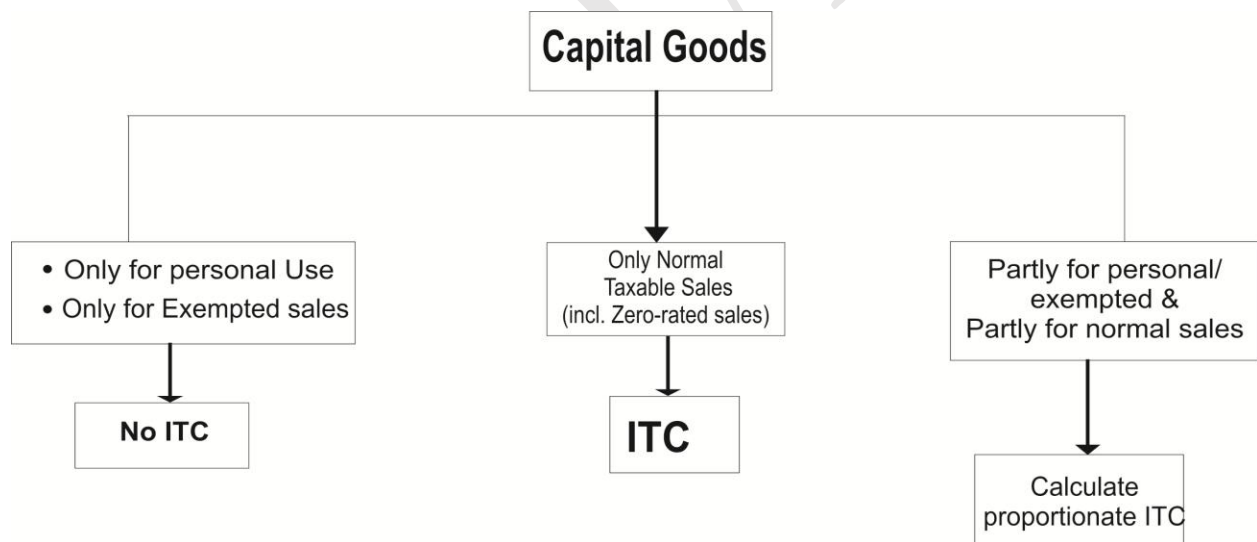
No ITC is available for capital goods that are exclusively used for personal consumption or for use in exempted supplies.

Example 1: Personal Purchases

Ms. Anita has purchased a fridge. Since this is not required for her business, i.e., a purely personal purchase, she will not be able to claim any ITC on the GST paid for the fridge.

Example 2: Capital Goods used for exempted supply

Mr. Avinash has purchased a small flour mill in his grocery shop to grind wheat grains to flour. Since he is producing unbranded flour, it is exempted from GST. As it is an exempted supply, he cannot claim any ITC on the GST paid for the mill.



2. Capital Goods used for taxable supply

XYZ has purchased machinery to manufacture shoes. Since, supply of shoes is taxable supplies, the GST paid while purchasing machinery will be available as ITC.

3. Common credit for partly personal/ exempted and partly normal supply

- a. The ITC paid for the capital goods will be credited to electronic credit ledger ;

- b. Useful life of such capital asset will be taken as 5 years from the date of purchase ;
- c. Now the total amount of input tax credited to electronic credit ledger for the whole useful life will be distributed over the useful life

If GST is paid on a monthly basis, then following formula will be deployed:

$$\text{Input Tax Credit for 1 month} = \frac{\text{Input Tax Credited to Electronic Credit Ledger}}{60 (5 \text{ years} * 12 \text{ months})}$$

However, if the registered person has turnover less than 1.5crore, then he is required to pay GST on a quarterly basis. ITC will be calculated using the following formula :

$$\text{Input Tax Credit for 1 quarter} = \frac{\text{Input Tax Credited to Electronic Credit Ledger}}{20 (5 \text{ years} * 4 \text{ quarters})}$$

Calculations for common credit

C.1 For exempted supplies

The amount of ITC attributable to exempt supplies out of common capital credit–

$$\text{Credit attributable to exempt supplies} = \frac{\text{Value of exempt supplies}}{\text{Total Turnover}} * \text{Credit for a tax period}$$

Remaining amount after deducting credit for exempt supplies will be allowed as ITC.

All the above calculations must be done separately for:

- Central tax
- State Tax
- Union Territory Tax

- Integrated Tax

C.2 What happens if one starts using an asset for exempt supplies and also for taxable supplies?

If a capital asset was earlier used exclusively for personal purpose or for effecting exempted supplies and **now it will be used commonly for** Business and personal purpose or for effecting taxable and exempt supplies, then the ITC to be calculated in following manner:

Input tax to be credited to electronic credit ledger = Input Tax – 5% of Input tax for every quarter or part thereof from date of invoice.

Example: Mr. Avinash bought a capital asset for use in exempt supplies only. He paid Rs1,00,000/- along with GST of Rs18,000 as input tax on 01/10/2017. On 15/11/2018 he wishes to use the capital asset commonly for both taxable and exempt supplies.

Now the eligible common ITC will be calculated as follows

= Input Tax – 5% of Input tax for every quarter or part thereof.

(The no. of quarters from 01/10/2017 to 15/11/2018 = 5)

= 18,000 – (5% of 18000) * 5 quarters

= 18,000 – 4,500

= 13,500

Now, this is the common credit available to Mr. Avinash. Now he will calculate the ITC attributable to exempted supplies as per the formula in C.1.

Common credit for 1 month = $13,500 \div 60 = 225$

Assuming his total turnover is 160 lakhs and exempted supply is 40 lakhs-

$$\text{Credit attributable for exempt supplies} = \frac{\text{Value of exempt supplies}}{\text{Total turnover}} \times \text{Common credit for the month}$$

$$\text{Credit attributable for exempt supplies} = \frac{40}{160} \times 225$$

=56.25

This amount of Rs.56.25 will be reversed under ITC Reversal.

F. AVAILABILITY OF ITC FOR BANKING COMPANY OR FINANCIAL INSTITUTION:

As per sub-section (4) of section 17 of the PGST Act, 2017 read with rule 38 of the PGST Rules, 2017 a banking company or a financial institution, including a non-banking financial company, engaged in the supply of services by way of accepting deposits or extending loans or advances has the option either apportion ITC between taxable and exempt supplies or avail, every month, an amount equal to fifty per cent of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse. Thus, the banking company or financial institution shall follow the following procedure, namely:

- a) The said company or institution shall not avail the credit of ITC from non-business purposes and ITC restricted u/s 17(5);
- b) 100% of the ITC shall be availed for the inward supplies received from distinct persons;
- c) Fifty percent of the remaining amount of input tax shall be admissible to the company or the institution.

G. NEGATIVE LIST OF ITC – SEC 17(5): A registered person is not eligible to avail ITC in respect of the supplies enumerated in sub-section (5) of the Section 17 of the PGST Act, 2017.

1) Motor vehicles for transportation of passengers having approved seating capacity of not more than thirteen persons (including the driver)– sec 17(5)(a): ITC is not available in respect of such procurement except where the same are to be used for making further taxable supplies, namely:

- further supply of such motor vehicles; or
- transportation of passengers; or
- imparting training on driving such motor vehicles.

Illustration: M/s XYZ & Co. buys a car for their business. They cannot claim ITC on the same.

Illustration: M/s Happy Tours purchased a bus for inter-city transport of passengers. ITC is available.

Illustration: A driving school purchases a car to give training to students. The school can claim ITC for the GST paid on the car.

2) Vessels and aircrafts – sec 17(5) (aa): ITC is not available in respect of such procurement except where the same are to be used for making further taxable supplies, namely:

- further supply of such vessels and aircrafts; or
- transportation of passengers; or
- imparting training on navigating such vessels;
- imparting training on flying such aircrafts.
- Transportation of goods.

3) Services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred above sec 17(5) (ab). However, ITC of such services shall be available if the motor vehicles, vessels or aircraft are used for the purpose specified above. Also, ITC of such services shall be available if they are received by a taxable person who is engaged in:

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

4) Food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:– sec 17 (5)(b) (i). However, ITC of such services shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply.

Illustration: M/s ABC Travels lends out a car to M/s XYZ Travels. Then M/s XYZ Travels can claim ITC on the same.

5) Membership of a club, health and fitness Centre – sec 17 (5)(b) (ii).

Illustration: Mr. X, a Managing Director has taken membership of a club and the company pays the membership fees. ITC will not be available to the company or Mr. X.

6) Travel benefits extended to employees on vacation such as leave or home travel concession– sec 17 (5)(b) (iii).

Illustration: M/s ABC Ltd. offers a travel package to its employees for personal holidays. ITC on GST paid by M/s ABC Ltd. for the holiday package will not be allowed.

It may be noted that ITC in respect of the items detailed at Para 4, 5 and 6 above would be available if the same are made obligatory for an employer to provide its employee by the Government under any current law in force.

➤ For example, assuming the government passes a rule which makes it mandatory for all employers to provide cab services to staff working in nightshifts. ABC Ltd. hires a rent-a-cab to provide for transportation to its female staff on nightshifts. Then ITC will be available to ABC Ltd. on the GST paid to the rent-a-cab service.

7) Works contract services to the extent of capitalization – sec 17(5)(c). However, ITC of such services shall be available where it is an input service for further supply of works contract service.

Illustration: M/s XYZ Contractors are constructing an immovable property for M/s 123 Limited. M/s 123 Limited cannot avail ITC in relation to the construction services provided by M/s XYZ Contractors. However, XYZ hires ABC Contractors for a portion of the works contract. XYZ can claim ITC on the GST charged by ABC Contractors.

8) Goods/services for construction of immovable property – sec 17(5)(d). No ITC is available for goods/services for construction of an immovable property to the extent of capitalization. But this restriction does not apply to plant or machinery. ITC is available on inputs and input services used to manufacture plant and machinery on his own account.

Illustration: Ajay Steel Industries constructs an office building for its headquarter and same is capitalized in the books. ITC will not be available.

Illustration: Ajay Steel Industries also constructs a blast furnace to manufacture steel. ITC is available since it is a plant.

9) Goods or services or both on which tax has been paid under sec 10– sec 17(5)(e)

Illustration: M/s ABC Private Ltd. purchases stationery items for business purposes from a composition taxpayer registered under Section 10. M/s ABC Private Ltd. shall be issued a bill of supply on which no tax can be charged. Hence, no ITC is available to M/S ABC Private Ltd. for the said supply.

10) Goods or services or both received by a non-resident taxable person (NRTP) except on goods imported by him – sec 17(5)(f)

Illustration: M/s XYZ LTD. is an NRTP registered under GST. The said firm shall not be eligible for claim of ITC on taxes paid on domestic purchases but the IGST paid on import of goods from outside India shall be available as ITC to the NRTP.

11) Goods or services or both used for personal consumption– sec 17(5)(g).

Illustration: Mr. A is engaged in supply of Mobiles. On the birthday of his son, he gifts him a mobile out of the stock at his shop. He will not be eligible to avail ITC in relation to the same.

12) Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples – sec 17(5)(h).

a) Free samples and gifts

You must have got small toothpaste packets during a seminar on oral hygiene in your school. The toothpaste packet mentions 'Not for supply' on it. Various toothpaste brands offer such type of free samples/gifts to those present at the seminar. Also, pharmaceutical companies provide free drug samples to the medical practitioners, etc. These samples are supplied without any consideration. Therefore, ITC cannot be claimed on the inputs, input services and capital goods to the extent they are used in relation to the free samples and gifts supplied without any consideration.

b) Buy one, get one free

In Big Bazaar or on online platforms like Myntra, you must have come across such 'Buy One Get One Free' offers. You can find this offer on various products like grocery items, clothes, electrical appliances, etc. These offers are for some limited period of time and you get notifications like "Hurry, offer ends in few hours/days or Limited offer alert". This is not an individual supply of free goods, rather this is supply of two or more individual supplies where a single price is charged for the entire supply. It is supply of two goods for the price of one.

So, for the purpose of GST, ITC can be claimed on the inputs, input services and capital goods to the extent they are used in relation to supply of goods or services under such offers.

c) Buy more, save more

If you have purchased grocery items from Paytm Mall, then you must have come across such 'Buy more, save more' offers. These offers provide you discounts if you purchase the no. of items specified therein or more. Like 10% discount on purchase of minimum 5 items. These kind of offers urge you to spend a little more to get additional discount benefits. These are generally referred to as 'volume discounts' commercially. Since, in this case the discounts being offered are known upfront and the invoice for supply would be prepared in accordance with the quantity purchased, therefore such discount is not to be included in the valuation and the supplier would be eligible for ITC for the supplies effected at discount.

Similarly, there are long term contracts between suppliers and recipients where the suppliers offer volume discount for the supplies effected during the period of contract. The discount offered is linked with the volume of purchases made by the recipient. For example, a contract for supply of pens between Mr. A and Mr. B specifies that price will be Rs. 100/- per pen if Mr. B purchases 100 pens. It further specifies that price will be Rs. 90/- if Mr. B purchases 500 pens. It may further specify that price will be Rs. 80/- if Mr. B purchases 1000 pens and above. Since the contract is for one year the quantum of purchases made by Mr. B over the period of the contract will be considered. Let's say that at the end of the year it is ascertained that Mr. B has purchased 650 pens. So, Mr. A will issue credit note for Rs. 6500/- i.e. the difference between the price at which the pens were supplied (Rs. 100/-) and the price which is finally applicable based on quantity purchased (i.e. Rs. 90/-) multiplied with the quantum purchased i.e. 650 pens. So, for the purpose of valuation under GST, such discount is not to be included in the valuation of supply provided the conditions specified under Sub-section(3) of Section 15 of the Act i.e. the discount was known at the time of supply or before and the recipient has reversed the ITC proportionately for the discount offered. Further, supplier can claim ITC on the inputs, input services and capital goods to the extent they are used in relation to supply of goods or services on such discounts.

13) Any tax paid in terms of section 74, 129 or 130

H. AVAILABILITY OF CREDIT IN SPECIAL CIRCUMSTANCES

- 1) Taxpayer who applied for registration under this Act within thirty days from the date on which he becomes liable to registration:** Entitled to ITC in respect of inputs held in

stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act.

- 2) **Taxpayer who applied for voluntary registration under this Act:** Entitled to ITC in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration.
- 3) **Registered person ceases to pay tax under section 10:** Entitled to ITC in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9.
- 4) **Exempt supply of goods or services or both by a registered person becomes a taxable supply:** Entitled to ITC in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable.

It may be noted that the invoices in respect of which ITC is being availed in relation to the scenarios detailed Para 1) to 4) above should not be more than one-year-old. Further, a declaration to be made in **FORM GST ITC-01** specifying the details relating to the inputs held in stock or inputs contained in semi-finished or finished goods, must be filed within thirty days of becoming liable for registration.

- 5) **Transfer of ITC upon Change of Constitution of Business with the specific provisions for transfer of liabilities:** Transferor allowed to transfer unutilized ITC in his electronic credit ledger to the transferee by furnishing details in **FORM GST ITC- 02**. In case of demerger, ITC to be apportioned in ratio of value of assets of the new units.
- 6) **Taxpayer opts for composition scheme or where goods or services or both supplied by him becomes wholly exempt:** Taxpayer to pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to credit availed in respect of Inputs held in stock, Inputs contained in semi-finished goods or finished goods held in stock and Capital goods or plant and machinery on the day immediately preceding the date of exercising of such option or, as the case may be, the date of such exemption - **FORM GST ITC-03 to be filed.**
- 7) **ITC reversal on supply of Capital Goods and Plant & Machinery on which ITC has been availed:** Registered person to pay an amount equal to ITC taken on the said capital goods or plant and machinery reduced by five percentage points for every quarter or part thereof or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher. However, where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.

Illustration: Mr. X sold a machinery for Rs. 1,44,550/- (inclusive of GST at the rate of 18% of Rs. 22,050/-) on 10.05.2019 which he purchased on 01.07.2017 for Rs. 2,36,000/- (inclusive of Rs. 36,000/- as GST @ 18%). So, Mr. X has to pay an amount equivalent to higher of the following:

- a) An amount equal to the GST levied on transaction value on supply of the machinery, i.e. of Rs. 22,050/- or
- b) An amount of ITC as reduced by five percentage points for every quarter or part thereof from the date of the issue of the invoice for such goods (**Rule 40 (2)**).

Machinery has been used for total 1 year, 10 months and 10 days, which constitute 8 quarters. So, percentage amount to be reduced for 8 quarters is 40%. Thus, the amount of ITC to be reversed is Rs. 36000 less 40% of Rs. 36000 i.e. Rs. 21,600/-. As the amount paid on transaction value i.e. Rs. 22,050/- is higher than the ITC to be reversed i.e. Rs. 21600/-, same would be payable.

I. TAKING ITC IN RESPECT OF INPUTS & CAPITAL GOODS SENT FOR JOB – WORK

- a) The principal shall avail ITC for the inputs or capital goods sent to a job-worker for job-work. It may be noted that the principal shall be entitled to take ITC on inputs or capital goods even if the same are directly sent to a job worker for job-work without being first brought to his place of business.
- b) As per rule 45(3) of the PGST Rules, 2017, the principal manufacturer is required to file **FORM GST ITC-04** mentioning therein details of challans in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another job worker. However, vide **Notification No. 38/2019 – Central Tax dated 31st August, 2019** this requirement has been waived off for the period from July,2017 to March,2019. But the taxpayer is required to furnish the details of all the challans in respect of goods dispatched to a job worker in the period July, 2017 to March, 2019 but not received from a job worker or not supplied from the place of business of the job worker as on the 31st March, 2019, in serial number 4 of **FORM ITC-04** for the quarter April-June, 2019.

J. MANNER OF DISTRIBUTION OF ITC BY INPUT SERVICE DISTRIBUTOR (ISD)

The ISD may distribute the ITC subject to following conditions, namely:

- a) ITC can be distributed against ISD invoice or credit note or any document issued by an ISD in accordance with the provisions of sub-rule (1) of rule 54;
- b) Amount of ITC distributed shall not exceed the amount of ITC available for distribution;
- c) ITC attributed to a recipient can be distribute do only to that recipient;

- d) ITC attributable to more than one recipient shall be distributed only amongst such recipient(s)(**prorata***)
- e) ITC attributable to all recipients can be distributed amongst such recipients (**pro rata***)
- f) For pro-rata distribution of ITC, the turnover in a state/UT of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients/all recipients and which are operation a line the current year, during the said relevant period is to be considered.

Illustration: M/s XYZ Ltd, having its head Office at Mumbai, is registered as ISD. It has three units in different states namely 'Mumbai', 'Jabalpur' and 'Delhi' which are operational in the current year. M/s XYZ Ltd furnishes the following information for the month of July, 2019 and accordingly distributes the following ITC to various units:

- a) CGST paid on services used only for Mumbai Unit: Rs.3,00,000/-
- b) IGST, CGST & SGST paid on services used for all units: Rs.12,00,000/-

Total Turnover of the units for the Financial Year 2018-19 are as follows: -

- a) Total Turnover of three units = Rs. 10,00,00,000
- b) Turnover of Mumbai unit =Rs. 5,00,00,000 (50%)
- c) Turnover of Jabalpur unit = Rs. 3,00,00,000 (30%)
- d) Turnover of Delhi unit = Rs. 2,00,00,000 (20%)

Computation of ITC to be distributed among various units is as follows:

- a) ITC distributed to Mumbai unit: $\text{Rs.}3,00,000/- + (5,00,00,000/10,00,00,000) *12,00,000 = \text{Rs. } 9,00,000.$
- b) ITC distributed to Jabalpur unit: $(3,00,00,000/10,00,00,000) *12,00,000 = \text{Rs. } 3,60,000.$
- c) ITC distributed to Delhi: $(2,00,00,000/10,00,00,000) *12,00,000 = \text{Rs. } 2,40,000.$

K. MANNER OF RECOVERY OF ITC DISTRIBUTED IN EXCESS BY ISD

Any distribution of ITC by ISD in contravention of the provisions contained in Section 20 resulting in excess distribution of ITC to one or more recipients of credit, shall be recovered from such recipient(s) along with interest.

L. UTILIZATION OF ITC:

The **original scheme** of availing the ITC audit utilization for discharge of CGST,SGST/UTGST and IGST liability has been explained in the following Table.

Credit of	To be utilized first for payment of	May be utilized further for payment of
CGST	CGST	IGST
SGST / UTGST	SGST / UTGST	IGST
IGST	IGST	CGST, then SGST/UTGST

Credit of CGST cannot be used for payment of SGST / UTGST and credit of SGST / UTGST cannot be utilized for payment of CGST.

However, vide Notification No.16/2019- Central Tax dated 29th March, 2019 read with Circular No.98/17/2019-GST dated 23rd April,2019, Rule 88A was introduced in the CGST Rules, 2017 wherein it was provided that ITC on account of integrated tax shall first be utilized towards payment of integrated tax, and the amount remaining, if any, may be utilized towards the payment of central tax and State tax or Union territory tax, as the case may be, in any order:

Provided that the ITC on account of central tax, State tax or Union territory tax shall be utilized towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the ITC available on account of integrated tax has first been utilized fully.

[Circular Option 1]

ITC TYPE	ITC AVAILABLE	OUTPUT LIABILITY				BALANCE /TOTAL
		IGST	CGST	SGST	UTGST	
		1000	300	300	0	1600
IGST	1300	-1000	-200	-100		0
CGST	200		-100	Not Allowed	Not allowed	100
SGST	200		Not Allowed	-200	Not Allowed	0
UTGST			Not Allowed		Not Allowed	
TOTAL	1700	-1000	-300	-300	0	100

[Circular Option 2]

ITC TYPE	ITC AVAILABLE	OUTPUT LIABILITY				BALANCE /TOTAL
		IGST	CGST	SGST	UTGST	
		1000	300	300	0	1600
IGST	1300	-1000	-100	-200		0
CGST	200		-200	Not Allowed	Not allowed	0
SGST	200		Not Allowed	-100	Not Allowed	100
UTGST			Not Allowed		Not Allowed	
TOTAL	1700	-1000	-300	-300	0	100

FINAL UNDERSTANDING OF NEW FEATURE PROVIDED BY RULE 88A:

The two sequences available to tax payer are:

1. Utilize ITC of IGST first for discharge of IGST liability and then for CGST and thereafter for SGST or UTGST; or
2. Utilize ITC of IGST first for discharge of IGST liability and then for SGST or UTGST and thereafter for CGST.

The only condition that needs to be complied with by the taxpayer is that the ITC of IGST has to be first fully utilized before the ITC of CGST or SGST can be deployed for the discharge of tax liability.

It may be noted that vide **Notification No. 75/2019 – Central Tax dated 26th December, 2019** rule 86A has been introduced which empowers Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner to restrict debit from electronic credit ledger where they have reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible.

ADVANCE RULINGS:

1. Advance Ruling no. 03/2018-19, dated May 4th, 2018–State of Uttarakhand -Whether credit will be available in GST of office fixtures & furniture, A.C. plant & sanitary fittings on newly constructed building on its own account, for furtherance of business and accounting entry is capitalized in books of account?

http://gstcouncil.gov.in/sites/default/files/ruling-new/03-2018-19_Dtd_04-05-18_Utrakhand.pdf

3. Advance Ruling no. AAR/AP/01/(GST)/2018 dated March 28th, 2018-State of Andhra Pradesh—Whether ITC is available on cess paid on import of Coal?

[http://insta.instavat.in/pdf/Andhra Pradesh Advance Ruling 2.pdf](http://insta.instavat.in/pdf/Andhra_Pradesh_Advance_Ruling_2.pdf)

3. Advance Ruling no. AAR/AP/04/(GST)/2018 dated June 26th, 2018- State of Andhra Pradesh—

- a) Whether Excise duty, CVD and SAD paid on Capital Goods purchases prior to July 1st July 2017 on which CENVAT Credit has not been claimed earlier, can be claimed U/s140(2) of the CGST Act, 2017 in the absence of registration under Central Excise Act?
- b) Whether VAT paid on Capital Goods purchases prior to July 1st 2017 on which input tax credit has not been claimed earlier, can be claimed U/s 140(2) of the Andhra Pradesh Act, 2017?

<http://gstcouncil.gov.in/sites/default/files/ruling-new/AP%2004-2018%2026.06.18%20NSL%20MiningRIPL.pdf>

4. Advance Ruling no. AAR/AP/14/(GST)/2018 dated October 9th, 2018- State of Andhra Pradesh –

- a) Whether we are eligible to take GST Input on goods which are used for installation (foundation) of plant and machinery?
- b) Whether we are eligible to take GST input services which are used for installation(foundation) of plant and machinery?
- c) Whether we are eligible to take GST input on goods which are used for protection (by creating sheds) for plant and machinery?
- d) Whether we are eligible to take GST input on services which are used for protection (by creating sheds) for plant and machinery?

http://gstcouncil.gov.in/sites/default/files/rulingnew/AP%20142018%2009.10.18_Maruti%20Ispat.pdf

5. **Advance Ruling no. STC/AAR/01/2018 dated June 6th, 2018- State of Chhattisgarh –**
Pertaining to availability of ITC on taxable stock used for making exempt supply

<http://insta.instavat.in/pdf/CHHATIGARH-ADVANCE-RULING-1.pdf>

6. **Advance Ruling no. HAR/HAAR/R/2018-19/04 dated June 6th, 2018-State of Haryana–**

a) Whether the applicant is eligible to take input tax credit on:

- GST charged by the contractor for hiring of buses for transportation of Employees?
- GST Charged by the Contractor for hiring of cars for transportation of Employees?

b) Whether the restriction on 'Rent a Cab' service specified in Section 17(5)(b)(iii) is applicable to input tax credit on:-

- GST charged by the contractor for hiring of buses for transportation of Employees?
- GST Charged by the Contractor for hiring of cars for transportation of Employees?

<http://gstpanacea.com/2019/02/15/gst-charged-by-the-contractor-for-hiring-of-buses-for-transportation-of-employees/>

7. **Advance Ruling no. Maha-GST-ARA-01-B-109 dated 05th September 2018 - State of Maharashtra –** Admissibility of input tax credit. Whether full ITC is allowable or it will be restricted to output GST liability?

<https://www.mahagst.gov.in/sites/default/files/ddq/GST%20ARA%20ORDER%20-%20THE%20IDEAL%20CONSTRUCTION.pdf>

KEY POINTS:

1. Whether the taxpayer possesses all the documents on which ITC has been availed.
2. Whether ITC has been availed on any negative list of goods or services mentioned in Section 17(5) of PGST Act, 2017.
3. Whether ITC has been availed by taxpayer in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts under Section 74 of the Act.

4. Whether the calculation for reversal of tax where the input/input services are partly used for the purposes of business and partly for other purposes was done properly in terms of Rule 42 of PGST Rules.
5. Whether the calculation for reversal of tax where the capital goods are partly used for the purposes of business and partly for other purposes was done properly in terms of Rule 43 of PGST Rules.
6. Tally ITC availed from GSTR-2A with purchase account maintained to ensure that the ITC was taken on the items actually purchased.
7. Whether the taxpayer has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961 and availed the input tax credit on the said tax component which cannot be allowed in terms of Section 16(3) of PGST Act.
8. Whether the taxpayer has paid the value of supply to the supplier within 180 days from the date of issue of invoice by the supplier in terms of Section 16(2)(d) of PGST Act to ensure that ITC was not taken in cases where consideration was not paid within the stipulated time.
9. Whether ITC was taken within the time limits stipulated in Section 16(4) of PGST Act.
10. Whether conditions as per Section 16(2) have been complied with for availment of ITC.
11. Whether any goods have been received in installments and whether credit has been availed on receipt of last installments.
12. Whether ITC has been proportionately reversed for taxable and exempt supplies?
13. Whether ITC has been reversed where supplier has issued Credit note for supply?
14. Whether taxpayer has availed ITC in alignment with Section 18?
15. Whether in case of merger/demerger, transfer appropriate ITC has been transferred?
16. Whether any capital goods have been disposed off and correct tax has been paid on same?
17. Whether value of exempt supplies have been correctly calculated especially taking into account section 17(3)?
18. Whether in case of Banking/NBFC, the option offered under Section 17(4) has been exercised and proportionate ITC has been reversed?
19. Whether in case of textile sector ITC has been reversed in terms of Notification No. 20/2018-Central Tax (Rate) dated 26th July, 2018?
20. Whether ITC of Compensation Cess has been used only for discharge of compensation Cess liability?
21. Detailed TRAN-1 Verification:

- a) To cross-check the veracity of information furnished under TRAN-1 vis-à-vis the books of account and last returns filed under the repealed Acts.
- b) To check whether ITC has been properly claimed on Capital Goods as per the existing provisions of the State VAT Act.
- c) Whether Inputs/Semi-finished goods/Capital Goods have been returned back to the Principal Place of business which were sent to Job Worker within the prescribed time as per Section 143.
- d) To check proper claim of credit on transactions where trader has not submitted statutory forms under the relevant Act within the prescribed time.
- e) Whether the ITC taken after filing GST Tran-1/Tran-2 is proper.

Circulars:

1. Circular No. 16/16/2017-GST dated 15th November 2017 – clarifying applicability of GST and availability of ITC in respect of certain services.
<http://www.eepcindia.org/download/171116133643.pdf>
2. Circular No. 87/06/2019-GST dated 2nd Jan, 2019 – clarifying issues to transition of cess under Section 140(1) of the Act.
<https://www.cbic.gov.in/resources/htdocs-cbec/gst/circular-cgst-87.pdf>
3. Circular No. 96/15/2019-GST dated 28th March, 2019 – clarifying transfer of input tax credit in case of death of sole proprietor.
<https://www.cbic.gov.in/resources/htdocs-cbec/gst/circular-cgst-96.pdf>
4. Circular No. 98/17/2019-GST dated 23rd April 2019 – clarifying utilization of input tax credit under GST.
<http://cbic.gov.in/resources/htdocs-cbec/gst/Circular-98-17-2019-GST.pdf>
5. Circular No. 123/42/2019– GST dated 11th November, 2019 – clarifying availment of input tax credit in terms of sub-rule (4) of rule 36 of CGST Rules, 2017.
https://www.cbic.gov.in/resources/htdocs-cbec/gst/circular-cgst-123_New.pdf
6. Circular No.133 03/2020-GST dated 23rd March, 2020 – clarifying apportionment of input tax credit (ITC) in cases of business reorganization under section 18 (3) of CGST Act read with rule 41(1) of CGST Rules.
<https://www.cbic.gov.in/resources/htdocs-cbec/gst/circular-cgst-133.pdf>
7. Circular No.134/04/2020-GST dated 23rd March, 2020 –clarifying issues under GST law for companies under Insolvency and Bankruptcy Code, 2016.
<http://www.gstcouncil.gov.in/sites/default/files/Circular-dynamic/circular-cgst-134.pdf>

CHAPTER 9
REGISTRATION

TABLE I: RELEVANT SECTIONS AND RULES

SR NO.	SECTIONS/RULES OF PGST ACT/RULES, 2017	DESCRIPTION
1	Section 22	Persons liable for registration
2	Section 23	Persons not liable for registration
3	Section 24	Compulsory registration in certain cases.
4	Section 25	Procedure for registration
5	Section 26	Deemed registration
6	Section 27	Special provisions relating to casual taxable person and non-resident taxable person.
7	Section 28	Amendment of registration
8	Section 29	Cancellation of registration.
9	Section 30	Revocation of cancellation of registration
10	Rule 8	Application for Registration
11	Rule 9	Verification of the application and approval
12	Rule 10	Issue of registration certificate
13	Rule 11	Separate registration for multiple business verticals within a State or a Union territory
14	Rule 12	Grant of registration to persons required to deduct tax at source or to collect tax at source
15	Rule 13	Grant of registration to non-resident taxable person
16	Rule 14	Grant of registration to a person supplying online information and data base access or retrieval services from a place outside India to a non- taxable online recipient
17	Rule 15	Extension in period of operation casual taxable person and non-resident taxable person.
18	Rule 16	Suo moto registration
19	Rule 17	Assignment of unique identity number to

SR NO.	SECTIONS/RULES OF PGST ACT/RULES, 2017	DESCRIPTION
		certain special entities
20	Rule 18	Display of registration certificate and GSTIN on the name board
21	Rule 19	Amendment of registration
22	Rule 20	Application for cancellation of registration
23	Rule 21	Registration to be cancelled in certain cases
24	Rule 22	Cancellation of registration
25	Rule 23	Revocation of cancellation of registration
26	Rule 24	Migration of persons registered under the existing law
27	Rule 25	Physical verification of business premises in certain cases
28	Rule 26	Method of authentication

(A) Persons liable for registration (Section 22)

As per section 22, as originally conceived, a supplier of goods or services was required to register in a state or union territory from where he supplied such goods or services if he crossed a certain threshold of turnover. Thus a supplier having turnover greater than 20 lakhs (Rs. 10 lakhs in case of special category states) was required to be registered. However, with effect from 1st April 2019, the threshold for registration under GST has been amended by the Government. Now, a supplier who is exclusively engaged in the supply of goods having aggregate turnover below Rupees 40 lakhs (20 Lakhs if business is in Arunachal Pradesh, Puducherry, Uttarakhand, Manipur, Mizoram, Sikkim, Meghalaya, Nagaland, Tripura and Telangana) is not required to register. Further small businesses having all India turnover of supply of services below Rupees 20 lakhs (10 Lakhs if business is in Manipur, Mizoram, Nagaland or Tripura) need not register. It may however be noted that the small businesses having turnover below the threshold limit can voluntarily opt to register.

(B) Persons not liable for registration (Section 23)

Persons who are engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax or an agriculturist, to the extent of supply of produce out of cultivation of land are not liable to register under the GST. It may be noted that the act empowers government to notify class of persons who will not be required to obtain registration under the PGST Act, 2017. By exercising this power, government has

notified suppliers whose all supplies are taxable under the reverse charge as a class of person for whom there is no requirement to register in light of **Notification No.5/2017 – central tax dated 19th June 2017.**

(C) Compulsory registration in certain cases (section 24)

The PGST Act,2017 enlists certain categories of suppliers who are required to get compulsory registration irrespective of their turnover that is to say, the specified threshold exemption limit is not available to them. Some of such suppliers who need to register compulsorily irrespective of the size of their turnover are as follows :

a) Inter-State suppliers. Suppliers engaged in inter-State supplies are liable to be registered irrespective of the threshold i.e. they are liable to be registered even if they effect supplies amounting to Rs 1/- .However, persons making inter-State Supplies of taxable services and having an aggregate turnover, to be computed on all India basis, not exceeding an amount of twenty lakh rupees (ten lakh rupees in States of Manipur, Mizoram, Nagaland and Tripura) are exempted from obtaining registration vide **Notification No. 10/2017-Integrated Tax dated 13th October 2017 as amended vide Notification No. 03/2019- Integrated Tax dated 29th November, 2019.** Thus , small suppliers of services , including job workers (except in relation to jewellery, goldsmith and silversmith wares) whose aggregate turnover is less than Rupees 20 lakh limit are exempted from registration , even if they supply services outside the state. Also, vide **Notification No. 03/2018-Integrated Tax dated 22nd October 2018,** the Inter-state suppliers of handicraft goods are exempted from compulsory registration till they cross the specified exemption threshold.

b) A person receiving supplies on which tax is payable by recipient on reverse charge basis: This covers the reverse charge on receipt of notified goods or services under Section 9(3) of PGST/CGST Act and 5(3) of IGST Act, and not those under Section 9(4) of PGST/CGST Act and Section 5(4) of the IGST Act. The goods so notified are cashew nuts, bidi wrapper leaves, tobacco leaves, silk yarn and raw cotton supplied by agriculturist, used vehicles, seized and confiscated goods, old and used goods, waste and scrap supplied by Government. The services notified for reverse charge include import of service, Goods transport agency service, legal services provided by advocates, certain services provided by Government, services supplied by an insurance agent or recovery agent, services by way of granting sponsorship, inward ocean freight services etc. However, if all the supplies being made by the supplier are taxable under reverse charge where no tax is payable by the supplier on goods or services or both, then there is no such requirement for such supplier to register in light of **Notification No.05/2017- Central tax dated 19th June 2017.**

c) **Casual taxable person** is a supplier who is not having fixed place of business in the State or Union Territory from where he wants to make supply. It may be noted that they have to apply for registration at least 5 days prior to the commencement of business. They can make taxable supplies only after obtaining registration and have to deposit in advance the estimated tax liability at the time of applying for the registration. They are given registration with 90 days validity, which can be extended on need based basis for another 90 days. However casual taxable persons making supplies of specified handicraft goods need not take compulsory registration and are entitled to the threshold exemption limit. Handicraft goods are specified in Explanation to **Notification No. 21/2018- Central Tax (Rate) dated 26th July, 2018.**

d) **Non-resident taxable person** is a supplier who is not having fixed place of business or residence in India. It may be noted that they have to apply for registration at least 5 days prior to the commencement of business. They can make taxable supplies only after obtaining registration and have to deposit in advance the estimated tax liability at the time of applying for the registration. They are given registration with 90 days validity, which can be extended on need based basis for another 90 days . While Income Tax PAN is the basis of GST registration, the registration to a non-resident taxable person is given on the basis of his valid passport (in case of individual) or the Tax Identification number (TIN) issued by the respective country (if it is incorporated business entity).

e) A person who supplies on behalf of some other taxable person (i.e. **an Agent of some Principal**). The scope of agent and principal has been clarified vide **Circular No. 73/47/2018-GST dated 05th November 2018.**

f) **An e-commerce operator**, who is required to collect tax at source under section 52, who provide platform to the suppliers to make supply through it.

g) **TDS Deductor.** This covers the authorities notified under **notification No. 33/2017-Central Tax dated 15th September 2017**, who are mandated to deduct GST TDS @ 1% on payment made to supplier where value of such supply, under a contract, is more than Rs. 2.5 lakh. Such authorities are required to register separately as a TDS deductor irrespective of the turnover, the operation of tax deduction has been implemented w.e.f. 1st October 2018.

h) **Input service distributor.** They need to separately register as ISD regardless of the turnover. They are usually an office of the supplier of the goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purpose of distributing the credit of central tax , state tax , integrated tax or union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office.

i) Suppliers engaged in supplying online information and data base access or retrieval services from outside India to a non-registered person in India. A simplified registration Scheme is provided for suppliers of OIDAR services. Instead of State-wise registration, he will take single registration for entire India either himself or through his appointed agent in India, and will pay IGST. The registration and other GST compliance by the OIDAR service providers is exclusively administered by the Central Government through the office of Principal Commissioner of Central Tax, Bengaluru (West).

(D) Procedure for registration (Section 25)

The registration under GST is PAN based and State specific. Supplier has to register in each of such State or Union territory from where he effects supply. Area upto 12 nautical miles in the sea is considered part of the nearest coastal State where the nearest point of appropriate base line is located. Area beyond 12 nautical miles and up to 200 nautical miles, which is not covered under any Union Territory is considered as a separate Union territory for the GST law. A person registered in one State is considered 'unregistered person' outside the State. If a person has unit in SEZ or is a SEZ developer and also unit in domestic tariff Area (i.e. outside the SEZ) in the same State, then he has to take separate registration for his SEZ unit / as a SEZ developer as a separate place of business of him. If a supplier also wants to distribute credit to his same-PAN entities, then he will take separate registration as 'input service distributor' in addition to his registration as 'supplier'. Unlike service tax regime, the GST law does not have the facility of centralized registration for units across multiple states. In GST registration, the supplier is allotted a 15-digit GST identification number called "GSTIN" and a certificate of registration in incorporating there in this GSTIN is made available to the applicant on the GSTN common portal. The first 2 digits of the GSTIN is the State code, next 10 digits are the PAN of the legal entity, the next two digits are for entity code, and the last digit is check sum number.

A given PAN based legal entity would have one GSTIN per State, that means a business entity having its branches in multiple States will have to take separate State-wise registration for the branches in different States. Moreover, a person having multiple places of business in a State or Union territory may be granted separate registration for each such place of business. Further a unit in SEZ or a SEZ developer needs to necessarily obtain separate registration. Every registered person is required to display his certificate of registration in a prominent location at his principal place of business and at every additional place of business. He is also required to display his GSTIN on the name board exhibited at the said places.

Generally, the liability to register under GST arises when a person is a "supplier" within the meaning of the term, and also if his aggregate turn over in the financial year is above the specified exemption threshold. It may be noted that where a person applies for registration

within 30 days from becoming liable for obtaining registration he would be entitled to take credit of input tax in the respect of the inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax.

Illustration: M/s ABC Ltd. became liable for registration on 1st April 2019. They applied for registration on 29th April 2019 and were granted registration on 5th May 2019. They would be eligible to avail ITC in respect of stock held as on 31st March 2019. However, if they had applied for registration on 2nd May 2019, they would have become ineligible for availing this ITC.

In respect of supplies to some notified agencies of United Nation organization, multinational financial institutions and other organizations, a centralized Unique Identification Number (UIN) is issued.

(E) Deemed registration (Section 26)

Section 26 provides that registration under GST is not tax specific which means that there is a single registration for all taxes i.e. CGST, PGST/UTGST, IGST and compensation cess. This is subject to the condition that the application for the registration or the Unique Identity Number has not been rejected under the PGST Act, 2017 within the time specified.

(F) Special provisions relating to casual taxable person and non-resident taxable person (Section 27)

Section 27 of the PGST Act, specifies that the certificate of registration issued to a casual taxable person or non-resident taxable person shall be valid for 90 days from the effective date of registration. The registration certificate can be extended further period of 90 days by the proper officer on sufficient reasons shown by the taxable person. The casual or non-resident taxable persons have to make an advance deposit of tax liability and make additional deposit of tax for the extension period.

(G) Amendment of registration (Section 28)

Section 28 of the PGST Act, specified the provision of amendment of GST registration. Every registered person or a person to whom a Unique Identity Number has been issued shall inform the proper officer of any change in the information of registration within 15 days of the said change. The proper officer may approve or reject the amendment in the

registration of such particulars but the proper officer shall not reject the application for registration without giving the person an opportunity of being heard.

Except for the changes in some core information in the registration application, a registered person shall be able to make amendments without requiring any specific approval from the tax authority. In case the change is for legal name of the business, or the State of place of business or additional place of business, the registered person will apply for amendment within 15 days of the event necessitating the change. The proper officer, then, will approve the amendment within next 15 days. For other changes like name of day to day functionaries, e-mail Ids, Mobile numbers etc. no approval of the proper officer is required, and the amendment can be effected by the registered person on his own on the common portal. A functionality to update email and mobile number of the authorized signatory is available in the GST system. The taxpayers can get it done by the concerned jurisdictional tax authority.

(H) Cancellation of registration (Section 29)

The GST law provides for two scenarios where cancellation of the registration can take place:

- (a) the one when the taxable person no more requires it (voluntary cancellation)
- (b) when the proper officer considers the registration liable for the cancellation in view of certain specified defaults (Suo-Moto Cancellation) like when the registrant is not doing business or if he issues tax invoice without making the supply of the goods or services or he fails to file 6 monthly returns or the taxpayer has failed to comply with the provisions of the Act (as per section 29 (2) (a) of the PGST Act).

(a) Voluntary surrender of registration: The registered person desirous of cancellation of registration will apply on the common portal within 30 days of the event warranting cancellation. The reason of such action may range from discontinuation of business to change in the constitution of business etc. He will also declare in the application the stock held on the day with effect from which he seeks cancellation. He will also work out and declare the quantum of dues of payment and credit reversal, and the particulars of payments made towards discharge of such liabilities. If satisfied, the proper officer has to cancel the registration within 30 days from the date of application or the date of reply to the notice (if issued, when the rejection is concluded by the officer).

(b) Cancellation by the proper officer:- If the proper officer has reason to cancel the registration of a person then he will issue a Show Cause Notice to such person in the **FORM GST REG-17**. The ground for the cancellation of the registration are detailed hereunder:

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

The registered person must reply in the **FORM REG-18** within 7 days from the date of service of notice why his registration should not be cancelled. If the reply is found to be satisfactory, the proper officer will drop the proceedings and pass an order in **FORM GST REG-20**. If the registration is liable to be cancelled, the proper officer will issue an order in the **FORM GST REG-19**. The order will be issued within 30 days from the date of reply to the show cause notice. It is pertinent to mention here that the act empowers the tax authority to cancel the registration from an earlier date. If such an order has been issued, the supplies effected by the person after the date of cancellation lose their legal character and any ITC availed on the basis of the same becomes inadmissible.

It may be noted that on cancellation of registration, the taxable person would be liable to pay tax equivalent to the credit of input tax held in stock and inputs contained in semi-finished goods or finished goods held in stock or capital goods or plant and machinery on the date immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher. Further, in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery , reduced by five percentage points every quarter or part thereof or the tax on the transaction value of such capital goods or plant and machinery , whichever is higher.

The cancellation of registration would not affect his past liabilities. Also, cancellation of the registration under the PGST act,2017 would be deemed to be the cancellation under the other acts as well. Moreover, as per section 45 of the PGST Act, 2017, every registered person who is required to furnish a return under sub-section (1) of section 39 and whose registration has been cancelled shall furnish a final return within three months of the date of cancellation or the date of the order of cancellation, whichever is later , in **FORM GSTR-10**.

(I) Revocation of cancellation of registration (Section 30)

- a) Where the registration has been cancelled by the Proper Officer on his own motion and not on the basis of an application by the registered person, then the registered person, whose registration has been cancelled, can submit an application for revocation of cancellation of registration, in FORM GST REG-21, to the Proper Officer, within a period of thirty days from the date of the service of the order of cancellation of registration.
- b) However, if the registration has been cancelled for failure to furnish returns, application for revocation shall be filed, only after such returns are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, penalty and late fee in respect of the said returns.
- c) On examination of the application, if the Proper Officer is satisfied, for reasons to be recorded in writing, that there are sufficient grounds for revocation of cancellation of registration, then he shall revoke the cancellation of registration by an order in FORM GST REG-22 within a period of thirty days from the date of the receipt of the application and communicate the same to the applicant.
- d) However, if on examination of the application for revocation, the Proper Officer is not satisfied then he will issue a notice in **FORM GST REG-23** requiring the applicant to show cause as to why the application submitted for revocation should not be rejected and the applicant has to furnish the reply within a period of seven working days from the date of the service of the notice. e) Upon receipt of the information or clarification in **FORM GST REG-24**, the Proper Officer shall dispose of the application within a period of thirty days from the date of the receipt of such information or clarification from the applicant. In case the information or clarification provided is satisfactory, the Proper Officer shall dispose the application as per para (c) above. In case it is not satisfactory the applicant will be mandatorily given an opportunity of being heard, after which the Proper Officer after recording the reasons in writing may by an order in **FORM GST REG- 05**, reject the application for revocation of cancellation of registration and communicate the same to the applicant.
- f) The revocation of cancellation of registration under the PGST Act, 2017 shall be deemed to be a revocation of cancellation of registration under CGST Act as well.

(J) Suspension of registration

The Punjab Goods and Services tax (Amendment) Act, 2018 which has been made effective from 1st February, 2019 has amended section 29 of the PGST Act, 2017 in order to enable the tax authorities to suspend the registration of the tax payer. Entire new proviso has been

inserted to section 29 (1) which states that “provided that during the pendency of proceedings relating to the cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed”. Rule 21A has been introduced which provides that where a registered person has filed for the cancellation of the GST registration and the request is pending with the proper officer, the registration will be considered suspended in accordance with either dates whichever is later as mentioned below:

- a) date of submission of the application for cancellation of registration; or
- b) date from which the cancellation is sought.

The effect on the registered person after the suspension of GST registration are as follows: -

- a) He won't be able make any taxable supply.
- b) He won't have to furnish any returns.

The main benefit of the suspension of GST registration from the point of view of the registered person, is that he would be freed from the return compliance under the GST pending cancellation by the proper officer he has voluntarily applied for.

The proper officer has been bestowed upon the right to, cancel the registration of any registered person, if he has the reason to believe that the registration of the person is liable to be cancelled. However, the proper officer has to follow the entire procedure laid down under the rule 22 of the PGST rules, 2017 before cancelling such registration and the said procedures require appropriate time. Thus in such cases, where the proceeding for the cancellation of registration has been initiated by the proper officer, the proper officer can suspend the registration of such person. However, before the suspension of the GST registration, the proper officer is required to give the registered person a reasonable opportunity of being heard. Once the proceedings of the cancellation of the GST registration is being completed by the proper officer, the suspension of the GST registration shall be revoked .The revocation of the suspension of GST registration shall be effective from the date on which the suspension had come into effect.

CIRCULARS AND NOTIFICATIONS:

1. Circular No. 71/45/2018-GST dated 26th October, 2018 –clarifying issues under GST related to casual taxable person.

<https://www.cbic.gov.in/resources/htdocs-cbec/gst/Circular-No-71.pdf>

2. Circular No. 95/14/2019-GST dated 28th March, 2019 – clarifying verification of applications for grant of new registration.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-95.pdf>

3. Circular No.134/04/2020-GST dated 23rd March, 2020 –clarifying issues under GST law for companies under Insolvency and Bankruptcy Code, 2016.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-134.pdf>

CHAPTER-10

RETURNS

TABLE I: TYPE OF FORMS

Form	Rule	Particulars	Frequency	Due Date
GSTR-1	59(1)	Details of outward supplies of taxable goods or services affected	<ul style="list-style-type: none"> ▶ Quarterly (for aggregate turnover up to Rs. 1.5 Crore) ▶ Monthly (others) 	11 th * of next month with effect from October 2018 *Previously, due date was 10 th
GSTR-2 Suspended	60(1)	Details of inward supplies of taxable goods or services affected claiming the input tax credit.	Monthly	15 th of next month
GSTR 2A	60(1)	Details of auto drafted supplies	----	Auto - populated from GSTR 1, GSTR 5, GSTR 6, GSTR 7 and GSTR 8
GSTR-3 Suspended	61(1)	Monthly return on the basis of finalization of details of outward supplies and inward supplies alongwith payment of tax.	Monthly	20 th of next month

GSTR 3A	68	Notice to return defaulter u/s 46 for not filing return	----	Will be issued by the concerned proper officer to return defaulter
GSTR-3B	61(5)	Return in which summary of outward supplies along with IIC is declared and payment of tax is affected by taxpayer	Monthly	20 th of next month*
GSTR-4	62	Return for a taxpayer registered under the composition levy	Quarterly* *Annually vide Notification No. 20/2019 – Central Tax dated 23 rd April, 2019.	18 th of the month succeeding quarter* * thirtieth day of April following the end of such financial year
GSTR-5	63	Return for a registered Non-Resident taxable person	Monthly	20 th of next month
GSTR-5A	64	Return for OIDAR service provider located outside India	Monthly	20 th of next month
GSTR-6	65	Return for ISD	Monthly	13 th of next month
GSTR-7	66(1)	Return for TDS	Monthly	10 th of next month
GSTR-8	67(1)	Statement for TCS	Monthly	10 th of next month
GSTR-9	80	Annual Return for a Registered person	Annually	31 st December of next financial year*
GSTR-9A	80	Annual Return for taxpayer under composition levy	Annually	31 st December of next financial year*
GSTR-9B	80(2)	Annual Return for e-Commerce operator	Annually	

GSTR-9C	80(3)	Reconciliation statement	Annually	To be filed by a registered person with aggregate turnover exceeding Rs. two crores.
GSTR-10	81	Final Return	Registration is cancelled or surrendered	Within three months of the date of cancellation or date of cancellation order, whichever is later.
GSTR-11	82	Details of inward supplies to be furnished by a person having UIN and claiming a refund	Monthly	28 th of the month following the month for which statement is filed
CMP-08	62	Statement containing details of payment of self-assessed tax to be furnished by taxpayers under composition.	Quarterly	18 th day of the month succeeding such quarter

* Subject to changes by Notifications / Orders

(A) FORM GSTR-1

FORM GSTR-1 is a monthly or quarterly details of outward supplies to be submitted by regular taxpayer. The FORM is divided into 13 sections.

1. GSTIN
2. Legal name of the registered person
3. Aggregate Turnover in the preceding Financial Year

- Aggregate Turnover is total value of all taxable supplies made (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both.

4. Taxable outward supplies made to registered persons (including UIN-holders):

4A. Under this head invoice wise details of all supplies made other than those under reverse charge and supplies made through e-commerce operator are mentioned.

4B. All outward supplies on which reverse charge is applicable and which has been excluded in 4A are shown here.

4C. Supplies made through e-commerce operator which attract TCS has to be reported here. The details have to be – rate wise or operator wise.

Note: The details declared here will be reflected automatically in **FORM GSTR 2A** of the corresponding recipient.

5. Taxable outward inter-State supplies to un-registered persons where the invoice value is more than Rs.2.5 lakh:

5A. This includes outward supplies (other than made through e-commerce operators).

5B. The details of B2C supplies made online through e-commerce operator.

6. Zero-rated supplies and deemed exports:

- All type of zero-rated supplies and deemed exports has to be mentioned under this head. A registered taxpayer has to give details of invoice, bill of export or shipping bill.

7. This section contains taxable supplies to un-registered person.

7A. B2C Intra-State supplies including supplies made through e-commerce operator are mentioned here.

7B. B2C inter-State supplies along with place of supply i.e. name of State/UT where invoice value is up to Rs 2.5 lakhs are specified here.

8. Nil-rated, exempt and non-GST outward supplies:

- All the other supplies whether nil rated, exempt or non-GST which has not been reported under any of the above section is reported under this head.

9. Amendments to taxable outward supply details furnished in returns for earlier tax periods in table 4, 5 and 6 (including current and amended debit notes, credit notes, and refund vouchers):

Following details cannot be amended here:

- a. Changing a tax invoice into bill of supply;
- b. GSTIN of recipient;
- c. Details with respect to Export invoices;
 - Shipping Bill Date/Bill of Export Date
 - Type of Export- i.e. with/without payment of tax.
- d. Details with respect to Credit/ Debit Note.
 - GSTIN of recipient; (However, taxable person may amend & link any other invoices for the same GSTIN)
 - Place of Supply;
 - Reverse charge applicable.
- All the above details with respect to Credit/Debit Notes are based on the original Invoice which it is linked to. Hence these details must match with the details of the linked invoice. Amended invoices or details are declared in the tax period in which the amendment takes place as follows:

TABLE II: TYPE OF AMENDMENT

Sl. No.	Type of Amendment	Explanation
1	B2B Amendments (9A)	Amendments made in the invoices already issued earlier must be reported here.
2	B2C Large Amendments (9A)	Amendments in the original invoices already issued must be mentioned here. These reflect original invoices issued for taxable outward supplies made to unregistered taxpayers where: <ul style="list-style-type: none"> ➤ Supply is made inter-State.

		➤ Total invoice value is more than Rs 2,50,000/-.
3	Credit/Debit Notes (Registered)	Credit or debit note amended against already issued Credit or debit note reported under B2B.
4	Credit Debit Note (Unregistered) Amendments (9C)	Amended Credit or debit note issued against original credit or debit note reported under B2C Large and Export Invoices section.
5	Export Invoices Amendments	Amended invoices issued against already issued original invoices are reported here. Export invoices includes: 1. Export under bond/LUT; 2. Export with IGST.

10. Amendments to taxable outward supplies to unregistered persons furnished in returns for earlier tax periods. Following details cannot be amended:

- Nil Rated;
- HSN summary of outward supplies;
- Cannot add a new place of supply.

11. Consolidated Statement of Advances Received or adjusted in the current tax period, plus amendments from earlier tax periods.

- All advances received during the earlier period corresponding to invoices raised during the current period.
- All advances received in the month for which invoice was not raised.

12. HSN-wise summary of outward supplies: This section requires a registered taxpayer to provide HSN wise summary of outward supplies.
13. Documents issued during the tax period: This head will include details of all invoices issues in a tax period, any kind of revised invoice, debit notes, credit notes etc.

(B) GSTR – 3B Return: It is divided into 6 sections.

1. GSTIN
2. Legal Name of the Registered Person

3.1. Outward supplies and inward supplies on reverse charge i.e. details of supplies where tax is payable by registered person. The registered person must provide total taxable value tax wise i.e. IGST, CGST, SGST/UTGST and cess, if any.

- a) **Outward taxable supplies** – Do not include supplies which are zero-rated, or have a nil rate of tax or are exempt from GST.

Value of Taxable Supplies = Value of invoices (+) value of debit notes (-) value of credit notes (+) value of advances received for which invoices have not been issued in the same month (-) value of advances adjusted against invoices.

- Details of advances as well as adjustment of advances against invoices are not required to be shown separately.

b) **Outward taxable supplies (zero-rated)** – It includes Zero-rated supplies i.e. exports or supplies made to SEZ.

c) **Other outward supplies (nil rated, exempt)** – includes supplies which are exempt from GST or are nil rated. Nil rated supplies are those for which the GST rate is nil. Further, goods such as salt, puja samagri, curd, lassi, fresh milk have been exempted under GST.

d) **Inward supplies (liable to reverse charge)** – provide details of purchases made which are subject to RCM and tax is to be paid by return here as recipient.

e) **Non-GST outward supplies** – Details of any supplies made by registered person kept wholly out of GST. For e.g., alcohol for human consumption and five petroleum products.

3.2. Of the supplies shown in 3.1 above, details of inter-State supplies made to unregistered persons, composition taxable persons, and UIN holders. Here registered person must mention the inter-State supplies which are made to:

- unregistered persons;
- composition taxpayers;

➤ those who hold a UIN.

4. **Eligible ITC:** This is the detail required for ITC. It must be provided separately for IGST, SGST, CGST, UTGST, and Cess. Only total values are to be reported and invoice level information is not required.

(A) ITC Available (whether in full or part) – This information is broken down into ITC on:

- a) import of goods;
- b) import of services;
- c) inward supplies on reverse charge (other than on import of goods and services reported above);
- d) inward supplies from taxable person Input Service Distributor (ISD);
- e) all other ITC

(B) ITC Reversed

- a) As per rules 42 & 43 of PGST/CGST Rules – These rules require that ITC must be reversed for goods and services, where they have been used partly for business and partly for other purposes, to the extent not used for business. Similarly, ITC reversal is also required where taxpayer is engaged in both taxable and exempt supplies.
- b) Others – Any other ITC which has been reversed by registered person.

(C) Net ITC available (A) – (B)

(D) Ineligible ITC

- a) As per Section 17(5) – Report credit which is not available to registered person.
- b) Others

5. Provide values of exempt, nil rated, and non-GST inward supplies: The registered person has to report any purchases, which are exempt, nil rated or not covered by GST at all.

6. **Payment of Tax:** Under this section, registered person reports the final tax payable by him on taxable supplies made by him which should match with details furnished in Table 3. The amount is separately reported under IGST, CGST, SGST/UTGST and Cess. The tax is to be discharged through utilization of ITC and balance if any, is to be discharged in cash. It may be noted that tax on RCM supplies has to be paid in cash. If any interest or late fee has been deposited that must also be reported.

6.2. TDS/TCS credit.

(C) FORM GSTR 2A: FORM GSTR 2A is details of inward supplies that has been automatically generated for each registered person by the common portal. When a Supplier files his **FORM GSTR-**

1, the information is captured in **FORM GSTR 2A** of the corresponding recipient. It takes information of goods and/or services which have been purchased in a given month from the Supplier's GSTR-1. GSTR 2A is auto-populated from the following returns of the Supplier/counterparty:

TABLE IV: AUTO-POPULATION OF GSTR 2A

Return	Filed by
GSTR 1	Regular registered Supplier
GSTR-5	Non-resident
GSTR 6	Input Service Distributor
GSTR 7	Person liable to deduct TDS
GSTR 8	E-commerce operator liable to collect TCS

Comparison between FORM GSTR – 2A and FORM GSTR – 3B

- a) **FORM GSTR – 3B** is a monthly summary return filed by the taxpayer by the 20th of the next month. Taxpayers are allowed to take ITC based on the details declared by them in Table 4.
- b) **FORM GSTR – 2A** is an auto-populated from the outward supplies declared by his suppliers in **FORM GSTR – 1**.

Matching FORM GSTR – 2A and FORM GSTR – 3B

When the supplier files **FORM GSTR – 1** for any particular month furnishing details of his outward supplies, the corresponding details are captured in **FORM GSTR – 2A** of the recipient. While the filing of **FORM GSTR – 2** has been kept in abeyance, it is still important under the GST framework for the taxpayers to reconcile the ITC claimed in **FORM GSTR – 3B** and **FORM GSTR – 2A**. Since **FORM GSTR – 3B** is a summary return hence, the amount of ITC availed in Table 4(a) must match with ITC details in **FORM GSTR – 2A**. It is important to reconcile this information on account of the following reasons:

- a) Reconciliation ensures that ITC being claimed is only in respect of tax which has been actually paid to the supplier.
- b) Ensures that no invoices have been missed/ recorded more than once etc.

Reasons for non-reconciliation of FORM GSTR – 2A and FORM GSTR – 3B

The details disclosed in **FORM GSTR – 2A and FORM GSTR – 3B** may not reconcile on account of the following reasons:

- Credit of IGST claimed on the import of goods.
- Credit of IGST on the import of services.
- Credit of GST paid on reverse charge mechanism etc.
- Transitional credit claimed in TRAN – I and TRAN – II.
- ITC for goods and services received in FY 2017 – 18 but availed in FY 2018 – 19.

In the cases mentioned above, the figures will not reconcile as no corresponding **FORM GSTR – 1** is being filed by the supplier or the ITC is being claimed at a later date. After considering the situations mentioned above, if any discrepancies are found in **FORM GSTR – 2A and FORM GSTR – 3B** leading to any excess ITC claimed by the recipient, the same must be paid by the taxpayer along with interest. It may be noted that even at the time of filing an Annual return in **FORM GSTR – 9**, reconciliation of ITC as per **FORM GSTR – 2A and FORM GSTR – 3B** is required to be done in Table 6 and Table 8.

Checking FORM GSTR – 3B vis-à-vis FORM GSTR 1 & FORM GSTR – 2A

Every month, registered taxpayer has to file a summary return in **FORM GSTR-3B** and report consolidated figures for outward and inward supplies and the ITC availed. He is also required to compute and pay the taxes based on self-declaration. Also, he is required to file **FORM GSTR-1** monthly/quarterly based on the turnover limit and report invoice wise detail of outward supplies. Based on the **FORM GSTR-1** filed by suppliers, common portal will auto-populate **FORM GSTR – 2A** for a particular recipient. Problem arises where there exists a difference between the figures declared in the **FORM GSTR-1** by a supplier and the corresponding summary figure declared in the **FORM GSTR-3B** by him. Following checkpoints need to be examined to ensure nil data gap:

- a) Reconciling the total summary figures for outward supplies declared in **FORM GSTR-3B** with the total of the Outward supplies declared in **FORM GSTR-1** for a particular month;
- b) Checking the amount of ITC availed as per **FORM GSTR-3B** vis-à-vis details mentioned in **FORM GSTR-2A**. It may be noted that as per the new sub-rule (4) of Rule 36 of PGSt Rules, 2017, taxpayers cannot avail ITC more than 110% of the ITC as per **FORM GSTR – 2A**.
- c) Ensuring that credit and debit notes have been correctly declared in **FORM GSTR-1**.

Restriction on availment of ITC linked to FORM GSTR-2A: Rule 36(4) has been inserted by **Notification No. 49/2019-Central Tax dated 9th October, 2019** (<https://www.cbic.gov.in/htdocs-cbec/gst/notfctn-49-central-tax-english-2019.pdf>) in CGST

Rules, 2017 which restricts ITC in case of mis-match of invoices. The said Rule 36(4) is reproduced below:

“(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.”

Thus, Rule 36(4) aims to limit the availment of ITC by the recipient in respect of invoices/debit notes, details of which have not been uploaded by the supplier in its **FORM GSTR-1** filed under Section 37(1) of the CGST/PGST Act, 2017. Let us decode the new insertion with a simple example. If an assessee has total ITC of Rs. 150 of which Rs.100 is reflected in **FORM GSTR-2A** and Rs. 50 remains un-reflected, the total ITC that can be availed is Rs. 120 i.e. 100 + Rs 20 (20% of Rs. 100). Thus, ITC of Rs. 30 out of Rs. 50 which remained not reflected cannot be claimed.

Further this limit of 20% has been revised downwards to 10% with effect from 1st January, 2020.

Rule 138E of PGST Rules, 2017: Restriction on furnishing of information in PART A of FORM GST EWB 01. This rule restricts any person on furnishing of information in Part-A of Form GST EWB 01 in case if the registered person has not furnished the return for a consecutive period of two months. The said rule is reproduced as below: -

Notwithstanding anything contained in sub-rule (1) of rule 138, no person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in PART A of FORM GST EWB 01 in respect of a registered person, whether as a supplier or a recipient, who,—

(a) being a person paying tax under section 10, or availing the benefit of Notification No. 02/2019– Central Tax (Rate), dated 7th March, 2019, has not furnished the statement in FORM GST CMP-08 for two consecutive quarters; or

(b) being a person other than a person specified in clause (a), has not furnished the returns for a consecutive period of two months:

Provided that the Commissioner may, on receipt of an application from a registered person in FORM GST EWB-05, on sufficient cause being shown and for reasons to be recorded in writing, by order, in FORM GST EWB-06, allow furnishing of the said information in PART A of FORM GST EWB 01, subject to such conditions and restrictions as may be specified by him:

Provided further that no order rejecting the request of such person to furnish the information in PART A of FORM GST EWB 01 under the first proviso shall be passed without affording the said person a reasonable opportunity of being heard:

Provided also that the permission granted or rejected by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be granted or, as the case may be, rejected by the Commissioner.

Explanation: – For the purposes of this rule, the expression “Commissioner” shall mean the jurisdictional Commissioner in respect of the persons specified in clauses (a) and (b).

Statutory Provisions in GST for Annual Returns

Sec 35(5)

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

Sec 44(2)

Every registered person who is required to get his accounts audited in accordance with the provisions of sub-section (5) of section 35 shall furnish, electronically, the annual return under sub-section (1) along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be prescribed.

Rule 80(3)

Every registered person whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

FORM GSTR-9 is an accumulation of information furnished in **FORM GSTR-1** and **FORM GSTR-3B** for a financial year. **FORM GSTR-1** corresponds to assessment of tax liability derived from Tax on Outward Supplies, Tax on Advances received and Inward Supply liable to Reverse Charge Mechanism. Similarly, **FORM GSTR-3B** is a reflection taxable turnover including reverse charge, and tax liability under different heads, ITC availed and reversed and tax liability discharged. **FORM**

GSTR-9 derives data for its tables from **GSTR-1 & GSTR3B** and some important derivations are elucidated as below:

TABLE V:DETAILS IN GSTR 9

TABLE 4 (GSTR 9): TAXABLE SUPPLY		Details of advances, inward and outward supplies made during the financial year		
PART II	PARTICULARS	DETAILS	GSTR 1	GSTR 3B
4A	Supplies made to un-registered persons (B2C)	B2C(small)+ B2C(large)+/- unregistered credit/debit notes+ /-amendments.	Table7, 5A, 5B,9B, Table 10	--
4B	Supplies made to registered persons (B2B)	Outward supplies [except supplies to SEZs with or without payment of tax AND Deemed Export]	Table 4A,4C	--
4C	Zero rated supply (Export) on payment of tax (except supplies to SEZs)	Physical Exports except supplies to SEZs unit	Table 6A	--
4D	Supply to SEZs on payment of tax	SEZ supplies with IGST Payment	Table 6B	--
4E	Deemed Exports	Supplies to EOU, Supplies against Advance/EPCG Authorizations	Table 6C	--
4F	Advances on which tax has been paid but invoice has not been issued (not covered under (A) to (E) above)	Unadjusted Advances (Advances received - Advance adjusted)	Table 11A & 11B	--
4G	Inward supplies on which tax is to be paid on reverse charge basis	Inward supplies+ Advances +/- Credit /Debit Notes		--
4H	Sub-total (A to G above)	Calculation Formulae		--
4I	Credit Notes issued in respect of transactions specified in (B) to (E) above (-)	Aggregate of Credit Notes in respect of Supply in 4B, 4C, 4D, 4E	Table 9B	--

4J	Debit Notes issued in respect of transactions specified in (B) to (E) (+)	Aggregate of Debit Notes in respect of Supply in 4B, 4C, 4D, 4E	Table 9B	--
4K & L	Supplies / tax declared through Amendments (+)/(-)	(+)/(-) Amendments in respect of supplies in 4B, 4C, 4D, 4E	Table 9C	--
4M	Sub-total (I to L above)	(+)/(-) of 4I to 4L		
4N	Supplies and advances on which tax is to be paid (H + M) above	Total tax to be paid on all supplies and advances as reflected in above columns		

TABLE VI: DETAILS OF ITC AVAILED

TABLE 6 (GSTR 9)		Details of ITC availed as declared in returns filed during the Financial Year		
PART	PARTICULARS	DETAILS	GSTR 1	GSTR 3B
6A.	Total amount of input tax credit availed through FORM GSTR-3B (sum total of Table 4A of FORM GSTR-3B)	Total Input Tax Credit availed would be auto-populated.	--	Table 4
6B.	Inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZs)	All Other ITC of Table (4)(A)(5) of GSTR 3B	--	Table 4(A) (5)
6C.	Inward supplies received from unregistered persons liable to reverse charge (other than B above) on which tax is paid & ITC availed	Input Tax Credit availed on all inward supplies received from unregistered person	--	Table (4)(A)(3)
6D.	Inward supplies received from registered persons liable to reverse charge (other than B above) on which tax is paid and ITC availed.	Input Tax Credit availed on all inward supplies received from registered person.	--	Table (4)(A)(3)

6E.	Import of goods (including supplies from SEZs)	Input Tax Credit Availed on import of goods.	--	Table (4)(A)(1)
6F.	Import of services (excluding inward supplies from SEZs)	Input Tax Credit availed on import of Services.	--	Table (4)(A)(2)
6G.	IITC received from ISD	Value of ITC received from ISD.	--	Table (4)(A)(4)
6H.	Amount of ITC reclaimed (other than B above) under the provisions of the Act.	Value of ITC Availed, reversed and reclaimed.		
6I.	Sub-total (B to H above)	Calculation formulae		
6J.	Difference (I - A above)	Calculation formulae		

TABLE VII: DETAILS OF OTHER ITC

PARTII	PARTICULARS	DETAILS	FORMS
6K.	Transition Credit through TRAN-I (including revisions if any)	Transition credit received in the Electronic Credit Ledger	GST TRAN-1
6L.	Transition Credit through TRAN-II	Transition credit received in the Electronic Credit Ledger.	GST TRAN-II
6M.	Any other ITC availed but not specified above	ITC availed but not covered in any heads specified under 6B to 6L	ITC-01, ITC-02
6N.	Sub-total (K to M above)	Calculation Formulae	
6O.	Total ITC availed (I + N above)	Calculation Formulae	

TABLE VIII: DETAILS OF REVERSED & INELIGIBLE ITC

7	(GSTR9)	Details of ITC Reversed and Ineligible ITC
7A	Rule 37	Reversal of input tax credit in the case of non-payment of consideration within 180 days.
7B	Rule 39	Reversal of ISD Input Tax Credit.
7C	Rule 42	ITC Reversal on Inputs & Input Services for Exempted / Nil rated/ Non GST Supplies
7D	Rule 43	ITC Reversal on Capital goods for Exempted / Nil rated/ Non GST Supplies.

7E	Section 17(5)	Negative list Under Section 17(5).
7F	Reversal of Tran-I credit	Reversal of Trans-I Credit.
7G	Reversal of Tran-II Credit	Reversal of Trans-II Credit.
7H	Other reversals	Incorrect ITC Aailed and Excess ITC Aailed.
7I	Total ITC Reversed (A to H above)	It is sum total of all ITC reversed as per above mention columns.
7J	Net ITC Available for Utilization (6O - 7I)	It is net ITC available after all reversals.

TABLE IX: OTHER ITC RELATED INFORMATION

	Table 8 (GSTR 9)	Other ITC related information
8A	ITC as per GSTR-2A (Table 3 & 5 thereof)	Auto Populated
8B	ITC as per sum total of 6(B) and 6(H) above	All Other ITC of Table (4)(A)(5) of GSTR 3B and Value of ITC Aailed, reversed and reclaimed.
8C	“For FY 2017-18” ITC on inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZs) received during 2017-18 but aailed during April to September, 2018 (“For FY 2018-19, ITC on inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZs) received during 2018-19 but aailed during April 2019 to September 2019”)	Table 4(A)(5) of GSTR 3B (April to September 18) – Mar’19.
8D	Difference [A-(B+C)]	Calculation formulae
8E	ITC available but not aailed (out of D)	ITC Available in 2A but not aailed in table 4(A)(5) of GSTR 3B till September 18.
8F	ITC available but ineligible (out of D)	ITC Available in GSIR-2A but ineligible as per Section 17(5), 42, 43.
8G	IGST paid on import of goods (including supplies from SEZ)	Aggregate of IGST paid on Imports during F.Y 2017-18
8H	IGST credit aailed on import of goods (as per 6(E))	Auto Populated

	above	
8I	Difference (G-H)	Calculation formulae
8J	ITC available but not availed on import of goods (Equal to I)	Should be Equal to 8I.
8K	Total ITC to be lapsed in current financial year (E +F + J)	Calculation formulae

Similarly, other tables also derive their data from the monthly returns. Thus, **FORM GSTR-9** derives the fundamental data from **FORM GSTR-3B** and **FORM GSTR-1** and also includes any supplies for the respective financial year accounted for in the next financial year. Further, the taxpayer is also provided with an opportunity to reconcile any outward, inward supplies, supplies liable for reverse charge or ITC claimed vide **FORM GSTR-9C** which could not be declared in the monthly returns, and to discharge the resulting tax liability vide **DRC-03**.

Further clarification about following contents of FORM GSTR-9 has been provided through Notification No. 56/2019 – Central Tax dated 14th November, 2019

<https://www.cbic.gov.in/htdocs-cbec/gst/notfctn-56-central-tax-english-2019.pdf>:

Reference	Information	Amendment
Column 8C	ITC pertaining to year current year but claimed during succeeding F.Y.	Separate Column inserted for FY 2018-19, where ITC is claimed during April 19 to September, 2019
Point No. V	Particulars of transactions pertaining to current year but declared during permitted period of succeeding year	Separate Column inserted for FY 2018-19, where transactions pertaining to FY 2018-19 are declared in returns between April 19 to September, 2019
Table 4B- Table 4E	Details of B2C (4A), B2B (4B), Export on payment of Taxes (4C), Supply to SEZ on payment of taxes	For FY 2017-18 and 2018-19, Taxpayers are given an option to report amount in Table 4B to 4E net of credit note (Table 4I), Debit Notes (Table 4J) and amendments (Table

	(4D) and deemed export (4E).	4K and 4L). Accordingly, Table 4I , 4J, 4K and 4L is made optional.
Table 5D, 5E and 5F	Details of Exempted Supply (Table 5D), Nil Rated Supply (Table 5E) and Non-GST Supply (Table 5F)	If taxpayers are unable to differentiate supply between Exempted, Nil rated and Non-GST supply, then, taxpayer are given an option to furnish sum of all such 3 supplies under Table 5D-exempted Supply. Please note that this option is available for FY 2017-18 and 2018-19 only.
Table 5A to 5F	Details of Outward supplies made during the financial year on which tax is not payable	For FY 2017-18 and 2018-19, taxpayers are given an option to furnish information in Table 5A to 5F net of credit Note (Table 5H), Debit Note (Table 5I) and Amendments (Table 5J and 5K). Accordingly, table No. 5H, 5J, 5K and 5L are made optional.
Table 6B	Details of GST paid on inward supplies, i.e., Inputs, Capital Goods and Input Services	For FY 2017-18 and 2018-19, the registered person shall have an option to report the entire ITC under the “inputs” row.
Table 6C and 6D	Inwards supplies from registered and unregistered persons liable to GST under RCM in form of Input, Input services and capital Goods	For FY 2017-18 and 2018-19, taxpayers have option to report the entire ITC under “Inputs”. Further, they are also given an option to fill the consolidated data of Table 6C and 6D in table 6D only.
Table 6E	ITC on Import of goods, i.e., Inputs and Capital Goods	Taxpayers may report consolidated amount under “Inputs” row only

Table 7A to 7H	Details of ITC Reversed and Ineligible ITC for the financial year	Taxpayer may enter the consolidated amount of reversal under table 7H only. However, reversal on account of TRAN-1 credit (Table 7F) and TRAN-2 (Table 7G) are be reported in respective columns.
Table 8A	Auto-populated ITC as per GSTR-2A	For FY 2018-19, ITC shall auto-populate as per GSTR-2A on 1st November, 2018.
Table 8A to 8D	Reconciliation of ITC claimed and ITC appearing in GSTR-2A	For FY 2017-18 and 2018-19, the registered person shall have an option to upload the details for the entries in Table 8A to 8D duly signed, in PDF format in FORM GSTR-9C (without the CA certification).
Table 10	Particulars of the transactions for the FY 2017-18 declared in returns between April 2018 till March 2019	Table has been amended to contain details of transaction of 2018-19 declared in return of April, 2019 to September, 2019.
Table 12	Reversal of ITC availed during previous financial year	For FY 2017-18 and 2018-19, the registered person shall have an option to not fill this table
Table 13	ITC availed for the previous financial year	For FY 2017-18 and 2018-19, the registered person shall have an option to not fill this table.
Table 15A to 15G	Particulars of Demands and Refunds	For FY 2017-18 and 2018-19, the registered person shall have an option to not fill this table.

Table 16A & 16B	Information on supplies received from composition taxpayers, deemed supply under section 143 and goods sent on approval basis	For FY 2017-18 and 2018-19, the registered person shall have an option to not fill this table.
Table 17	HSN Wise Summary of outward supplies	For FY 2017-18 and 2018-19, the registered person shall have an option to not fill this table.
Table 18	HSN Wise Summary of Inward supplies	For FY 2017-18 and 2018-19, the registered person shall have an option to not fill this table.

3. Following Amendments or Clarifications have been provided with respect to FORM-9C:

Reference	Information	Amendment
Table 5B-5H	Reconciliation of turnover declared in audited Annual Financial Statement with turnover declared in Annual Return (GSTR9)	For FY 2017-18 and 2018-19, the registered person shall have an option to not fill this table. If there are any adjustments required to be reported then the same may be reported in Table 5O.
Table 12B & 12C	ITC booked in earlier Financial Years claimed in current Financial Year & ITC booked in current Financial Year to be claimed in subsequent Financial Years	For FY 2017-18 and 2018-19, the registered person shall have an option to not fill this Table

Table 14	Reconciliation of ITC declared in Annual Return (GSTR9) with ITC availed on expenses as per audited Annual Financial Statement or books of account	For FY 2017-18 and 2018-19, the registered person shall have an option to not fill this Table
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GSTR-9 & GSTR-9C: A Comparison

**TABLE X: COMPARISON BETWEEN ANNUAL RETURN
& RECONCILIATION STATEMENT**

Points of Comparison	GSTR-9 Annual Return	GSTR-9C Reconciliation Statement
Nature	➤ Informational/ consolidation of all GST returns.	➤ Analytical statement on GST returns certified by GST Auditor/CA/CMA for GST authorities to take necessary action.
Who must file	➤ Registered taxpayers	➤ Registered taxpayers having aggregate turnover above Rs. 2 Crore.
Not applicable to	<ul style="list-style-type: none"> ➤ Casual Taxable Person ➤ Non-Resident Taxable Person ➤ Input Service Distributor ➤ Unique Identification Number Holders ➤ Online Information and Database Access Retrieval Service providers ➤ Composition Dealers ➤ Persons subject to TCS or 	➤ Those mentioned under GSTR-9 but also registered person(s) whose aggregate turnover in a FY is less than Rs. 2 Crores.

	TDS provisions	
Late fees & penalty	➤ Late fees of Rs. 200 per day of delay subject to a maximum cap of an amount at 0.25% of total turnover in respective State/UT.	➤ No specific provision. Hence, subject to a general penalty of Rs. 25,000.
Who must certify/ attest	To be attested by taxpayer using a digital signature	➤ Certification of GST Auditor is required who is either a CA/CMA through digital signature and must be attested by the taxpayer using a digital signature.
Annexures	No annexures to be attached	Annexure of Audited financial statement is required.

It may be noted that the foreign airlines have been exempted from furnishing reconciliation Statement in **FORM GSTR 9C** vide **Notification 09/2020-Central Tax dated 16th March, 2020**.

KEY POINTS

1. In a few cases, certain transactions may have not been reported in the filed GST returns for various reasons. However, these may affect the tax liability at the end of the year. ITC on this, cannot be claimed in **FORM GSTR-9**. Further, liability identified later can be deposited with Government

- using **FORM DRC-03** by cash only. Examples for this situation are – Supply without consideration, goods sent on approval basis, deemed supplies where taxpayers have sent inputs or capital goods to the job workers and have not received them by one or three years respectively, etc.
2. It has been clarified that the auto-population of data is a service provided to the taxpayers for easy filing. However, the taxpayers have to report the data as per their books of accounts or GST returns filed during the financial year.
 3. Any payments made through **FORM DRC-03** for any supplies relating to the period between July 2017 to March 2018 will not be accounted for in **FORM GSTR-9** but shall be reported during reconciliation in **FORM GSTR-9C**.
 4. Returns data should be analyzed to check for time of filing of returns to verify if the late fee and interest due has been paid for the respective tax period(s). Further, as mandated by explanation u/s 49 read with Rule 85(3) of the Act(s) *ibid*, mere deposit in the cash ledger does not discharge the tax liability.
 5. Returns should be verified for the reversals mandated by law, such as u/s 17, as notified under the law such as for cloth manufacturer for their stock ending on 31-07-2018. Further, reversals accounted for in the returns should be checked for omissions and commissions, whether same has been correctly accounted for goods returned, goods destroyed, exempted supplies, or against any departmental proceedings etc.
 6. **FORM DRC-03** voluntary payment of tax should be checked, if same has been made to account for an error in the returns or in response to departmental proceedings wherein **FORM ASMT-10**, or a demand and recovery notice has been issued against the registered taxable person.
 7. As per the legal provision of Section 44(1) of PGST/CGST Act, every registered person shall be required to file **FORM GSTR-9**. Hence, even if the status of the taxpayer is not registered(Cancelled) as on 31st March 2018 but he was registered between July-17 to March-18, he is required to file the **FORM GSTR-9** providing details for the period during which he was registered. Similarly, if a taxpayer had applied for cancellation of registration but the application was pending as on 31st March 2018, he is required to file **FORM GSTR-9**. **FORM GSTR-9C** is an audit form that must be filed by all taxpayers whose aggregate turnover exceeds Rs. 2 crores in a financial year and is liable to get their annual reports audited.
 8. **FORM GSTR-9** is required to be filed at the GSTIN level i.e. for each registration. If taxpayer has obtained multiple GST registrations, under the same PAN, whether in the same State or different States, he/she is required to file annual return for each registration separately, where the GSTIN was registered as a normal taxpayer for some time during the financial year or for the whole of the financial year.
 9. Invoices amended in returns are liable to interest.
 10. For services exported under LUT, payment not received within one year become domestic sale(Table 5A of **FORM GSTR-9**)
 11. Non-business income shown in IT return will be used for making reversals of ITC.

12. ITC on capital goods to be compared with fixed assets shown in balance sheet. Any reduction/write-off in fixed asset schedule may relate to sale of capital goods.
13. Credit notes received must be in comparison with reduced liability. Also credit notes to be checked according to reversal of theft, damaged goods.

Late fee & Interest:

- a) Interest is 18% per annum. It has to be calculated by the taxpayer on the amount of outstanding tax to be paid. It shall be calculated on the tax liability identified in the ledger at the time of payment. The time period will be from the next day of filing due date till the actual date of payment.

As per GST, Late fee is Rupee 100 per day per Act. So it is Rs. 100 under CGST & Rs. 100 under SGST. Total will be Rupee. 200/day. The maximum amount is Rs. 5,000. It may be noted that Vide **Notification No. 76/2018-Central Tax dated 31st December, 2018** (<https://www.cbic.gov.in/htdocs-cbec/gst/notfctn-76-central-tax-english-2018.pdf>)

, late fees has been waived for **FORM GSTR-1, FORM GSTR-3B** and **FORM GSTR-4** for the period of July 2017 to September 2018 provided the said returns are furnished within the period from 22nd December, 2018 to 31st March 2019. Similar dispensation has been provided for delay in filing of **FORM GSTR-1** from July 2017 to November 2019 provided the said details are furnished by 17th January, 2020. The registered person who have to file returns but have 'nil' tax liability would have to pay late fee of Rs 10 under PGST law, and an equal amount under CGST law.

CHAPTER – 11

REFUND

TABLE I- SECTIONS & RULES RELATED TO REFUND			
SR. NO	Section/Rule	PGST/IGST Act/Rule 2017	Description
1	Section 54	PGST	Refund of tax.
2	Section 55	PGST	Refund in certain cases.
3	Section 56	PGST	Interest on delayed refunds.
4	Section 57	PGST	Consumer Welfare Fund.
5	Section 58	PGST	Utilization of Fund
6	Section 77	PGST	Tax wrongfully collected and paid to Central Government or State Government.
7	Section 2 (5)	IGST	Export of goods.
8	Section 2 (6)	IGST	Export of services.
9	Section 2 (23)	IGST	Definition of zero rated supply.
10	Section 15	IGST	Refund of Integrated tax paid on supply of goods to tourists.
11	Section 16	IGST	Zero Rated Supply.
12	Rule 89	PGST Rules	Application for refund of tax, interest, penalty, fees or any other amount.
13	Rule 90	PGST Rules	Acknowledgement.
14	Rule 91	PGST Rules	Grant of provisional refund.
15	Rule 92	PGST Rules	Order sanctioning refund.
16	Rule 93	PGST Rules	Credit of the amount of rejected refund claim.
17	Rule 94	PGST Rules	Order sanctioning interest on delayed refunds.
18	Rule 95	PGST Rules	Refund of tax to certain persons

19	Rule 95A	PGST Rules	Refund of taxes to the retail outlets established in departure area of an international Airport beyond immigration counters making tax free supply to an outgoing international tourist.
20	Rule 96	PGST Rules	Refund of Integrated tax paid on goods [or services] exported out of India.
21	Rule 96 A	PGST Rules	Export of goods or services under bond or letter of undertaking.
22	Rule 97	PGST Rules	Consumer Welfare fund.
23	Rule 97 A	PGST Rules	Manual filing & Processing.

LEGAL PROVISIONS:

The provisions related to refund and “relevant date” for the same are embodied in Sections 54 and 77 of the PGST Act, 2017 and the requirement of submission of relevant documents as listed in sub-rule (2) of Rule 89 of PGST Rules, 2017 provides an insight into various situations that may necessitate a refund claim. A claim for refund may arise on account of:

1. Export of Goods or services.
2. Supplies to SEZ units and developers.
3. Deemed Export supplies.
4. Refund of taxes on purchase made by UN or embassies etc.
5. Refund arising on account of judgment, decree, order or direction of the Appellate Authority or Appellate Tribunal or any court.
6. Refund of accumulated Input Tax Credit on account of inverted duty structure.
7. Refund on account of finalization of provisional assessment.
8. Refund of pre-deposit.
9. Refund of excess payment of tax.
10. Refunds to International tourists of GST paid on goods in India and carried abroad at the time of their departure from India.
11. Refund on account of issuance of refund vouchers for taxes paid on advances against which goods or services have not been supplied.
12. Refund of CGST & SGST paid by treating the supply as intra-State supply which is subsequently held as inter-State supply and vice versa.

Principle of Unjust Enrichment:

Talking about unjust enrichment, a presumption is always drawn that the businessman will shift the incidence of tax to the final consumer. This is because GST is an indirect tax whose incidence is to be borne by the consumer. It is for this reason that every claim of refund (barring specified exceptions) need to pass the test of unjust enrichment and every such claim if sanctioned is first transferred to the Consumer Welfare Fund. The GST law makes this test inapplicable in case of following refunds:

- a) refund of accumulated ITC;
- b) refund on account of exports;
- c) refund of payment of wrong tax (integrated tax instead of central tax plus state tax and vice versa);
- d) refund of tax paid on a supply which is not provided or which refund voucher is issued or if the applicant shows that he has not passed on the incidence of tax to any other person.

In all other cases the test of unjust enrichment needs to be satisfied for the claim to be paid to the applicant. For crossing the bar of unjust enrichment, if the refund claim is less than Rs.2 Lakhs, then a self-declaration of the applicant to the effect that the incidence of tax has not been passed to any other person will suffice to process the refund claim. For refund claims exceeding Rs. 2 Lakhs, a certificate from a Chartered Accountant/Cost Accountant will have to be given.

De-minimus rule:

Notwithstanding anything contained in Section 54 of PGST Act, 2017, no refund under sub-section (5) and (6) of the said Section shall be paid, if the amount is less than one thousand rupees. The limit of Rupees one thousand shall be applied for each tax head separately and cumulatively. Example: If a refund is applied of IGST -20,000/-, CGST-900/-, SGST-900/-, then only IGST-20,000/- is admissible for refund.

TIME PERIOD FOR FILING OF REFUND:

As per section 54 of the PGST Act, 2017 every claim for refund is to be filed within two years from the relevant date. As for "*relevant date*", the same has been defined in the said section and is enumerated hereunder:

- 1) in the case of goods exported of India:
 - a) 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;

- b) If the goods are exported by land, the date on which such goods pass the frontier;
 - c) If the goods are exported by post, the date of dispatch of goods by the post office concerned to a place outside India.
- 2) In case of deemed exports, the date on which the return relating to such deemed exports is furnished.
 - 3) In case of services exported out of India:
 - a) Where supply of services had been completed prior to the receipt of such payment, the date of receipt of payment in convertible foreign exchange.
 - b) Where payment for the services had been received in advance prior to the date of issue of invoice, the relevant date is issue of invoice.
 - 4) In case of refund of unutilized input tax credit *on account of inverted duty structure*, the relevant date is *the due date for furnishing of return under Section 39 for the period in which such claim for refund arises*.
 - 5) In case where refund is as a consequence of judgement, decree, order or direction of the Appellate authority, appellate tribunal or any court, the relevant date is date of communication of such judgement.
 - 6) In case where tax is paid provisionally under this act, the date of adjustment of tax after the final assessment.
 - 7) In the case of a person other than a 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.

[Note: Point 4) was amended w.e.f. 01st February, 2019. Before 01st February, 2019, it said relevant date in the case of refund of unutilized ITC under sub-section (3), shall be the end of financial year in which such for refund arises.]

Zero rated supply

“Zero rated supply” under Section 16 of the IGST Act, 2017 means any of the following supplies of goods or services or both, namely:

- a. Export of goods or services or both; or
- b. Supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

Clause 5 of section 2 of IGST Act, 2017 defines – “Export of Goods” as taking goods out of India to a place outside India.

Further, Clause (6) of Section 2 of IGST Act, 2017 defines “Export of services” as supply of any service when, –

- i. the supplier of service is located in India;
- ii. the recipient of service is located outside India;
- iii. the place of supply of service is outside India;
- iv. the payment for such service has been received by the supplier of service in convertible foreign exchange *or in Indian rupees wherever permitted by the Reserve Bank of India*;
- v. the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.

[Note: Explanation 1 of Section 8 of IGST Act, 2017- For the purposes of this Act, where a person has,-

- a) an establishment in India and any other establishment outside India;
 - b) an establishment in a State or Union Territory and any other establishment outside that State or Union territory;
 - c) an establishment in a State or Union Territory and any other registered within that State or Union territory,
- then such establishments shall be treated as establishments of distinct persons.]

Refund of Integrated tax paid on goods exported out of India- In accordance with the Rule 96 of PGST Act 2017, the shipping bill filed by an exporter shall be deemed to be an application of refund of IGST paid on goods exported out of India only when the person in charge of the conveyance carrying the export goods duly files a departure manifest or export manifest or an export report covering the number and date of the shipping bills or bills of export and the applicant has furnished a valid return in **FORM GSTR-3** or **FORM GSTR-3B**.

As per sub-rule (10) of Rule 96, the persons claiming refund of integrated tax paid on exports of goods or services should not have:

- (a) received supplies on which the benefit of **Notification No. 48/2017-Central Tax, dated 18th October, 2017**, except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme or **Notification No. 40/2017-Central Tax (Rate), dated 23rd October, 2017**, or **Notification No. 41/2017-Integrated Tax (Rate), dated 23rd October, 2017** has been availed; or
- (b) availed the benefit under **Notification No. 78/2017-Customs, dated 13th October, 2017**, or **Notification No. 79/2017- Customs, dated the 13th October, 2017**, except so

far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme.

Refund for Deemed Exports

As per sub-section (39) of Section 2 of PGST Act, 2017, **deemed exports means such supplies of goods** as may be notified under section 147. Section 147 of the said Act notifies 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 manufactures in India. Accordingly, **Notification No 48/2017-Central Tax dated 18th October, 2017** has been issued which has notified the following supplies as deemed exports:

- a) Supply of goods by a registered person against Advance Authorization;
- b) Supply of capital goods by a registered person against Export Promotion Capital Goods Authorization;
- c) Supply of good by a registered person to Export Oriented Unit;
- d) Supply of gold by a bank or Public Sector Undertaking specified in the notification No 50/2017- Customs, dated 30th June, 2017.

Refund of unutilized ITC is allowed only in following two cases:

a. Zero rated supplies made without payment of tax:

On account of zero rating of supplies, the supplier will be entitled to claim ITC in respect of goods or services or both used for such supplies even though they might be non-taxable or exempt supplies. The IGST Act, 2017 allows the flexibility to the exporters (which will include the supplier making supplies to SEZ) to claim refund upfront as integrated tax (by making supplies on payment of tax using ITC) or export without payment of tax by executing a Bond/LUT and claim refund of related ITC of taxes paid on inputs and input services used in making such zero rated supplies.

As per sub-section (3) of Section 16 of the IGST Act, 2017 read with section 54 of the PGST Act, 2017, a registered person making zero rated supply is eligible to claim refund of unutilized ITC where he supplies goods or services or both under bond or Letter of Undertaking, without payment of integrated tax.

Thus the registered person binds himself to pay the tax due along with the interest within a period of –

- (i) fifteen days after the expiry of three months or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export, if the goods are not exported out of India; or
- (ii) fifteen days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the Reserve Bank of India.

Where the goods are not exported within the time specified and the registered person fails to pay the amount, the facility of export under bond or Letter of Undertaking shall be withdrawn forthwith and the said amount shall be recovered from the registered person in accordance with the provisions of Section 79. However, the said facility shall be restored immediately when the registered person pays the amount due.

As per sub-rule (4) of Rule 89, refund of input tax credit on account of zero-rated supply of goods and services without payment under bond or Letter of Undertaking shall be granted as per the following formula –

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover

Where,-

- (A) “Refund amount” means the maximum refund that is admissible;
- (B) “Net ITC” means input tax credit availed on inputs and input services during the relevant period other than the ITC availed for which refund is claimed under sub-rules (4A) or (4B) or both;
- (C) “Turnover of zero-rated supply of goods” means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking, other than the ITC availed for which refund is claimed under sub-rules (4A) or 4(B) or both;
- (D) “Turnover of zero-rated supply of services” means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

(E) “Adjusted Total turnover” means the sum total of the value of:

- (i) the turnover in a State or a Union territory, as defined under sub-section (112) of section 2 excluding the turnover of services
- (ii) the turnover of zero rated supply of services determined in terms of clause (D) above and non-zero rated supply of services, excluding the value of exempt supplies other than zero-rated supplies and the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both.

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

[**Note:** The transitional credit pertains to duties and taxes paid under the existing law and thus cannot be treated as part of 'Net ITC' and therefore no refund of such unutilized transitional credit is admissible.]

It should be noted that no refund of unutilized input tax credit is allowed in cases where the goods exported out of India are subjected to export duty. Further, no refund of input tax credit is 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.

Grant of Provisional Refund in case of Zero Rated Supplies

GST law also provides for grant of provisional refund of 90% of the total refund claim, in case the claim relates for refund arising on account of zero rated supplies. The provisional refund would be paid within 7 days after giving the acknowledgement. The acknowledgement of refund application is normally issued within a period of 15 days. The provisional refund would not be granted to such supplier who was, during any period of five years immediately preceding the refund period, was prosecuted.

b. Inverted duty structure: Where the ITC has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government

on the recommendations of the Council. This would include even those cases where supply has been made to merchant exporters under **Notification No. 40/2017- Central Tax (Rate) dated 23rd October, 2017** or **Notification No. 41/2017-Integrated Tax (Rate) dated 23rd October, 2017 or both**. In such cases also, refund can be applied under Section 54 of the PGST Act, 2017 read with Rule 89 of the PGST Rules, 2017. Under sub-rule(5) of Rule 89, In the case of inverted duty structure, refund of input tax credit shall be granted as per the following formula –

Maximum Refund Amount = {(Turnover of inverted rated supply of goods) x Net ITC ÷ Adjusted Total Turnover} – tax payable on such inverted rated supply of goods and services

- (a) Net ITC shall mean input tax credit availed on inputs during the relevant period other than the ITC availed for which refund is claimed under sub-rules (4A) or (4B) or both.
- (b) 'Adjusted Total turnover' and 'relevant date' shall have the same meaning as assigned to them in sub-rule (4).

In respect of **goods, Notification no. 5/2017- Central Tax (Rate) dated 28th June, 2017** as amended by **Notification No. 29/2017 - Central Tax (Rate) dated 22nd September, 2017**, and **Notification No.44/2017-Central Tax(Rate) dated 14th November, 2017** has been issued whereby the following goods have been notified in respect of which no refund of unutilized input tax credit shall be allowed, where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on the output supplies of such goods (other than nil rated or fully exempt supplies).

TABLE-II: GOODS WHERE NO REFUND OF UNUTILIZED ITC ALLOWED IN CASE OF INVERTED DUTY		
SR. NO.	Tariff item, heading, sub-heading-Chapter	Description
1	5007	Woven fabrics of silk or of silk waste
2	5111 to 5113	Woven fabrics of wool or of animal hair
3	5208 to 5212	Woven fabrics of cotton
4	5309 to 5311	Woven fabrics other vegetable textile fibres, paper yarn

5	5407, 5408	Woven fabrics of manmade textile materials
6	5512 to 5516	Woven fabrics of manmade staple fibres
6A	5608	Knotted netting of twine, cordage or rope; made up fishing nets and other made up nets, of textile materials
6B	5801	Corduroy fabrics
6C	5806	Narrow woven fabrics, other than goods of heading 5807; narrow fabrics consisting of warp without weft assembled by means of an adhesive
7		Knitted or crocheted fabrics [All goods]
8	8601	Rail locomotives powered from an external source of electricity or by electric accumulators
9	8602	Other rail locomotives; locomotive tenders; such as Diesel-electric locomotives, Steam locomotives and tenders thereof
10	8603	Self-propelled railway or tramway coaches, vans and trucks, other than those of heading 8604
11	8604	Railway or tramway maintenance or service vehicles, whether or not self-propelled (for example, workshops, cranes, ballast tampers, track liners, testing coaches and track inspection vehicles)
12	8605	Railway or tramway passenger coaches, not self-propelled; luggage vans, post office coaches and other special purpose railway or tramway coaches not self-propelled (excluding those of heading 8604)
13	8606	Railway or tramway goods vans and wagons, not self-propelled
14	8607	Parts of railway or tramway locomotives or rolling-stock; such as Bogies, axles and wheels, and parts thereof
15	8608	Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical) signalling, safety or traffic control equipment for rail-ways, tramways, roads, inland waterways, parking facilities, port installations or airfields; parts of the foregoing

However, vide **Notification No. 20/2018-Central Tax (Rate)**, dated 26th July, 2018, the restriction in relation to fabrics has been removed prospectively from 1st August, 2018 subject to the condition that the accumulated input tax credit lying unutilized in balance, after

payment of tax for and up to the month of July, 2018, on the inward supplies received up to the 31st day of July 2018, shall lapse.

A comprehensive reading of amended notification makes it clear that it seeks to lapse the ITC on account of inverted duty structure lying in balance after payment of GST for the month of July (on purchases made on or before July 31, 2018). A detailed clarification regarding the above has been issued vide Circular No. 56/30/2018-GST dated 24th August, 2018.

Payment of Wrong Tax

Under GST it might happen that the taxable person may pay integrated tax instead of central tax plus state tax and vice versa because of incorrect application of the place of supply provisions. In such cases, while making the appropriate payment of tax, interest will not be charged and the refund claim of the wrong tax paid earlier will be entertained without subjecting it to the provision of unjust enrichment.

Claim by a person who has borne the incidence of tax

Any tax collected by the taxable person more than the tax due on such supplies must be credited to the Government account. The law makes explicit provision for the person who has borne the incidence of tax to file refund claim in accordance with the provisions of Section 54 of the PGST Act, 2017.

Refund to casual/Non-Resident Taxable Persons

A casual/non-resident taxable person has to pay tax in advance at the time of registration. Refund may become due to such persons at the end of the registration period because the tax paid in advance may be more than the actual tax liability on the supplies made by them during the period of validity of registration period. The law envisages refund to such categories of taxable persons also. But the amount of excess advance **tax shall not be refunded unless such person has filed all the returns due during the time their registration** was effective. It is only after such compliance that refund will be granted.

Refund to UN Bodies and other notified agencies

Supplies made to UN bodies and embassies may be exempted from payment of GST as per international obligations. However, this exemption is being operationalized by way of a refund mechanism. So a taxable person making supplies to such bodies would charge the tax due and remit the same to Government account. However, the UN bodies and other entities notified

under Section 55 of the PGST Act, 2017 can claim refund of the taxes paid by them on their purchases. The claim has to be made before the expiry of eighteen months from the last day of the quarter in which such supply was received. It may be noted that refund would be granted by Central Government as facility of a single UIN has been made available to such agencies.

[**Note:** The period of eighteen months was extended from six months vide Notification No. 20/2018- Central Tax dated 28th March, 2018.]

Refund of balance in the electronic cash ledger:

The claim for refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 of PGST Act, 2017 by a registered person may be made in the return furnished under section 39 of the Act for the relevant period.

Procedure for Refund:

Any person, except the persons covered under notification issued under section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file an application electronically in **FORM GST RFD-01** through the common portal.

[**Note:** Fully electronic system of refund has become operational from 26th September, 2019. Before that, refund applications were filed in **FORM GST RFD-01A**]

Refund to retail outlets at international airport:

1. Retail outlet established in departure area of an international airport, beyond the immigration counters, supplying indigenous goods to an outgoing international tourist who is leaving India shall be eligible to claim refund of tax paid by it on inward supply of such goods vide **Notification No. 31/2019 Central Tax dated 28th June 2019 which amends rule 95A.** Application to be submitted in **FORM GST RFD10 B.** 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.

2. Notification No 10/2019 Integrated Tax (Rate) dated 29th June, 2019 specifies 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 integrated tax paid on inward supply of such goods, subject to the conditions specified in rule 95A. (w.e.f July 1, 2019). Similar Notification has been issued under Central and State Tax.

3. Notification 11/2019 Central Tax(Rate) dated 29th June,2019 specifies 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. (w.e.f. July 1, 2019).

[Note: **Circular 106/25/2019 GST dated 29th June, 2019** specifies manner & procedure of filing of such refund claims.]

Circular 125/44/2019 dated 18th November, 2019:- The fully electronic refund procedure in which all steps of submission and processing shall be undertaken electronically, has been deployed on the common portal with effect from 26.09.2019. However, the Refund applications filed on the common portal before 26.09.2019 shall continue to be processed manually as prior to deployment of new system.

[Note: The detailed **Circular 125/44/2019 dated 18th November, 2019 is annexed at the end of this topic]**

GENERAL KEY POINTS:

1. Whether the application of refund is in proper form GST RFD 01 A or GST RFD 01(after 26th September, 2019) and made with in a period of 2 years from the relevant date?
2. Where the refund is of accumulated ITC or on account of export or inverted duty structure, whether the common portal has generated a proof of debit (ARN-Acknowledgement Receipt Number)?

3. Whether the documents/statements/undertakings/invoices submitted along with the electronic refund application have been scrutinized and are in accordance with PGST rules and various circulars issued on the subject?
4. Whether the amount of refund claimed of accumulated ITC or excess amount in cash ledger has been debited from the electronic credit ledger or cash ledger respectively?
5. Whether the amount of refund claimed is less than the statutory limit of Rs 1000/- ?
6. Whether the supply of goods or services are eligible to be categorized as exports under section (5) and (6) of Section 2 of IGST Act?
7. Whether the valid returns including GSTR 3B have been filed for the last tax period before the one in which the refund is claimed by the applicant?
8. Whether the liabilities of GST or existing law have been deducted before the grant of refund. (Section 54(10)(b))?

SPECIFIC KEY POINTS:

1. Whether the refund of tax paid on input services and capital goods has been claimed on account of inverted duty structure?
2. Whether the supply of goods or services without payment of tax made under bond or LUT or with payment of integrated tax? [Note: LUT/Bond is not required in case of export of non GST and exempted goods without payment of integrated tax]
3. Whether the registered person exporting non-GST goods comply with the requirement under existing laws?
4. Whether the amount of transitional credit has been included as part of 'net ITC' to claim refund of unutilized ITC?
5. Whether the refund of tax /duty paid under the existing laws has been disposed of in accordance with the provisions of existing laws?
6. Whether the necessary condition of realization of convertible foreign exchange or payment in Indian Rupee, if permitted by RBI has been adhered to in case of export of services (with/without payment of tax) supported by number and date of invoices and relevant BRC or FIRC?
7. Whether the claim of refund in export of goods is supported by number and date of shipping bills or bills of export and number & date of export invoices?
8. Whether the 'net ITC' as per formulae in rule 89 has been verified? Whether ITC availed on capital goods has been excluded in the case of refund of unutilized ITC?

9. Whether the refund on deemed exports claimed in the case of supply of goods only(Notification No. 48/2017 dated 18th October 2017)?
10. Whether details of exports of goods have been verified from ICEGATE?
11. Whether the refund of unutilized ITC is claimed on the goods notified under clause (ii) of sub-section (3) of Section 54 of the act.(**Notification No 5/2017 – Central Tax dated 28th June,2017, Notification No. 44/2017- Central Tax dated 14th November,2017 and Notification No. 20/2018- Central Tax datd 26th July, 2018**) ?

Court Judgement related to GST refunds:-

1.Vsg Exports Pvt. Ltd. Vs CC reported in 2019-TIOL-977-HC-MAD-GST: IGST refund cannot be denied on account of technical glitches.

Circular related to GST refunds:

- 1) Circular 17/17/2017 dated November 15, 2017, F. No. 349/169/2017 - GST :- Manual filing and processing of refund claims in respect of zero-rated supplies.
<https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular%20No.%2017-GST.pdf>
- 2) Circular 24/24/2017 dated December 21, 2017, F.No. 349/58/2017-GST:- Manual filing and processing of refund claims on account of inverted duty structure, deemed exports and excess balance in electronic cash ledger.
<https://www.cbic.gov.in/resources//htdocs-cbec/gst/circularno-24-cgst.pdf>
- 3) Circular 36/10/2018 dated March 13, 2018, F. No. 349/48/2017-GST:- Processing of refund application for UIN entities.
<https://www.cbic.gov.in/resources//htdocs-cbec/gst/circularno-36-cgst.pdf>
- 4) Circular 37/11/2017 dated March 15, 2018, F. No.349/47/2017-GST:- Clarifications on exports related refund issues.
<https://www.cbic.gov.in/resources//htdocs-cbec/gst/circularno-37-cgst.pdf>
- 5) Circular 43/17/2018 dated April 13, 2018, F. No. 349/48/2017-GST clarifying the issues arising in refund to UIN.
https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_No.43.pdf
- 6) Circular 45/19/2018 dated May 30, 2018, F. No. CBEC/20/16/4/2018-GST:Clarification on refund related issues
- 7)https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_No.45.pdf
- 8)Circular 48 / 22 / 2018 June 14, 2018, F. No. CBEC/20/16/03/2017-GST:- Circulars clarifying miscellaneous issues related SEZ and refund of unutilized ITC for job workers.
<https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular-48-22-2018-GST-updated.pdf>
- 9)Circular 56/30/2018, dated August 24, 2018, F.No.354/290/2018-TRU:- Clarification on removal of restriction on refund of accumulated Input Tax Credit on fabrics.

https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_No.56.pdf

10) Circular 59/33/2018 dated September 4, 2018, F. No. 349/21/2016-GST:- Clarification on refund related issues.

https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_No.59.pdf

11) Circular 60/34/2018 dated September 4, 2018, CBEC-20/16/10/2018-GST (CBEC):- Processing of refund applications filed by Canteen Stores Department (CSD).

https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_No.60.pdf

12) Circular 63/37/2018 dated September 14, 2018, F. No. 349/48/2017-GST Clarification regarding processing of refund claims filed by UIN entities.

https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_No.63.pdf

13) Circular 70/44/2018 dated October 26, 2018, F. No. CBEC/20/16/04/2018-GST :- Clarification on certain issues related to refund.

https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular-No-70_New.pdf

14) Circular 79/53/2018 dated December 31, 2018, F. No. CBEC-20/16/04/2018 – GST:- Clarification on refund related issues.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular-No-79.pdf>

15) Circular 94/13/2019 dated March 28, 2019, F. No. CBEC-20/16/04/2018 – GST: Seeks to clarify certain refund related issues under GST.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-94.pdf>

16) Circular 104/23/2019 dated June 28, 2019, F. No. CBEC - 20/16/04/2018 - GST:- Processing of refund applications in FORM GST RFD-01A submitted taxpayers wrongly mapped on the common portal – reg.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-104.pdf>

17) Circular 106/25/2019 dated June 29, 2019, F. No. CBEC-20/16/04/2018-GST:- Refund of taxes paid on inward supply of indigenous goods by retail outlets established departure area of the international airport beyond immigration counters when supplied to outgoing international tourist against foreign exchange - reg.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-106.pdf>

18) Circular 107/26/2019 dated July 18, 2019, F.N.CBEC-20/06/03/2019GST:- Clarification on doubts related to supply Information Technology enabled Services (ITeS services)-reg.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-107.pdf>

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-127.pdf>

19) Circular 125/44/2019 dated November 18, 2019, F.No. CBEC - 20/16/04/18:- GST Seeks to clarify the fully electronic refund process through FORM GST RFD-01 and single disbursement.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-125.pdf>

20) Circular 135/05/2020 dated March 31, 2020, F.No. CBEC - 20/01/06/2019:- Circular on Clarification on refund related issues-Reg

https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_Refund_135_5_2020.pdf

21) Circular 139/09/2020 dated June 10, 2020, CBEC - 20/06/03/2020:- Clarification on refund related issues

https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_Refund_139_9_2020.pdf

Notifications related to GST refunds:

22) Notification 5/2017 integrated Tax (rate), 28th June 2017 :- Notification regarding no refund of unutilized Input tax credit.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/Notification%20for%20restriction%20of%20ITC%20IGST-5.pdf>

23) Notification 06/2017-Integrated Tax (Rate), dt. 28-06-2017:- Notification prescribing refund of 50% of IGST on supplies to CSD under section 20.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/Notification%20for%20refund%20to%20CSD%20section%2055-6.pdf>

24) Notification 12/2017-Integrated Tax (Rate) ,dt. 28-06-2017:- To notify the supplies not eligible for refund of unutilized ITC under IGST Act.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/Notification12-IGST.pdf>

25) Notification 13/2017 - Integrated Tax (Rate), dt. 28-06-2017:- To notify specialized agencies entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them under IGST Act.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/Notification13-IGST.pdf>

26) Notification 29/2017 - Integrated Tax (Rate) , dt. 22-09-2017 :- Seeks to amend notification no. 5/2017- integrated tax(rate) dated 28.06.2017 to give effect to GST council decisions regarding restriction of refund on corduroy fabrics.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/Notification29-IGST-rate.pdf>

27) Notification 21/2018 - Integrated Tax (Rate), dt. 26-07-2018 :- Seeks to amend Notification 05/2017-Integrated Tax (Rate),dt. 28-06-2017 to give effect to the recommendations of the GST Council in it's 28th meeting held on 21.07.2018.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-21-2018-igst-rate-english.pdf>

28) Notification 05/2017-Central Tax (Rate),dt. 28-06-2017:- Supplies of goods in respect of which no refund of unutilized input tax credit shall be allowed under section 54 (3).

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/Notification-for-restriction-of-ITC-CGST.pdf>

29) Notification 06/2017-Central Tax (Rate),dt. 28-06-2017:- Refund of 50% of CGST on supplies to CSD under section 55.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/Notification-for-under-section-55-for-CSD.pdf>

30) Notification 16/2017-Central Tax (Rate) ,dt. 28-06-2017:- To notify specialized agencies entitled to claim a refund of taxes paid on the notified supplies of goods or services both received by them under CGST Act.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/Notifications16-CGST.pdf>

31) Notification 44/2017-Central Tax (Rate) ,dt. 14-11-2017:- seeks to amend notification no. 5/2017- Central tax(rate) dated 28.06.2017 to give effect to gst council decisions regarding restriction of ITC on certain fabrics.

<https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-44-cgst-rate-english.pdf>

32) Notification 20/2018-Central Tax (Rate) ,dt. 26-07-2018:- Seeks to amend Notification No 05/2017-Central Tax (Rate),dt. 28-06-2017 to give effect to the recommendations of the GST Council in it's 28th meeting held on 21.07.2018.

<https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-20-2018-cgst-rate-english.pdf>

33) Notification 03/2018-Central Tax ,dt. 23-01-2018:- First Amendment 2018, to CGST Rules.

<https://www.cbic.gov.in/resources/htdocs-cbec/gst/Notification-3-2018-central-tax-English-New.pdf>

34) Notification 16/2017-Central Tax,dt. 07-07-2017:- Notification No. 16/2017-CT (conditions and safeguards for furnishing a Letter of Undertaking in place of a bond for export without payment of integrated tax.

<https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-16-central-tax-english.pdf>

https://www.cbic.gov.in/resources/htdocs-cbec/gst/16_2017

[CT ConditionsForLUT Corrigendum.pdf](https://www.cbic.gov.in/resources/htdocs-cbec/gst/16_2017)

35) Notification 37/2017-Central Tax,dt. 04-10-2017:- Notification on extension of facility of LUT to all exporters issued.

<https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-37-central-tax-english.pdf>

36) Notification 49/2017-Central Tax ,dt. 18-10-2017:- Seeks to notify the evidences required to be produced by the supplier of deemed export supplies for claiming refund under rule 89(2)(g) of the CGST rules, 2017.

<https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-49-central-tax-english.pdf>

37) Notification no. 75/2017-Central tax dt. 29.12.2017:- CGST (Fourteenth Amendment) Rules,2017.

<https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-75-central-tax-english.pdf>

38) Notification 53/2018-Central Tax ,dt. 09-10-2018, Seeks to make amendments (Eleventh Amendment, 2018) to the CGST Rules, 2017. This notification restores rule 96(10) to the position that existed before the amendment carried out in the said rule by notification No. 39/2018- Central Tax dated 04.09.2018.

<https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-53-central-tax-english-2018.pdf>

39) Notification 54/2018-Central Tax, dt. 09-10-2018, Seeks to make amendments (Twelfth Amendment, 2018) to the CGST Rules, 2017. This notification amends rule 96(10) to allow exporters who have received capital goods under the EPCG scheme to claim refund of the IGST paid on exports and align rule 89(4B) to make it consistent with rule 96(10).

<https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-54-central-tax-english-2018.pdf>

40) Notification 11 / 2019 - Central Tax (Rate), dt. 29-06-2019:- Seeks to specifies 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.

<https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-11-2019-cgst-rate-englishn.pdf>

41) Notification 10/2019 -Integrated Tax (Rate), dt. 29-06-2019 :- Seeks to specifies 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.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-10-2019-igst-rate-englishn.pdf>

Circulars of customs related to GST refunds:

42) Circular 16/2019-Customs dated June 17, 2019, F. No. 450/119/2017-Cus-IV(Pt.I):- IGST refunds- mechanism to verify the IGST payments for goods exported out of India in certain cases.

<https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-circulars/cs-circulars-2019/Circular-No-16-2019.pdf>

43) Circular No. 01/2019-Customs dated January 2, 2019, F.No: 450/119/2017-Cus-IV :- IGST Export Refunds–resolution of errors.

<https://www.epch.in/policies/gst/Circular-01-2019-Customs.pdf>

44) Circular No. 40/2018-Customs dated October 24, 2018, F. No: 450/119/2017-Cus-IV:- IGST Export Refunds – extension in SB005 alternate mechanism and revised processing in certain cases including disbursal of compensation Cess.

<https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-circulars/cs-circulars-2018/Circular-40-2018-Customs.pdf>

45) Circular No. 37/2018-Customs dated October 9, 2018, F. No: 450/119/2017-Cus-IV:- Cases where IGST refund have not been granted due to claiming higher rate of drawback or where higher rate and lower rate were identical.

<https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-circulars/cs-circulars-2018/Circular-37-2018-Customs.pdf>

46) Circular No. 33/2018-Customs dated September 19, 2018, F.No: 450/119/2017-Cus-IV Sanction of pending IGST refund claims where the records have not been transmitted from GSTN to DG (System).

<https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-circulars/cs-circulars-2018/Circular-33-2018-Customs.pdf>

47) Circular No. 22/2018-Customs dated July 18, 2018, F. No : 450/119/2017- Cus-IV :- Refund of IGST on export of goods on payment of duty-Clarification in case of SB003 errors and extension of date in SB005 & other cases using officer Interface for rectification of errors.

<http://www.eepcindia.org/download/180720170208.pdf>

- 48) Circular No. 21/2018-Customs dated July 18, 2018, F. No: 450/119/2017-Cus-IV:-Refund of IGST on export of Goods on payment of duty-Setting up of Help Desks.
<https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2018/circ21-2018cs.pdf>
- 49) Circular No. 15/2018-Customs dated June 6, 2018, F. No: 450/119/2017-Cus-IV:- Refund of IGST on export of Goods-Extension of date in SB005 alternate mechanism cases and Clarification in other cases.
<https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2018/circ15-2018cs.pdf>
- 50) Circular No. 12/2018-Customs dated May 29, 2018, F. No : 450 / 119 / 2017-Cus-IV :- Sanction of pending IGST refund claims where the records have not been transmitted from the GSTN to DG Systems.
<https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2018/circ12-2018cs.pdf>
- 51) Circular No. 8/2018-Customs dated March 23, 2018, F. No: 450/119/2017-Cus-IV Refund of IGST on Export-extension of date in SB005 alternate mechanism cases & clarifications in other cases.
<https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2018/circ08-2018cs.pdf>
- 52) Circular No. 6/2018-Customs dated March 16, 2018, F. No: 450/119/2017-Cus-IV Pt:- Refund of IGST on Export-EGM Error related cases.
<https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2018/circ06-2018cs.pdf>
- 53) Circular No. 5/2018-Customs dated February 23, 2018, F. No: 450/119/2017-Cus-IV:- Refund of IGST on Export-Invoice mismatch Cases-Alternative mechanism with Officer Interface.
<https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2018/circ05-2018cs.pdf>
- 54) Circular No. 42/2017-Customs dated November 7, 2017, F. No: 450/119/2017-Cus-IV Refund of IGST paid on export of goods under rule 96 of CGST Rules, 2017.
<https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2017/circ42-2017cs.pdf>
- 55) Circular No. 32/2017 – Customs dated July 27, 2017, F. No. 609/64/2017-DBK:- Clarification regarding exports under claim for drawback in the GST scenario.
<https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2017/circ32-2017cs.pdf>

ADVANCE RULINGS RELATED TO REFUND:

- 1) Asahi Kasei India Pvt. Ltd, 27AAKCA9444P1ZV, ORDER NO.GST-ARA-35/2018-19/ B-108 DATED 05.09.2018(Maharashtra).
http://gstcouncil.gov.in/sites/default/files/ruling-new/Maha-GST-ARA-35-B-108%20dt.%2005.09.18_AKIPL.pdf
- 2) Behr-Hella Thermo-control India Pvt. ltd, 27AACCB8750D1ZS, No.GST-ARA-12/2018-19/B-116 DATED 15.09.2018 (Maharashtra).
http://www.gstcouncil.gov.in/sites/default/files/ruling-new/Maha-GST-ARA-12-B-116%20dt.%2015.09.18_BHTIPL.pdf
- 3) Sabre Travel Network India Pvt. Ltd., 27AAACA4836H2ZR, No.GST-ARA-08/2018-19/b-76 dated 26.07.2018.(Maharashtra)
http://gstcouncil.gov.in/sites/default/files/ruling-new/Maha-GST-ARA-08-B-76%20dt.26.07.18_STNIPL.pdf
- 4) Platina Business Management Pvt. Ltd, 27AAICP0486C1ZH, No.GST-ARA-50 / 2018- 19/B-78 DATED 31.07.2018(Maharashtra).
<http://www.gstcouncil.gov.in/sites/default/files/ruling-new/Maha-GST-ARA-50-B-78%20dt.31.07.2018-PBMPL.pdf>
- 5) Vservglobal Pvt. Ltd, 27AAGCV2195L1ZS, No.GST-ARA-03/2018-19/B-59 dated 07.07.2018(Maharashtra).
http://gstcouncil.gov.in/sites/default/files/ruling-new/Maha-GST-ARA-03-B-59%20dt.07.07.18_VSERV.pdf
- 6) Esprit India Pvt. Ltd, 06AACCE9909R1ZX Advance Ruling No HAR/HAAR/R/2018-19/6/11.04.2018(Haryana)
http://gstcouncil.gov.in/sites/default/files/ruling-new/Haryana-AR%2006_2018-19%20dt.11.04.18%20EIPL.pdf
- 7) M/s H&M Hennes & Mauritz India Pvt. Ltd., 29AABCH6109F1ZQ, Advance Ruling No. KAR ADRG 10 / 2018 Dated : 29th June, 2018(Karnataka)
<http://gstcouncil.gov.in/sites/default/files/ruling-new/Krntk%2010.18%20dt%2029.06.18%20H%26MIPL.pdf>

CBEC-20/16/04/18-GST

Government of India Ministry of Finance

Department of Revenue

Central Board of Indirect Taxes and Customs

GST Policy Wing

New Delhi, Dated the 18th November, 2019

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/
Commissioners of Central Tax (All) / The Principal Director Generals/ Director Generals (All)

The Principal Chief Controller of Accounts (CBIC)

Madam/Sir,

Subject: Fully electronic refund process through FORM GST RFD-01 and single disbursement – regarding

After roll out of GST w.e.f. 01.07.2017, on account of the unavailability of electronic refund module on the common portal, a temporary mechanism had to be devised and implemented wherein applicants were required to file the refund application in **FORM GST RFD-01A** on the common portal, take a print out of the same and submit it physically to the jurisdictional tax office along with all supporting documents. Further processing of these refund applications, i.e. issuance of acknowledgement of the refund application, issuance of deficiency memo, passing of provisional/final order, payment advice etc. was also being done manually. In order to make the process of submission of the refund application electronic, Circular No. 79/53/2018-GST dated 31.12.2018 was issued wherein it was specified that the refund application in **FORM GST RFD-01A**, along with all supporting documents, shall be submitted electronically. However, various post submission stages of processing of the refund application continued to be manual.

2. The necessary capabilities for making the refund procedure fully electronic, in which all steps of submission and processing shall be undertaken electronically, have been deployed on the common portal with effect from **26.09.2019**. Accordingly, the Circulars issued earlier laying down the guidelines for manual submission and processing of refund claims need to be suitably modified and a fresh set of guidelines needs to be issued for electronic submission and processing of refund claims. With this objective and in order to ensure uniformity in the implementation of the provisions of law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby lays down the procedure for electronic submission and processing of refund applications in supersession of earlier Circulars viz. Circular No. 17/17/2017-GST dated 15.11.2017, 24/24/2017-GST dated 21.12.2017, 37/11/2018-GST dated 15.03.2018, 45/19/2018-GST dated 30.05.2018 (including corrigendum dated 18.07.2019), 59/33/2018-GST dated 04.09.2018, 70/44/2018-GST dated 26.10.2018, 79/53/2018-GST dated 31.12.2018 and 94/13/2019-GST

dated 28.03.2019. However, the provisions of the said Circulars shall continue to apply for all refund applications filed on the common portal before 26.09.2019 and the said applications shall continue to be processed manually as prior to deployment of new system.

Filing of refund applications in FORM GST RFD-01

3. With effect from **26.09.2019**, the applications for the following types of refunds shall be filed in **FORM GST RFD 01** on the common portal and the same shall be processed electronically:
- a. Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;
 - b. Refund of tax paid on export of services with payment of tax;
 - c. Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax;
 - d. Refund of tax paid on supplies made to SEZ Unit/SEZ Developer with payment of tax;
 - e. Refund of unutilized ITC on account of accumulation due to inverted tax structure;
 - f. Refund to supplier of tax paid on deemed export supplies;
 - g. Refund to recipient of tax paid on deemed export supplies;
 - h. Refund of excess balance in the electronic cash ledger;
 - i. Refund of excess payment of tax;
 - j. Refund of tax paid on intra-State supply which is subsequently held to be inter-State supply and vice versa;
 - k. Refund on account of assessment/provisional assessment/appeal/any other order;
 - l. Refund on account of “any other” ground or reason.

- 4.** The following modalities shall be followed for all refund applications filed in **FORM GST RFD-01** on the common portal with effect from **26.09.2019**:
- a. **FORM GST RFD-01** shall be filled on the common portal by an applicant seeking refund under any of the categories mentioned above. This shall entail filing of statements/declarations/undertakings which are part of **FORM GST RFD-01** itself, and also uploading of other documents/invoices which shall be required to be provided by the applicant for processing of the refund claim. A comprehensive list of such documents is provided at **Annexure-A** and it is clarified that no other document needs to be provided by the applicant at the stage of filing of the refund application. The facility of uploading these other documents/invoices shall be available on the common portal where four documents, each of maximum 5MB, may be uploaded along with the refund application. Neither the refund application in **FORM GST RFD-01** nor any of the supporting documents shall be required to be physically submitted to the office of the jurisdictional proper officer.
 - b. The Application Reference Number (ARN) will be generated only after the applicant has completed the process of filing the refund application in **FORM GST RFD-01**, and has completed uploading of all the supporting documents/ undertaking/statements/invoices and, where required, the amount has been debited from the electronic credit/cash ledger.
 - c. As soon as the ARN is generated, the refund application along with all the supporting documents shall be transferred electronically to the jurisdictional proper officer who shall be able to view it on the system. The application shall be deemed to have been filed under sub-rule (2) of rule 90 of the CGST Rules on the date of generation of the said ARN and the time limit of 15 days to issue an acknowledgement or a deficiency memo, as the case may be, shall be counted from the said date. This will obviate the need for an applicant to visit the jurisdictional tax office for the submission of the refund application and /or any of the supporting documents. Accordingly, the acknowledgement for the complete application (**FORM GST RFD-02**) or deficiency memo (**FORM GST RFD-03**), as the case may be, would be issued electronically by the jurisdictional tax officer based on the documents so received from the common portal.
 - d. If a refund application is electronically transmitted to the wrong jurisdictional officer, he/she shall reassign it to the correct jurisdictional officer electronically as soon as possible, but not later than three working days, from the date of generation of the ARN. Deficiency memos shall not be issued in such cases merely on the ground that the applications were received electronically in the wrong jurisdiction.
 - e. It may be noted that the facility to reassign such refund applications is already available with the Commissioner or the officer(s) authorized by him.

5. The refund application in **FORM GST RFD-01** filed by all taxpayers, who have already been assigned to the Centre or the State tax authorities, shall be automatically forwarded by the common portal to the concerned authority. At the same time, there might be some migrated taxpayers, who have remained unassigned so far. The refund application in **FORM GST RFD-01** filed by such unassigned taxpayers shall be forwarded, for processing, by the common portal to the jurisdictional proper officer of the tax authority from which the taxpayer has originally migrated. Such officers will continue to process these applications up to the stage of issuance of final order in **FORM GST RFD-06** and the related payment order in **FORM GST RFD-05** even if the applicant is assigned to the counterpart tax authority while the refund claim is under processing. However, if such an applicant gets assigned to one of the tax authorities after generation of the ARN and a deficiency memo gets issued for the refund application submitted by him, then the re-submitted refund application, after correction of deficiencies, shall be treated as a fresh refund application and shall be forwarded to the jurisdictional proper officer of the tax authority to which the taxpayer has now been assigned, irrespective of which authority handled the initial refund claim and issued the deficiency memo.

6. Any refund claim for a tax period may be filed only after furnishing all the returns in **FORM GSTR-1** and **FORM GSTR-3B** which were due to be furnished on or before the date on which the refund application is being filed. However, in case of a claim for refund filed by a composition taxpayer, a non-resident taxable person, or an Input Service Distributor (ISD) furnishing of returns in **FORM GSTR-1** and **FORM GSTR-3B** is not required. Instead, the applicant should have furnished returns in **FORM GSTR-4(along with FORM GST CMP-08)**, **FORM GSTR-5** or **FORM GSTR-6**, as the case may be, which were due to be furnished on or before the date on which the refund application is being filed.

7. Since the functionality of furnishing of **FORM GSTR-2** and **FORM GSTR-3** remains unimplemented, it has been decided by the GST Council to sanction refund of provisionally accepted input tax credit. However, the applicants applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of sub-section (2) of section 16 read with sub-section (2) of section 42 of the CGST Act have not been complied with in respect of the amount refunded. This undertaking should be submitted electronically along with the refund claim.

8. The applicant, at his option, may file a refund claim for a tax period or by clubbing successive tax periods. The period for which refund claim has been filed, however, cannot spread across different financial years. Registered persons having aggregate turnover of up to Rs. 1.5 crore in the preceding financial year or the current financial year opting to file **FORM GSTR-1** on quarterly basis, can only apply for refund on a quarterly basis or clubbing successive quarters as aforesaid. However, refund claims under categories listed at (a), (c) and (e) in para 3 above must be

filed by the applicant chronologically. This means that an applicant, after submitting a refund application under any of these categories for a certain period, shall not be subsequently allowed to file a refund claim under the same category for any previous period. This principle / limitation, however, shall not apply in cases where a fresh application is being filed pursuant to a deficiency memo having been issued earlier.

Deficiency Memos

9. It may be noted that if the application for refund is complete in terms of sub-rule (2), (3) and (4) of rule 89 of the CGST Rules, an acknowledgement in **FORM GST RFD-02** should be issued within 15 days of the filing of the refund application. The date of generation of ARN for **FORM GST RFD-01** is to be considered as the date of filing of the refund application. Sub-rule

(3) of rule 90 of the CGST Rules provides for communication of deficiencies in **FORM GST RFD-03** where deficiencies are noticed within the aforesaid period of 15 days. It is clarified that either an acknowledgement or a deficiency memo should be issued within the aforesaid period of 15 days starting from the date of generation of ARN. Once an acknowledgement has been issued in relation to a refund application, no deficiency memo, on any grounds, may be subsequently issued for the said application.

10. After a deficiency memo has been issued, the refund application would not be further processed and a fresh application would have to be filed. Any amount of input tax credit/cash debited from electronic credit/ cash ledger would be re-credited automatically once the deficiency memo has been issued. It may be noted that the re-credit would take place automatically and no order in **FORM GST PMT-03** is required to be issued. The applicant is required to rectify the deficiencies highlighted in deficiency memo and file fresh refund application electronically in **FORM GST RFD-01** again for the same period and this application would have a new and distinct ARN.

11. It is further clarified that once an application has been submitted afresh, pursuant to a deficiency memo, the proper officer will not serve another deficiency memo with respect to the application for the same period, unless the deficiencies pointed out in the original deficiency memo remain un-rectified, either wholly or partly, or any other substantive deficiency is noticed subsequently.

12. It is also clarified that since a refund application filed after correction of deficiency is treated as a fresh refund application, such a rectified refund application, submitted after correction of deficiencies, shall also have to be submitted within 2 years of the relevant date, as defined in the explanation after sub-section (14) of section 54 of the CGST Act.

Provisional Refund

13. Doubts get raised as to whether provisional refund would be given even in those cases where the proper officer prima-facie has sufficient reasons to believe that there are irregularities in the refund application which would result in rejection of whole or part of the refund amount so claimed. It is clarified that in such cases, the proper officer shall refund on a provisional basis ninety percent of the refundable amount of the claim (amount of refund claim less the inadmissible portion of refund so found) in accordance with the provisions of rule 91 of the CGST Rules. Final sanction of refund shall be made in accordance with the provisions of rule 92 of the CGST Rules.

14. It is further clarified that there is no prohibition under the law preventing a proper officer from sanctioning the entire amount within 7 days of the issuance of acknowledgement through issuance of **FORM GST RFD-06**, instead of grant of provisional refund of 90 per cent of the amount claimed through **FORM GST RFD-04**. If the proper officer is fully satisfied about the eligibility of a refund claim on account of zero-rated supplies, and is of the opinion that no further scrutiny is required, the proper officer may issue final order in **FORM GST RFD-06** within 7 days of the issuance of acknowledgement. In such cases, the issuance of a provisional refund order in **FORM GST RFD-04** will not be necessary.

15. Further, there are doubts on the procedure to be followed in situations where the final refund amount to be sanctioned in **FORM GST RFD-06** is less than the amount of refund sanctioned provisionally through **FORM GST RFD-04**. For example, consider a situation where an applicant files a refund claim of Rs.100/- on account of zero-rated supplies. The proper officer, after prima-facie examination of the application, sanctions Rs. 90 as provisional refund through **FORM GST RFD-04** and the same is electronically credited to his bank account. However, on detailed examination, it appears to the proper officer that only an amount of Rs. 70 is admissible as refund to the applicant. In such cases, the proper officer shall have to issue a show cause notice to the applicant, in **FORM GST RFD-08**, under section 54 of the CGST Act, read with section 73 or 74 of the CGST Act, requiring the applicant to show cause as to why:

- (a) the amount claimed of Rs. 30/- should not be rejected as per the relevant provisions of the law; and
- (b) the amount of Rs. 20/- erroneously refunded should not be recovered under section 73 or section 74 of the CGST Act, as the case may be, along with interest and penalty, if any.

16. The proper officer for adjudicating the above case shall be the same as the proper officer for sanctioning refund under section 54 of the CGST Act. The above notice shall be adjudicated following the principles of natural justice and an order shall be issued, in **FORM GST RFD-06**, under section 54 of the CGST Act, read with section 73 or section 74 of the CGST Act, as the case may be. If the adjudicating authority decides against the applicant in respect of both points (a) and

(b) above, then an amount of Rs. 70/- will have to be sanctioned in **FORM GST RFD-06**, and an amount of Rs. 20/-, along with interest and penalty, if any, shall be entered by the officer in the electronic liability register of the applicant through issuance of **FORM GST DRC-07**. Further, if

the application pertains to refund of unutilized/accumulated ITC, then Rs. 30/-, i.e. the amount rejected, shall have to be re-credited to the electronic credit ledger of the applicant through **FORM GST PMT-03**. However, this re-credit shall be done only after the receipt of an undertaking from the applicant to the effect that he shall not file an appeal or in case he files an appeal, the same has been finally decided against the applicant. In such cases, it may be noted that **FORM GST RFD-08** and **FORM GST RFD-06**, are to be considered as show cause notice and adjudication order respectively, under both section 54 (for rejection of refund) and section 73/74 of the CGST Act as the case may be (for recovery of erroneous refund).

17. It is further clarified that no adjustment or withholding of refund, as provided under sub-sections (10) and (11) of section 54 of the CGST Act, shall be allowed in respect of the amount of refund which has been provisionally sanctioned. In cases where there is an outstanding recoverable amount due from the applicant, the proper officer, instead of granting refund on provisional basis, may process and sanction refund on final basis at the earliest and recover the amount from the amount so sanctioned.

Scrutiny of Application

18. In case of refund claim on account of export of goods without payment of tax, the Shipping bill details shall be checked by the proper officer through ICEGATE SITE (www.icegate.gov.in) wherein the officer would be able to check details of EGM and shipping bill by keying in port name, Shipping bill number and date. It is advised that while processing refund claims, information contained in Table 9 of **FORM GSTR-1** of the relevant tax period as well as that of the subsequent tax periods should also be taken into cognizance, wherever applicable. In this regard, Circular No. 26/26/2017–GST dated 29.12.2017 may be referred, wherein the procedure for rectification of errors made while filing the returns in **FORM GSTR-3B** has been provided. Therefore, in case of discrepancies between the data furnished by the taxpayer in **FORM GSTR-3B** and **FORM GSTR-1**, the proper officer shall refer to the said Circular and process the refund application accordingly.

19. Detailed guidelines laid down in subsequent paragraphs of this Circular covering various types of refund claims may also be followed while scrutinizing refund claims for completeness and eligibility.

Re-crediting of electronic credit ledger on account of rejection of refund claim

20. In case of rejection of refund claim of unutilized/accumulated ITC due to ineligibility of the input tax credit under any provisions of the CGST Act and rules made thereunder, the proper officer shall have to issue a show cause notice in **FORM GST RFD-08**, under section 54 of the CGST Act, read with section 73 or 74 of the CGST Act, requiring the applicant to show cause as to why:

- (a) the refund amount corresponding to the ineligible ITC should not be rejected as per the relevant provisions of the law; and
- (b) the amount of ineligible ITC should not be recovered as wrongly availed ITC under section 73 or section 74 of the CGST Act, as the case may be, along with interest and penalty, if any.

21. The above notice shall be adjudicated following the principles of natural justice and an order shall be issued, in **FORM GST RFD-06**, under section 54 of the CGST Act, read with section 73 or section 74 of the CGST Act, as the case may be. If the adjudicating authority decides against the applicant in respect of both points (a) and (b) above, then **FORM GST RFD-06** shall have to be issued accordingly, and the amount of ineligible ITC, along with interest and penalty, if any, shall be entered by the officer in the electronic liability register of the applicant through issuance of **FORM GST DRC-07**. Alternatively, the applicant can voluntarily pay this amount, along with interest and penalty, as applicable, before service of the demand notice, and intimate the same to the proper officer in **FORM GST DRC-03** in accordance with sub-section (5) of section 73 or sub-section (5) of section 74 of the CGST Act, as the case may be, read with sub-rule (2) of rule 142 of the CGST Rules. In such cases, the need for serving a demand notice for recovery of ineligible ITC will be obviated. In any case, the proper officer shall order for the rejected amount to be re-credited to the electronic credit ledger of the applicant using **FORM GST PMT-03**, only after the receipt of an undertaking from the applicant to the effect that he shall not file an appeal or in case he files an appeal, the same is finally decided against the applicant.

22. In case of rejection of a claim for refund, on account of any reason other than the ineligibility of credit, the process described in **para 20 and 21** above shall be followed with the only difference that there shall be no proceedings for recovery of ineligible ITC under section 73 or section 74, as the case may be.

23. Consider an example where against a refund claim of unutilized/accumulated ITC of Rs.100/-, only Rs.80/- is sanctioned (Rs.15/- is rejected on account of ineligible ITC and Rs.5/- is rejected on account of any other reason). As stated above, a show cause notice, in **FORM GST RFD-08** shall have to be issued to the applicant, requiring him to show cause as to why the refund claim amounting to Rs.20/- should not be rejected under the relevant provisions of the law and why the ineligible ITC of Rs. 15/- should not be recovered under section 73 or section 74, as the case may be, with interest and penalty, if any. If the said notice is decided against the applicant, Rs. 15/-, along with interest and penalty, if any, shall be entered by the officer in the electronic liability register of the applicant through issuance of **FORM GST DRC-07**. Further, Rs. 20/- would be re-credited through **FORM GST PMT-03** only after the receipt of an undertaking from the applicant to the effect that he shall not file an appeal or in case he files an appeal, the same is finally decided against the applicant.

24. Continuing with the above example, further assume that the applicant files an appeal against this order and the appellate authority decides wholly in the applicant's favour. It is hereby clarified in such a case the petitioner would file a fresh refund claim for the said amount of Rs.

20/- under the option of claiming refund “On Account of Assessment/Provisional Assessment/Appeal/Any other order”.

Application for refund of integrated tax paid on export of services and supplies made to a Special Economic Zone developer or a Special Economic Zone unit

25. It has been represented that while filing the return in **FORM GSTR-3B** for a given tax period, certain registered persons committed errors in declaring the export of services on payment of integrated tax or zero-rated supplies made to a Special Economic Zone developer or a Special Economic Zone unit on payment of integrated tax. They have shown such supplies in the Table under column 3.1(a) instead of showing them in column 3.1(b) of **FORM GSTR-3B** whilst they have shown the correct details in Table 6A or 6B of **FORM GSTR-1** for the relevant tax period and duly discharged their tax liabilities. Such registered persons were earlier unable to file the refund application in **FORM GST RFD-01A** for refund of integrated tax paid on the export of services or on supplies made to a SEZ developer or a SEZ unit on the GST common portal because of an in-built validation check in the system which restricted the refund amount claimed (integrated tax/cess) to the amount of integrated tax/cess mentioned under column 3.1(b) of **FORM GSTR-3B** (zero rated supplies) filed for the corresponding tax period.

26. In this regard, it is clarified that for the tax periods commencing from 01.07.2017 to 30.06.2019, such registered persons shall be allowed to file the refund application in **FORM GST RFD-01** on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of **FORM GSTR-3B** filed for the corresponding tax period.

Disbursal of refunds

27. Separate disbursement of refund amounts under different tax heads by different tax authorities, i.e. disbursement of Central tax, Integrated tax and Compensation Cess by Central tax officers and disbursement of State tax by State tax officers, was causing undue hardship to the refund applicants. In order to facilitate refund applicants on this account, it has now been decided that for a refund application assigned to a Central tax officer, both the sanction order (**FORM GST RFD-04/06**) and the corresponding payment order (**FORM GST RFD-05**) for the sanctioned refund amount, under all tax heads, shall be issued by the Central tax officer only. Similarly, for refund applications assigned to a State/UT tax officer, both the sanction order (**FORM GST RFD-04/06**) and the corresponding payment order (**FORM GST RFD-05**) for the sanctioned refund amount, under all tax heads, shall be issued by the State/UT tax officer only.

28. The sanctioned refund amounts, as entered in the payment orders issued by the Central and State/UT tax officers, shall be disbursed through the Public Financial Management System (PFMS) of the Controller General of Accounts (CGA), Ministry of Finance, Government of India.

On filing of a refund application in **FORM GST RFD-01**, the common portal shall generate a master file for the applicant containing the relevant details like name, GSTIN, bank account details etc. This master file shall be shared with PFMS for validation of the bank account details provided by the applicant in the refund application. Once the bank account is validated, PFMS will create a unique assessee code (combination of GSTIN + validated bank account number) for the applicant. This unique assessee code will be used by PFMS for all refund payments made to the applicant in the said bank account. Therefore, in order to avoid repeat validations and generation of multiple unique assessee codes for the same GSTIN, it shall be advisable for the applicants to enter the same bank account details in successive refund applications submitted in **FORM GST RFD-01**. In cases where an applicant wishes to avail the refund in a different bank account, which has not yet been validated, a new unique assessee code (comprising of GSTIN + new bank account) will be generated by PFMS after validation of the said bank account.

29. If the bank account details mentioned by an applicant in the refund application submitted in **FORM GST RFD-01** are invalidated, an error message shall be transmitted by PFMS to the common portal electronically and the common portal shall make the error message available to the applicant and the refund officers on their dashboards. On receiving such an error message, an applicant can:

- a) rectify the invalidated bank account details by filing a non-core amendment in **FORM GST REG-14**; or
- b) add a new bank account by filing a non-core amendment in **FORM GST REG-14**

30. The updated bank account details will be reflected in a drop-down menu on the dashboard. From this drop-down menu, the applicant can choose any bank account, including the ones rectified (option (a)) or newly added (option (b)), from the list of bank accounts available in his registration database. The chosen bank account details will again be sent to PFMS for validation. The proper officer will be able to issue the payment order in **FORM GST RFD-05** only after the selected bank account has been validated.

31. By following the above process, validation errors, if any, will generally be corrected before the issuance of payment order in **FORM GST RFD-05**. Therefore, there should generally not be any validation errors after issuance of a payment order in **FORM GST RFD-05**. However, in certain exceptional cases, it is possible that a validation error occurs after issuance of the payment order. In such cases, the said payment order will be invalidated by the common portal and a new payment order will have to be issued by the proper officer after following the rectification process described in **paras 29 and 30** above. The re-issued payment order will have a new reference number and shall contain the newly selected bank account details. However, there will be no change in either the original ARN or the sanction order number or the amount for which the payment order was originally issued.

32. It may be noted that the applicant, at the time of filing of refund application in **FORM GST RFD-01**, can select a bank account only from the list of bank accounts provided by him at the time of registration in **FORM GST REG-01**, or subsequently through filing a non-core amendment in **FORM GST REG-14**. The same account details will be auto-populated in the payment order issued in **FORM GST RFD-05**. Any change in these auto-populated bank account details shall not be allowed unless there is a validation error in relation to the same.

33. The disbursement status of the refund amount would be communicated by PFMS to the common portal. The common portal shall notify the same to the taxpayer by email/SMS. Such details shall also be available on the status tracking facility on the dashboard.

34. Section 56 of the CGST Act clearly states that if any tax ordered to be refunded is not refunded within 60 days of the date of receipt of application, interest at the rate of 6 per cent (notified vide notification No. 13/2017-Central Tax dated 28.06.2017) on the refund amount starting from the date immediately after the expiry of sixty days from the date of receipt of application (ARN) till the date of refund of such tax shall have to be paid to the applicant. It may

be noted that any tax shall be considered to have been refunded only when the amount has been

credited to the bank account of the applicant. Therefore, interest will be calculated starting from the date immediately after the expiry of sixty days from the date of receipt of the application till the date on which the amount is credited to the bank account of the applicant. Accordingly, all tax

authorities are advised to issue the final sanction order in **FORM GST RFD-06** and the payment

order in **FORM GST RFD-05** within 45 days of the date of generation of ARN, so that the

disbursement is completed within 60 days.

35. The provisions relating to refund provide for partial as well as complete adjustment of refund against any outstanding demand under GST or under any existing law. It is hereby clarified that both partial or complete adjustment of sanctioned amount of refund against any outstanding demand under GST or under any existing law would be made in **FORM GST RFD-06**. Furthermore, sub-clause (b) of sub-section (6), sub-clause (a) of sub-section (7), sub-clause (a) of sub-section (8) and sub-clause (a) of sub-section (9) of Section 142 of the CGST Act provides for recovery of any tax, interest, fine, penalty or any other amount recoverable under the existing law as an arrear of tax under GST unless such amount is recovered under the existing law. It is hereby clarified that adjustment of refund amount against any outstanding demand under the existing law can be done.

Guidelines for refunds of unutilized Input Tax Credit

36. Applicants of refunds of unutilized ITC, i.e. refunds pertaining to items listed at (a), (c) and (e) in **para 3** above, shall have to upload a copy of **FORM GSTR-2A** for the relevant period (or any prior or subsequent period(s) in which the relevant invoices have been auto-populated) for which the refund is claimed. The proper officer shall rely upon **FORM GSTR-2A** as an evidence of the account of the supply by the corresponding supplier(s) in relation to which the input tax credit has been availed by the applicant. Such applicants shall also upload the details of all the invoices on the basis of which input tax credit has been availed during the relevant period for which the refund is being claimed, in the format enclosed as **Annexure-B** along with the application for refund claim. Such avilment of ITC will be subject to restriction imposed under sub-rule (4) in rule 36 of the CGST rules inserted vide Notification No. 49/2019-CT dated 09.10.2019. The applicant shall also declare the eligibility or otherwise of the input tax credit availed against the invoices related to the claim period in the said format for enabling the proper officer to determine the same. Self-certified copies of invoices in relation to which the refund of ITC is being claimed and which are declared as eligible for ITC in **Annexure – B**, but which are not populated in **FORM GSTR-2A**, shall be uploaded by the applicant along with the application in **FORM GST RFD 01**. It is emphasized that the proper officer shall not insist on the submission of an invoice (either original or duplicate) the details of which are available in **FORM GSTR-2A** of the relevant period uploaded by the applicant.

37. In case of refunds pertaining to items listed at (a), (c) and (e) in **para 3** above, the common portal calculates the refundable amount as the least of the following amounts:

- a) The maximum refund amount as per the formula in rule 89(4) or rule 89(5) of the CGST Rules [formula is applied on the consolidated amount of ITC, i.e. Central tax + State tax/Union Territory tax +Integrated tax];
- b) The balance in the electronic credit ledger of the applicant at the end of the tax period for which the refund claim is being filed after the return in **FORM GSTR-3B** for the said period has been filed; and
- c) The balance in the electronic credit ledger of the applicant at the time of filing the refund application.

After calculating the least of the three amounts, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the applicant in the following order:

- a) Integrated tax, to the extent of balance available;
- b) Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, Central tax), the differential amount is to be debited from the other electronic credit ledger (i.e., State tax/Union Territory tax, in this case).

38. The order of debit described above, however, is not presently available on the common portal. Till the time such facility is made available on the common portal, the taxpayers are advised to follow the order as explained above for all refund applications. However, for applications where

this order is not adhered to by the applicant, no adverse view may be taken by the tax authorities. The above system validations are being clarified so that there is no ambiguity in relation to the process through which an application in **FORM GST RFD-01** is generated.

39. For all refund applications where refund of unutilized ITC of compensation cess is being claimed, the calculation of the refundable amount of compensation cess shall be done separately and the amount so calculated will be entirely debited from the balance of compensation cess available in the electronic credit ledger.

40. The third proviso to sub-section (3) of section 54 of the CGST Act states that no refund of input tax credit shall be allowed in cases where the supplier of goods or services or both avails of drawback in respect of Central tax. It is clarified that if a supplier avails of drawback in respect of duties rebated under the Customs and Central Excise Duties Drawback Rules, 2017, he shall be eligible for refund of unutilized input tax credit of Central tax/ State tax/ Union Territory tax / Integrated tax/ Compensation cess. It is also clarified that refund of eligible credit on account of State tax shall be available if the supplier of goods or services or both has availed of drawback in respect of Central tax.

Guidelines for refund of tax paid on deemed exports

41. Certain supplies of goods have been notified as deemed exports vide notification No. 48/2017-Central Tax dated 18.10.2017 under section 147 of the CGST Act. Further, the third proviso to rule 89(1) of the CGST Rules allows either the recipient or the supplier to apply for refund of tax paid on such deemed export supplies. In case such refund is sought by the supplier of deemed export supplies, the documentary evidences as specified in notification No. 49/2017-Central Tax dated 18.10.2017 are also required to be furnished which includes an undertaking that the recipient of deemed export supplies shall not claim the refund in respect of such supplies and shall not avail any input tax credit on such supplies. Similarly, in case the refund is filed by the recipient of deemed export supplies, an undertaking shall have to be furnished by him stating that refund has been claimed only for those invoices which have been detailed in statement 5B for the tax period for which refund is being claimed and that he has not availed input tax credit on such invoices. The recipient shall also be required to declare that the supplier has not claimed refund with respect to the said supplies. The procedure regarding procurement of supplies of goods from DTA by Export Oriented Unit (EOU) / Electronic Hardware Technology Park (EHTP) Unit / Software Technology Park (STP) Unit / Bio-Technology Parks (BTP) Unit under deemed export as laid down in Circular No. 14/14/2017-GST dated 06.11.2017 needs to be complied with.

Guidelines for claims of refund of Compensation Cess

42. Doubts have been raised whether a registered person is eligible to claim refund of unutilized input tax credit of compensation cess paid on inputs, where the zero-rated final product is not leviable to compensation cess. For instance, cess is levied on coal, which is an input for the manufacture of aluminum products, whereas cess is not levied on aluminum products. In this context, attention is invited to section 16(2) of the Integrated Goods and Services Tax Act, 2017 (hereafter referred to as the “IGST Act”) which states that, subject to the provisions of section 17(5) of the CGST Act, credit of input tax may be availed for making zero rated supplies. Further, section 16 of the IGST Act has been *mutatis mutandis* made applicable to inter-State supplies under the Cess Act vide section 11 (2) of the Cess Act. Thus, it implies that input tax credit of Compensation Cess may be availed for making zero-rated supplies. Further, by virtue of section 54(3) of the CGST Act, the refund of such unutilized ITC shall be available. Accordingly, it is clarified that a registered person making zero rated supply of aluminum products under bond or LUT may claim refund of unutilized credit including that of compensation cess paid on coal. Such registered persons may also make zero-rated supply of aluminum products on payment of Integrated tax but they cannot utilize the credit of the compensation cess paid on coal for payment of Integrated tax in view of the proviso to section 11(2) of the Cess Act, which allows the utilization of the input tax credit of cess, only for the payment of cess on the outward supplies.

43. As regards the certain issues related to refund of accumulated input tax credit of compensation cess on account of zero-rated supplies made under Bond/Letter of Undertaking on which clarifications have been sought since GST roll out, the same have been examined and are clarified as below:

- a) **Issue:** A registered person uses inputs on which compensation cess is leviable (e.g. coal) to export goods on which there is no levy of compensation cess (e.g. aluminum). For the period July, 2017 to May, 2018, no ITC is availed of the compensation cess paid on the inputs received during this period. ITC is only availed of the Central tax, State tax/Union Territory tax or Integrated tax charged on the invoices for these inputs. This ITC is utilized for payment of Integrated tax on export of goods. Vide Circular No. 45/19/2018-GST dated 30.05.2018, it was clarified that refund of accumulated ITC of compensation cess on account of zero-rated supplies made under Bond/Letter of Undertaking is available even if the exported product is not subject to levy of cess. After the issuance of this Circular, the registered person decides to start exporting under bond/LUT without payment of tax. He also decides to avail (through the return in **FORM GSTR-3B**) the ITC of compensation cess, paid on the inputs used in the months of July, 2017 to May, 2018, in the month of July, 2018. The registered person then goes on to file a refund claim for ITC accumulated on account of exports for the month of July, 2018 and includes the said accumulated ITC for the month of July, 2018. How should the amount of compensation cess to be refunded be calculated?

Clarification: In the instant case, refund on account of compensation cess is to be recomputed as if the same was available in the respective months in which the refund of unutilized credit of Central tax/State tax/Union Territory tax/Integrated tax was claimed on account of exports made under LUT/Bond. If the aggregate of these recomputed amounts of refund of compensation cess is less than or equal to the eligible refund of compensation cess calculated in respect of the month in which the same has actually been claimed, then the aggregate of the recomputed refund of compensation cess of the respective months would be admissible. However, the recomputed amount of eligible refund (of

compensation cess) in respect of past periods, as aforesaid, would not be admissible in

respect of consignments exported on payment of Integrated tax. This process would be applicable for application(s) for refund of compensation cess (not claimed earlier) in respect of the past period.

- b) **Issue:** A registered person uses coal for the captive generation of electricity which is further used for the manufacture of goods (say aluminum) which are exported under Bond/Letter of Undertaking without payment of duty. Refund claim is filed for accumulated Input Tax Credit of compensation cess paid on coal. Can the said refund claim be rejected on the ground that coal is used for the generation of electricity which is an intermediate product and not the final product which is exported and since electricity is exempt from GST, the ITC of the tax paid on coal for generation of electricity is not available?

Clarification: There is no distinction between intermediate goods or services and final goods or services under GST. Inputs have been clearly defined to include any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Since coal is an input used in the production of aluminum, albeit indirectly through the captive generation of electricity, which is directly connected with the business of the registered person, input tax credit in relation to the same cannot be denied.

- c) **Issue:** A registered person avails ITC of compensation cess (say, of Rs. 100/-) paid on purchases of coal every month. At the same time, he reverses a certain proportion (say, half

i.e. Rs. 50/-) of the ITC of compensation cess so availed on purchases of coal which are used in making zero rated outward supplies. Both these details are entered in the **FORM GSTR-3B** filed

for the month as a result of which an amount of Rs. 50/- only is credited in the electronic credit ledger. The reversed amount (Rs. 50/-) is then shown as a 'cost' in the books of accounts of the registered person. However, the registered person declares Rs. 100/- as 'Net ITC' and uses the same in calculating the maximum refund amount which works out to be Rs. 50/- (assuming that export turnover is half of total turnover). Since both the balance in the electronic credit ledger at the end of the tax period for which the claim of refund is being filed and the balance in the electronic credit ledger at the time of filing the refund claim is Rs. 50/- (assuming that no other debits/credits have happened), the common portal will proceed to debit Rs. 50/- from the ledger as the claimed refund amount. The question is whether the proper officer should sanction Rs. 50/- as the refund amount or Rs. 25/- (i.e. half of the ITC availed after adjusting for reversals)?

Clarification: ITC which is reversed cannot be held to have been 'availed' in the relevant period. Therefore, the same cannot be part of refund of unutilized ITC on account of zero-rated supplies. Moreover, the reversed ITC has been accounted as a cost which would have reduced the income tax liability of the applicant. Therefore, the same amount cannot, at the same time, be refunded to him/her in the ratio of export turnover to total turnover. However, if the said reversed amount is again availed in a later tax period, subject to the restriction under section 16(4) of the CGST Act, it can be refunded in the ratio of export turnover to total turnover in that tax period in the same manner as detailed in **para 37** above. This is subject to the restriction that the accounting entry showing the said ITC as cost is also reversed.

Clarifications on issues related to making zero-rated supplies

44. Export of goods or services can be made without payment of Integrated tax under the provisions of rule 96A of the CGST Rules. Under the said provisions, an exporter is required to furnish a bond or Letter of Undertaking (LUT) to the jurisdictional Commissioner before effecting zero rated supplies. A detailed procedure for filing of LUT has been specified vide Circular No. 8/8/2017 –GST dated 4.10.2017. It has been brought to the notice of the Board that in some cases, such zero-rated supplies were made before filing the LUT and refund claims for unutilized input tax credit got filed. In this regard, it is emphasized that the substantive benefits of zero rating may not be denied where it has been established that exports in terms of the relevant provisions have been made. The delay in furnishing of LUT in such cases may be condoned and the facility for export under LUT may be allowed on ex post facto basis taking into account the facts and circumstances of each case.

45. Rule 96A (1) of the CGST Rules provides that any registered person may export goods or services without payment of Integrated tax after furnishing a LUT / bond and that he would be

liable to pay the tax due along with the interest as applicable within a period of fifteen days after the expiry of three months or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export, if the goods are not exported out of India. The time period in case of services is fifteen days after the expiry of one year or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange. It has been reported that the exporters have been asked to pay Integrated tax where the goods have been exported but not within three months from the date of the issue of the invoice for export. In this regard, it is emphasized that exports have been zero rated under the IGST Act and as long as goods have actually been exported even after a period of three months, payment of Integrated tax first and claiming refund at a subsequent date should not be insisted upon. In such cases, the jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on post facto basis keeping in view the facts and circumstances of each case. The same principle should be followed in case of export of services.

46. It is learnt that some field formations are asking for a self-declaration with every refund claim to the effect that the applicant has not been prosecuted. The facility of export under LUT is available to all exporters in terms of notification No. 37/2017- Central Tax dated 04.10.2017, except to those who have been prosecuted for any offence under the CGST Act or the IGST Act or any of the existing laws in force in a case where the amount of tax evaded exceeds two hundred and fifty lakh rupees. Para 2(d) of the Circular No. 8/8/2017-GST dated 04.10.2017, mentions that a person intending to export under LUT is required to give a self-declaration at the time of submission of LUT that he has not been prosecuted. Persons who are not eligible to export under LUT are required to export under bond. It is clarified that this requirement is already satisfied in case of exports under LUT and asking for self-declaration with every refund claim where the exports have been made under LUT is not warranted.

47. It has also been brought to the notice of the Board that in certain cases, where the refund of unutilized input tax credit on account of export of goods is claimed and the value declared in the tax invoice is different from the export value declared in the corresponding shipping bill under the Customs Act, refund claims are not being processed. The matter has been examined and it is clarified that the zero-rated supply of goods is effected under the provisions of the GST laws. An exporter, at the time of supply of goods declares that the goods are meant for export and the same is done under an invoice issued under rule 46 of the CGST Rules. The value recorded in the GST invoice should normally be the transaction value as determined under section 15 of the CGST Act read with the rules made thereunder. The same transaction value should normally be recorded in the corresponding shipping bill / bill of export. During the processing of the refund claim, the value of the goods declared in the GST invoice and the value in the corresponding shipping bill / bill of export should be examined and the lower of the two values should be taken into account while calculating the eligible amount of refund.

48. It is clarified that the realization of consideration in convertible foreign exchange, or in Indian rupees wherever permitted by Reserve Bank of India, is one of the conditions for export of services. In case of export of goods, realization of consideration is not a pre-condition. In rule 89

(2) of the CGST Rules, a statement containing the number and date of invoices and the relevant Bank Realization Certificates (BRC) or Foreign Inward Remittance Certificates (FIRC) is required in case of export of services whereas, in case of 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 is required to be submitted along with the claim for refund. It is therefore clarified that insistence on proof of realization of export proceeds for processing of refund claims related to export of goods has not been envisaged in the law and should not be insisted upon.

49. As per section 16(2) of the IGST Act, credit of input tax may be availed for making zero rated supplies, notwithstanding that such supply is an exempt supply. In terms of section 2 (47) of the CGST Act, exempt supply includes non-taxable supply. Further, as per section 16(3) of the IGST Act, a registered person making zero rated supply shall be eligible to claim refund when he either makes supply of goods or services or both under bond or letter of undertaking (LUT) or makes such supply on payment of Integrated tax. However, in case of zero-rated supply of exempted or non-GST goods, the requirement for furnishing a bond or LUT cannot be insisted upon. It is thus, clarified that in respect of refund claims on account of export of non-GST and exempted goods without payment of Integrated tax; LUT/bond is not required. Such registered persons exporting non-GST goods shall comply with the requirements prescribed under the existing law (i.e. Central Excise Act, 1944 or the VAT law of the respective State) or under the Customs Act, 1962, if any. Further, the exporter would be eligible for refund of unutilized input tax credit of Central tax, State tax, Union Territory tax, Integrated tax and compensation cess in such cases.

Refund of transitional credit

50. Refund of unutilized input tax credit is allowed in two scenarios mentioned in sub-section

(3) of section 54 of the CGST Act. These two scenarios are zero rated supplies made without payment of tax and inverted tax structure. In sub-rule (4) and (5) of rule 89 of the CGST Rules, the amount of refund under these scenarios is to be calculated using the formulae given in the said sub-rules. The formulae use the phrase 'Net ITC' and defines the same as "input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both". It is clarified that as the transitional credit pertains to duties and taxes paid under the existing laws viz., under Central Excise Act, 1944 and Chapter V of the Finance Act, 1994, the same cannot be said to have been availed during the

relevant period and thus, cannot be treated as part of 'Net ITC' and thus no refund of such unutilized transitional credit is admissible.

Restrictions imposed by sub-rule (10) of rule 96 of the CGST Rules

51. Sub-rule (10) of rule 96 of the CGST Rules, restricted exporters from availing the facility of claiming refund of Integrated tax paid on exports in certain scenarios. It was intended that exporters availing benefit of certain notifications would not be eligible to avail the facility of such refund. However, representations were received requesting that exporters who have received capital goods under the Export Promotion Capital Goods Scheme (hereinafter referred to as "EPCG Scheme"), should be allowed to avail the facility of claiming refund of the Integrated tax paid on exports. GST Council, in its 30th meeting held in New Delhi on 28th September, 2018, accorded approval to the proposal of suitably amending the said sub-rule along with sub-rule (4B) of rule 89 of the CGST Rules prospectively in order to enable such exporters to avail the said facility. Notification No. 54/2018 – Central Tax dated the 9th October, 2018 was issued to carry out the changes recommended by the GST Council. In addition, notification No. 39/2018- Central Tax dated 4th September, 2018 was rescinded vide notification No. 53/2018 – Central Tax dated the 9th October, 2018.

52. The net effect of these changes is that any exporter who himself/herself imported any inputs/capital goods in terms of notification Nos. 78/2017-Customs and 79/2017-Customs both dated 13.10.2017, before the issuance of the notification No. 54/2018 – Central Tax dated 09.10.2018, shall be eligible to claim refund of the Integrated tax paid on exports. Further, exporters who have imported inputs in terms of notification Nos. 78/2017-Customs dated 13.10.2017, after the issuance of notification No. 54/2018 – Central Tax dated 09.10.2018, would not be eligible to claim refund of Integrated tax paid on exports. However, exporters who are receiving capital goods under the EPCG scheme, either through import in terms of notification No. 79/2017-Customs dated 13.10. 2017 or through domestic procurement in terms of notification No. 48/2017-Central Tax, dated 18.10.2017, shall continue to be eligible to claim refund of Integrated tax paid on exports and would not be hit by the restrictions provided in sub-rule (10) of rule 96 of the CGST Rules.

Clarification on calculation of refund amount for claims of refund of accumulated ITC on account of inverted tax structure

53. Sub-section (3) of section 54 of the CGST Act provides that refund of any unutilized ITC may be claimed 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). Further, sub-section (59) of section 2 of the CGST Act defines inputs as any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Thus, inputs do not include services or capital goods. Therefore, clearly, the intent of the law is not to allow refund

of tax paid on input services or capital goods as part of refund of unutilized input tax credit. 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 tax structure.

54. There have been instances where while processing the refund of unutilized ITC on account of inverted tax structure, some of the tax authorities denied the refund of ITC of GST paid on those inputs which are procured at equal or lower rate of GST than the rate of GST on outward supply, by not including the amount of such ITC while calculating the maximum refund amount as specified in rule 89(5) of the CGST Rules. The matter has been examined and the following issues are clarified:

- a) 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.
- b) The calculation of refund of accumulated ITC on account of inverted tax structure, in cases where several inputs are used in supplying the final product/output, can be clearly understood with the help of following example:
 - i. 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).
 - ii. The refund of accumulated ITC in the situation at (i) above, will be available under section 54(3) of the CGST Act read with rule 89(5) of the CGST Rules, which prescribes the formula for the maximum refund amount permissible in such situations.
 - iii. Further assume that the applicant 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 applicant has no other outward supplies, his adjusted total turnover will also be Rs. 3,000/-.
 - iv. 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).
 - v. 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/-.
 - vi. 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/-.

Refund of TDS/TCS deposited in excess

55. Tax deducted in accordance with the provisions of section 51 of the CGST Act or tax collected in accordance with the provisions of section 52 of the CGST Act is required to be paid while discharging the liability in **FORM GSTR 7** or **FORM GSTR 8**, as the case may be, by the deductor or the collector, as the case may be.

56. It has been reported that, there are instances where taxes so deducted or collected is deposited under the wrong head (e.g. an amount deducted as Central tax is deposited as Integrated tax/State tax), thereby creating excess balance in the cash ledger of the deductor or the collector as the case may be. Doubts have been raised on the fate of this excess balance of TDS/TCS in the cash ledger of the deductor or the collector. It is clarified that such excess balance may be claimed by the tax deductor or the collector as the excess balance in electronic cash ledger. In this case, the common portal would debit the amount so claimed as refund. However, in case where tax deducted or collected in excess is also paid while discharging the liability in **FORM GSTR 7** or **FORM GSTR 8**, as the case may be, and the said amount has been credited to the electronic cash ledger of the deductee, the deductee can adjust the same while discharging his output liability or he can claim refund of the same under the category “refund of excess balance in the electronic cash ledger”.

Debit of electronic credit ledger using FORM GST DRC-03

57. Various representations have been received seeking clarifications on certain refund related issues, the solutions to which involve debiting the electronic credit ledger using **FORM GST DRC-03**.

58. These issues are clarified as under:

Sr.No.	Issue	Clarification
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1	<p>Certain registered persons have reversed, through return in FORM GSTR-3B filed for the month of August, 2018 or for a subsequent month, the accumulated input tax credit (ITC) required to be lapsed in terms of notification No. 20/2018-Central Tax (Rate) dated 26.07.2018 read with circular No. 56/30/2018-GST dated 24.08.2018 (hereinafter referred to as the “said notification”). Some of these registered persons, who have attempted to claim refund of accumulated ITC on account of inverted tax structure for the same period in which the ITC required to be lapsed in terms of the said notification has been reversed, are not able to claim refund of accumulated ITC to the extent to which they are so eligible. This is because of a validation check on the common portal which prevents the value of input tax credit in Statement 1A of FORM GST RFD-01A from being higher than the amount of ITC availed in FORM GSTR-3B of the relevant period minus the value of ITC reversed in the same period. This results in registered persons being unable to claim the full amount of refund of accumulated ITC on account of inverted tax structure to which they might be otherwise eligible. What is the solution to this problem?</p>	<p>a) As a one-time measure to resolve this issue, refund of accumulated ITC on account of inverted tax structure, for the period(s) in which there is reversal of the ITC required to be lapsed in terms of the said notification, is to be claimed under the category “any other” instead of under the category “refund of unutilized ITC on account of accumulation due to inverted tax structure” in FORM GST RFD-01A. It is emphasized that this application for refund should relate to the same tax period in which such reversal has been made.</p> <p>b) The application shall be accompanied by all statements, declarations, undertakings and other documents which are statutorily required to be submitted with a “refund claim of unutilized ITC on account of accumulation due to inverted tax structure”. On receiving the said application, the proper officer shall himself calculate the refund amount admissible as per rule 89(5) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “CGST Rules”), in the manner detailed in para 37 above. After calculating the admissible refund amount, as described above, and scrutinizing the application</p>
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Sl. No.	Issue	Clarification
		<p>for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer, in writing, to debit the said amount from his electronic credit ledger through FORM GST DRC-03. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in FORM GST RFD- 06 and the payment order in FORM GST RFD-05.</p> <p>c) All refund applications for unutilized ITC on account of accumulation due to inverted tax structure for subsequent tax period(s) shall be filed in FORM GST RFD-01 under the category “refund of unutilized ITC on account of accumulation due to inverted tax structure”.</p>
2	<p>The clarification at Sl. No. 1 above applies to registered persons who have already reversed the ITC required to be lapsed in terms of the said notification through return in FORM GSTR-3B. What about those registered persons who are yet to perform this reversal?</p>	<p>It is hereby clarified that all those registered persons required to make the reversal in terms of the said notification and who have not yet done so, may reverse the said amount through FORM GST DRC-03 instead of through FORM GSTR-3B.</p>

3	<p>What shall be the consequence if any registered person reverses the amount of credit to be lapsed, in terms the said notification, through the return in FORM GSTR-3B for any month subsequent to August, 2018 or through FORM GST DRC-03 subsequent to the due date of filing of the return in FORM GSTR-3B for the month of August, 2018?</p>	<p>a) As the registered person has reversed the amount of credit to be lapsed in the return in FORM GSTR-3B for a month subsequent to the month of August, 2018 or through FORM GST DRC-03 subsequent to the due date of filing of the return in FORM GSTR-3B for the month of August, 2018, he shall be liable to pay interest under sub-section (1) of section 50</p>
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Sl. No.	Issue	Clarification
		<p>of the CGST Act on the amount which has been reversed belatedly. Such interest shall be calculated starting from the due date of filing of return in FORM GSTR-3B for the month of August, 2018 till the date of reversal of said amount through FORM GSTR-3B or through FORM GST DRC-03, as the case may be.</p> <p>b) The registered person who has reversed the amount of credit to be lapsed in the return in FORM GSTR-3B for any month subsequent to August, 2018 or through FORM GST DRC-03 subsequent to the due date of filing of the return in FORM GSTR-3B for the month of August, 2018 would remain eligible to claim refund of unutilized ITC on account of accumulation due to inverted tax structure</p> <p>w.e.f. 01.08.2018. However, such refund shall be granted only after the reversal of the amount of credit to be lapsed, either through FORM GSTR-3B or FORM GST DRC-03, along with payment of interest, as applicable.</p>

4	How should a merchant exporter claim refund of input tax credit availed on supplies received on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017,	a) Rule 89(4B) of the CGST Rules provides that where the person claiming refund of unutilized input tax credit on account of zero-rated supplies without payment of tax has received supplies on which the supplier has availed the benefit of the said notifications, the refund of input tax credit, availed in respect of such inputs received under the said notifications for export of goods, shall be granted. This refund of accumulated ITC under rule 89(4B) of the CGST Rules shall
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Sl. No.	Issue	Clarification
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<p>published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321(E), dated the 23rd October, 2017 (hereinafter referred to as the “said notifications”)?</p>	<p>be applied under the category “any other” instead of under the category “refund of unutilized ITC on account of exports without payment of tax” in FORM GST RFD-01 and shall be accompanied by all supporting documents required for substantiating the refund claim under the category “refund of unutilized ITC on account of exports without payment of tax”. After scrutinizing the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer, in writing, to debit the said amount from his electronic credit ledger through FORM GST DRC-03. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in FORM GST RFD-06 and the payment order in FORM GST RFD-05.</p>
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Refund of Integrated Tax paid on Exports

59. The refund of Integrated tax paid on goods exported out of India is governed by rule 96 of the CGST Rules. The shipping bill filed by an exporter is deemed to be an application for refund in such cases, but the same is deemed to have been filed only when the export manifest or export report is filed and the applicant has filed the return in **FORM GSTR-3B** for the relevant period duly indicating the integrated tax paid on goods exported in Table 3.1(b) of **FORM-GSTR-3B**. In addition, the exporter is expected to furnish the details of the exported goods in Table 6A of **FORM GSTR-1** of the relevant period. Only where the common portal is able to validate the consistency of the details so entered by the applicant, the relevant information regarding the refund claim is forwarded to Customs Systems. Upon receipt of the information from the common portal regarding furnishing of these details, the Customs Systems processes the claim for refund and an amount equal to the Integrated tax paid in respect of such export is electronically credited to the bank account of the applicant.

Clarifications on other issues

60. Notification No. 40/2017 – Central Tax (Rate) and notification No. 41/2017 – Integrated Tax (Rate) both dated 23.10.2017 provide for supplies for exports at a concessional rate of 0.05% and 0.1% respectively, subject to certain conditions specified in the said notifications. It is clarified that the benefit of supplies at concessional rate is subject to certain conditions and the said benefit is optional. The option may or may not be availed by the supplier and / or the recipient and the goods may be procured at the normal applicable tax rate. It is also clarified that the exporter will be eligible to take credit of the tax @ 0.05% / 0.1% paid by him. The supplier who supplies goods at the concessional rate is also eligible for refund on account of inverted tax structure as per the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act. It may also be noted that the exporter of such goods can export the goods only under LUT / bond and cannot export on payment of Integrated tax.

61. Sub-section (14) of section 54 of the CGST Act provides that no refund under subsection (5) or sub-section (6) of section 54 of the CGST Act shall be paid to an applicant, if the amount is less than one thousand rupees. In this regard, it is clarified that the limit of rupees one thousand shall be applied for each tax head separately and not cumulatively.

62. Presently, ITC is reflected in the electronic credit ledger on the basis of the amount of the ITC availed on self-declaration basis in **FORM GSTR-3B** for a particular tax period. It may happen that the goods purchased against a particular tax invoice issued in a particular month, say August 2018, may be declared in the **FORM GSTR-3B** filed for a subsequent month, say September 2018. This is inevitable in cases where the supplier raises an invoice, say in August, 2018, and the goods reach the recipient's premises in September, 2018. Since GST law mandates that ITC can be availed only after the goods have been received, the recipient can only avail the ITC on such goods in the **FORM GSTR-3B** filed for the month of September, 2018. However, it has been reported that tax authorities are excluding such invoices from the calculation of refund of unutilized ITC filed for the month of September, 2018. In this regard, it is clarified that "Net ITC" as defined in rule 89(4) of the CGST Rules means input tax credit availed on inputs and input services during the relevant period. Relevant period means the period for which the refund claim has been filed. Input tax credit can be said to have been "availed" when it is entered into the electronic credit ledger of the registered person. Under the current dispensation, this happens when the said taxable person files his/her monthly return in **FORM GSTR-3B**. Further, section 16(4) of the CGST Act stipulates that ITC may be claimed on or before the due date of filing of the return for the month of September following the financial year to which the invoice pertains or the date of filing of annual return, whichever is earlier. Therefore, the input tax credit of invoices issued in August, 2019, "availed" in September, 2019 cannot be excluded from the calculation of the refund amount for the month of September, 2019.

63. It has been represented that 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. 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 applicant. It is clarified that the ITC of the GST paid on inputs, including 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. Further, 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.

64. It is requested that suitable trade notices may be issued to publicize the contents of this circular. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Yogendra Garg) Principal Commissioner

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Annexure-A

List of all statements/declarations/undertakings/certificates and other supporting documents to be provided along with the refund application

Sl. No.	Type of Refund	Declaration/Statement/Undertaking/Certificates to be filled online	documents to be additionally uploaded
1	Refund of unutilized ITC on account of exports without payment of tax	Declaration under second and third proviso to section 54(3)	Copy of GSTR-2A of the relevant period
		Undertaking in relation to sections 16(2)(c) and section 42(2)	Statement of invoices (Annexure-B)
		Statement 3 under rule 89(2)(b) and rule 89(2)(c)	Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period
		Statement 3A under rule 89(4)	BRC/FIRC in case of export of services and shipping bill (only in case of exports made through non-EDI ports) in case of goods
2	Refund of tax paid on export of services made with payment of tax	Declaration under second and third proviso to section 54(3)	BRC/FIRC /any other document indicating the receipt of sale proceeds of services
		Undertaking in relation to sections 16(2)(c) and section 42(2)	Copy of GSTR-2A of the relevant period
		Statement 2 under rule 89(2)(c)	Statement of invoices (Annexure-B)
			Self-certified copies of invoices entered in Annexure-A whose details are not found in GSTR-2A of the relevant period

			Self-declaration regarding non-prosecution under sub-rule (1) of rule 91 of the CGST Rules for availing provisional refund
3	Refund of unutilized ITC on account of Supplies made to SEZ units/developer without payment of tax	Declaration under third proviso to section 54(3)	Copy of GSTR-2A of the relevant period
		Statement 5 under rule 89(2)(d) and rule 89(2)(e)	Statement of invoices (Annexure-B)
		Statement 5A under rule 89(4)	Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period
		Declaration under rule 89(2)(f)	Endorsement(s) from the specified officer of the SEZ regarding receipt of goods/services for authorized operations under second proviso to rule 89(1)
		Undertaking in relation to sections 16(2)(c) and section 42(2)	
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	
4	Refund of tax paid on supplies made to SEZ	Declaration under second and third proviso to section 54(3)	Endorsement(s) from the specified officer of the SEZ regarding receipt of goods/services for authorized operations under second proviso to rule 89(1)

Sl. No.	Type of Refund	Declaration/Statement/Undertaking/Certificates to be filled online	documents to be additionally uploaded
	units/developer with payment of tax	Declaration under rule 89(2)(f)	Self-certified copies of invoices entered in Annexure-A whose details are not found in GSTR-2A of the relevant period
		Statement 4 under rule 89(2)(d) and rule 89(2)(e)	Self-declaration regarding non-prosecution under sub-rule (1) of rule 91 of the CGST Rules for availing provisional refund
		Undertaking in relation to sections 16(2)(c) and section 42(2)	
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	
5	Refund of ITC on unutilized account of accumulation due to inverted tax structure	Declaration under second and third proviso to section 54(3)	Copy of GSTR-2A of the relevant period
		Declaration under section 54(3)(ii)	Statement of invoices (Annexure-B)
		Undertaking in relation to sections 16(2)(c) and section 42(2)	Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period
		Statement 1 under rule 89(5)	
		Statement 1A under rule 89(2)(h)	

		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	
6	Refund to supplier of tax paid on deemed export supplies	Statement 5(B) under rule 89(2)(g)	Documents required under Notification No. 49/2017-Central Tax dated 18.10.2017 and Circular No. 14/14/2017-GST dated 06.11.2017
		Declaration under rule 89(2)(g)	
		Undertaking in relation to sections 16(2)(c) and section 42(2)	
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	
7	Refund to recipient of tax paid on deemed export supplies	Statement 5(B) under rule 89(2)(g)	Documents required under Circular No. 14/14/2017-GST dated 06.11.2017
		Declaration under rule 89(2)(g)	
		Undertaking in relation to sections 16(2)(c) and section 42(2)	

Sl. No.	Type of Refund	Declaration/Statement/Undertaking/Certificates to be filled online	documents to be additionally uploaded
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	
8	Refund of excess payment of tax	Statement 7 under rule 89(2)(k)	
		Undertaking in relation to sections 16(2)(c) and section 42(2)	
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	
9	Refund of tax paid on intra-state supply which is subsequently held to be an inter-state supply and vice versa	Statement 6 under rule 89(2)(j)	
		Undertaking in relation to sections 16(2)(c) and section 42(2)	
10	Refund on account of assessment / provisional assessment / appeal / any other order	Undertaking in relation to sections 16(2)(c) and section 42(2)	Reference number of the order and a copy of the Assessment / Provisional Assessment / Appeal / Any Other Order
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	Reference number/proof of payment of pre- deposit made earlier for which refund is being claimed

11		Undertaking in relation to sections 16(2)(c) and section 42(2)	Documents in support of the claim
	Refund on account of any other ground or reason	Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	

Annexure-B

Statement of invoices to be submitted with application for refund of unutilized ITC

Sr. No.	GSTIN of Supplier	Name of Supplier	Invoice Details			Type	Central Tax	State Tax/ Union Territory Tax	Integrated Tax	Cess	Eligible for ITC	Amount of eligible ITC	Whether invoice included in GSTR- 2A Y/N
			Invoice No.	Date	Value								
1	2	3	4	5	6	7	8	9	10	11	12	13	14
											Yes/No/Partially		

CHAPTER - 12

SPECIAL ECONOMIC ZONE

TABLE I- SECTIONS OR RULES

Sr. No.	Section/Rule	PGST/IGST Act/Rule 2017	Description
1	Section 2 (19)	IGST Act	Special Economic Zone
2	Section 2 (20)	IGST Act	Special Economic Zone Developer.
3	Section 16(1)(b)	IGST Act	Supply of goods or services or both to a SEZ developer or unit.
4	Section 7 (5)	IGST Act	Supply of goods or services or both to or by a SEZ unit or SEZ developer to be treated in the course of inter-state trade or commerce.
5	Section 8	IGST Act	Supply of goods or services or both to or by a SEZ unit or SEZ developer shall not be treated as intra state supply.
6	Section 25 (1)	PGST Act	Procedure for registration

A **special economic zone (SEZ)** is an area in which the business and trade laws are different from the rest of the country. SEZs are exclusive zones located within a country's national borders established with the aim of increasing trade balance, employment, investment, job creation and effective administration. The SEZ Act, 2005, supported by SEZ Rules, came into effect on 10th February 2006,

The salient features of the SEZ scheme are: -

- a) A designated duty-free enclave to be treated as a territory outside the customs territory of India for the purpose of authorised operations in the SEZ;
- b) No licence required for import;
- c) Manufacturing or service activities allowed;
- d) The Units are only required to achieve Positive Net Foreign Exchange to be calculated cumulatively for a period of five years from the commencement of production;
- e) Domestic sales subject to full customs duty and import policy in force;
- f) Full freedom for subcontracting;
- g) No routine examination by customs authorities of export/import cargo;

h) SEZ Developers /Co-Developers and Units enjoy Direct Tax and Indirect Tax benefits.

IMPORTANT TERMS RELATED TO SEZ:

Special Economic Zone: As per clause (19) of section 2 of IGST Act, the term "SEZ" shall have the same meaning as assigned to it in clause (za) of Section 2 of the Special Economic Zones Act, 2005.

As per clause (za) of Section 2 of SEZ Act, 2005, "Special Economic Zone" means each Special Economic Zone notified under the proviso to sub-section (4) of section 3 and sub-section (1) of section 4 (including Free Trade and Warehousing Zone) and includes an existing Special Economic Zone.

Domestic Tariff Area: As per clause (i) of section 2 of SEZ Act, 2005, "Domestic Tariff Area" means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the Special Economic Zones.

Free Trade and Warehousing Zone: As per Section 2(n) of SEZ Act, 2005, "Free Trade and Warehousing Zone" means a Special Economic Zone wherein mainly trading and warehousing and other activities related there to are carried on

Exports: As per clause (m) of Section 2 of SEZ Act, 2005, it means-

- a) Taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea or air or by any other mode, whether physical or otherwise; or
- b) Supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer; or
- c) Supplying goods, or providing services, from one Unit to another Unit or Developer, in the same or different Special Economic Zone.

TABLE II: SEZS NOTIFIED IN STATE OF PUNJAB

(AS ON 14.11.2019)

Sr.No	Name of Developer	Location	Type of SEZ	Date of notification
1.	Quarkcity India Pvt. Ltd.	Focal Point Industrial area, Phase VIII Extension, District Mohali, Punjab	IT	2 nd November,2006/ 26 th August, 2014/ 13 th November, 2018

2.	Ranbaxy Laboratories Ltd.	Plot No. A-41, Focal Point, Mohali, Punjab	Pharmaceuticals	10 th April 2007
3.	Infosys Limited	Plot No. I-3, IT City, Sector – 83, Alpha, SAS Nagar, Mohali, Punjab	IT/ITES	21 st November, 2016

IGST ON SUPPLIES MADE TO OR RECEIVED FROM SEZ:

The nature of supplies to SEZ has been specifically provided in section 7 of the IGST Act, 2017. As per sub-section (5) of the said section, any supplies to or from SEZ unit or developer are in the nature of inter-State supplies. Thus, such supplies would be subjected to levy of IGST. Therefore, the location of supplier or recipient or place of supply is immaterial for determining the nature of supply where the goods or services are either being supplied to or are being received from a SEZ unit or developer.

SEZ SUPPLIES AS ZERO-RATED SUPPLIES:

The relevant section for supplies made to SEZ is Section 16 of IGST Act, 2017 which provides that:

“zero rated supply” means any of the following supplies of goods or services or both, namely:

- a. export of goods or services or both; or*
- b. supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.*

The IGST Act, 2017 allows the flexibility to the suppliers making supplies to SEZ to claim refund of integrated tax (by making supplies on payment of tax using ITC) or make supplies without payment of tax by executing a Bond/LUT and claim refund of related ITC of taxes paid on inputs and input services used in making such zero-rated supplies. In respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the:

- a) Supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorized operations, as endorsed by the specified officer of the Zone;
- b) Supplier of services along with such evidence regarding receipt of services for authorized operations as endorsed by the specified officer of the Zone.

TABLE III - TAX TREATMENT FOR VARIOUS SUPPLIES IN RELATION TO SEZ

Sr. No.	Type of Supply	Description
1	DTA to SEZ Supply (Zero-Rated)	Supply of goods or services or both to a SEZ developer or unit are considered as Zero-rated supplies therefore the person making supplies to SEZ unit or developer can claim refund of accumulated ITC or taxes paid, provided the same are for authorized operations.
2	SEZ TO DTA Supply (Reference Rule 49 of SEZ Rules)	<ul style="list-style-type: none"> ➤ Supplies from SEZ to DTA will be treated separately in case of goods and services; ➤ In case of supply of goods, the supply is considered as import and custom duty along with integrated tax is paid by the recipient. Thus, such supplies acquire the character of reverse charge supplies under GST regime wherein the recipient is required to discharge GST albeit under the Customs Act. However, where such supplies are not covered under Customs Act on account of specific provision in SEZ Act and the rules made thereunder, then they are to be treated as normal supplies under GST; ➤ In case of supply of services, IGST is charged and transaction is like a normal supply under GST.
3	Intra-SEZ Supply	<ul style="list-style-type: none"> ➤ Zero Rated Supply; ➤ Supplies can be made under LUT or with payment of IGST.
4	Inter-SEZ Supply	<ul style="list-style-type: none"> ➤ Zero rated supply; ➤ Supplies for services can be made under LUT or with payment of IGST; ➤ In case of supply of goods the recipient SEZ unit has to file a Bill of entry and is regulated under Customs Procedure.
<p>Note: Bill of Entry is the declaration form filed by the importer or his clearing agent in the prescribed form under Bill of Entry Regulations, 1971 on or before the arrival of imported goods. It is part of custom clearance procedure.</p>		

TABLE IV: ISSUE AND CLARIFICATION

ISSUE	CLARIFICATION
<p>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 interstate 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)?</p>	<p>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 will have to be issued by the specified officer of the Zone. Therefore, subject to the provisions of section 17(5) of the PGST/CGST Act, if event management services, hotel accommodation services, consumables etc. are received by a SEZ developer or a SEZ unit for authorized 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.</p>
<p>Instruction no, 9 of FORM GSTR-1 return</p>	<p>It has been clarified that in case the goods are supplied by SEZ unit under the cover of bill of entry, no need to report such transactions in GSTR-1 Goods/services supplied not covered under the bill of entry only need to be reported in GSTR-1.</p>

TABLE IV- FAQs

FAQS	ANSWER
Question: I have a unit in the DTA and another in the SEZ; can I take a common registration?	No. A person having unit(s) in a Special Economic Zone as well as outside the SEZ in a State, shall make a separate application for registration for SEZ unit(s). A person having a unit, as defined in the Special Economic Zones Act, 2005, in a Special Economic Zone or being a Special Economic Zone developer shall have to apply for a separate registration, as distinct from his place of business located outside the Special Economic Zone in the same State or Union territory(Section 25(1) of PGST Act, 2017)
Question: When a SEZ unit or SEZ developer procures any goods or services from an unregistered supplier, whether the SEZ unit or SEZ developer needs to pay IGST under reverse charge or these will be zero rated supplies?	Supplies to SEZ unit or SEZ developer have been accorded the status of inter-State supplies under the IGST Act. Under the GST Law, any supplier making inter-State supplies has to compulsorily get registration under GST. Thus anyone making a supply to a SEZ unit or SEZ developer has to necessarily obtain GST registration. However, by virtue of Notification No 65/2017(CT) dated 15 th November, 2017, it has been provided that persons making inter-State supply of services other than supplies under sub-section (5) of section 9 through an electronic commerce operator having an aggregate turnover not exceeding twenty lakh rupees in a financial year are exempted from obtaining registration under the Act.
Question: Can a person paying tax under composition scheme supply goods to SEZ?	No, because supplies to SEZ from Domestic Tariff Area are treated as inter-State supply. A person paying tax under composition scheme cannot make inter-State outward supply of goods.

KEY POINTS:

1. Whether separate registration has been taken for a unit located in SEZ or being a developer, as distinct from the place of business located outside SEZ in the same State?
2. Whether the taxpayer has filed bill of entry for goods procured from SEZ and discharged duty?
3. Whether the supplies of goods or services to SEZ developer or SEZ unit have been treated as zero rated supplies
4. Whether nature of supply has been correctly determined for transactions with SEZ unit or developer?
5. Whether the goods or services or both supplied to SEZ are for the authorized operations? The authorized operations to be studied in consonance with section 2 (c) of SEZ Act 2005 and correlated with Letter of approval granted to set up SEZ in section 15 (9) of SEZ act 2005.
6. Whether an endorsement issued by the specified officer of SEZ regarding supplies for authorized operations is checked with the refund application?
7. Whether the supplies of goods or services or both by a SEZ to any other SEZ unit or developer other than DTA has been treated as inter-state supply?
8. Whether the details furnished for compliances under SEZ Act, 2005 are in consonance with the information furnished under GST Act?

CIRCULARS/NOTIFICATIONS ON SEZ:

1. Circular No. 11/2017-Customs dated 31st March 2017, F.No. DGEP/SEZ/51/2009 Part-II: - Clarification regarding amendment in Special Economic Zone Rules, 2006 in Rule 47, after sub-rule (4) dated 05.08.2016.
<https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2017/circ11-2017cs.pdf>
2. Notification 15/2017-Integrated Tax (Rate), dated 30th June, 2017:- Notification for Exemption from Integrated Tax to SEZ.
<https://www.cbic.gov.in/resources//htdocs-cbec/gst/Notification15-IGST-rate.pdf;jsessionid=A8630CA3490C8DC92F8845D458930407>
3. Circular No. 24/2017 –Customs dated 30th June 2017, F. No. 609/46/2017-DBK: - Duty Drawback for supplies made by DTA units to Special Economic Zones in the GST scenario.
<https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2017/circ24-2017cs.pdf>
4. Notification 18/2017-Integrated Tax (Rate), dated 05th July, 2017:- IGST exemption to SEZs on import of services by a unit/developer in an SEZ for authorized operations.
<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notification18-igst-rate.pdf>
5. Notification No. 64/2017-Customs dated 05th July, 2017 - IGST exemption to SEZs on import of goods by a unit/developer in an SEZ for authorized operations.

- <https://www.nsez.gov.in/resources/Notification%20no%2064.pdf>
6. Circular 14/14/2017 dated 6th November, 2017, F. No. 349/21/2016 GST (Policy Wing):- Procedure regarding procurement of supplies of goods from DTA by Export Oriented Unit (EOU) / Electronic Hardware Technology Park (EHTP) Unit / Software Technology Park (STP) Unit / Bio-Technology Parks (BTP) Unit under deemed export benefits under section 147 of CGST Act, 2017.
<https://www.cbic.gov.in/resources//htdocs-cbec/gst/circularno-14-gst.pdf>
7. Circular 48/22/2018 dated 14th June 2018, F. No. CBEC/20/16/03/2017-GST: - Circular clarifying miscellaneous issues related to SEZ.
<https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular-48-22-2018-GST-updated.pdf>

Advance Rulings: -

1. Appellate advance ruling order : MAH/AAAR/SS-RJ/12/2018-19 dated 01st November, 2018, Merit Hospitality Services Pvt. Ltd, 27AAAFF0535H1ZT:- The appellate authority for advance ruling held that services of supplying food by the appellant to employees of the unit located in SEZ is not covered under zero rated supplies.
http://gstcouncil.gov.in/sites/default/files/appellate-order/Mah.AAAR%20No-12-2018-19_01-11-18.pdf
2. M/s. Sapthagiri Hospitality Private Limited, 24AAMCS8870K1ZN, Advance Ruling- GUJ/GAAR/APPEAL/2019/2 dated 2nd January, 2019(Gujarat)
http://gstcouncil.gov.in/sites/default/files/appellate-authority/GUJ_GAAAR_2019_2%20dtd%2002.01.19.pdf
3. M/s. Sadesa Commercial Offshore De Macau Limited(unregistered), order No.24|AAR/2018 dated : 31st December, 2018 (Tamil Nadu).
<http://www.gstcouncil.gov.in/sites/default/files/ruling-new/TN-24-AAR-2018.pdf>
4. M/s.The Bank of Nova Scotia, 33AAACB7536HIZ7, order No.23 IAAR/2018 dated: 31st December, 2018 (Tamil Nadu).
<http://www.gstcouncil.gov.in/sites/default/files/ruling-new/TN-23-AAR-2018.pdf>
5. Magarpatta Club & Resorts Pvt Ltd, 27AADCM0664N1 Z6, GST-ARA-39/2018-19/B-95 dated 20th August, 2018(Maharashtra).
http://gstcouncil.gov.in/sites/default/files/ruling-new/Maha-GST-ARA-39%20dt.20.08.18_MCRPL.pdf
6. Coffee Day Global Ltd, 29AABCA5291P1Z3, Advance Ruling No. KAR ADRG 13 / 2018 dated : 26th July, 2018, (Karnataka).
<http://insta.instavat.in/pdf/KARNATAKA-ADVANCE-RULING-13.pdf>

CHAPTER 13

FINANCIAL RATIO ANALYSIS

Financial ratios of any business concern are indicative of its performance, profitability and overall working. But It is also an important tool with the tax-authorities to evaluate its tax-compliance. When compared with the industry standards, which may vary for different types of industry, and also with the results from the previous years, the financial ratios are able to indicate any deviation from the normal calling for deeper analysis. These ratios form an integral part of the financial statements i.e. Profit & Loss Account, Balance Sheet etc. Ratio analysis allows for evaluations using the Financial statement data and can bring to light any misrepresentation or suppression of facts that may have occurred leading to evasion or short payment of taxes. Whenever a change in a specific ratios or several related ratios is seen during the audit, the appropriate source records shall be examined in detail to determine the underlying reason. Though a number of ratios can be taken out from a company's financial statements, the following may have a direct bearing for the tax-auditors and are enumerated as under:-

(1) Current Ratio

Current Ratio indicates the financial health of the company. It tells us as to how capable a company is in meeting its current liabilities out of the assets held by it. The current assets include the cash in hand, stocks and other marketable securities which a company can convert immediately into cash. The current liabilities include accounts payable, wages, taxes payable and advances received during the current year. The current ratio is given as:-

$$\text{Current Ratio} = \frac{\text{Current Assets}}{\text{Current Liabilities}}$$

Illustration: If the company has:

Cash in hand	10,00,000 /-
Stocks	5,00,000 /-
Marketable Securities	5,00,000 /-
Loan from Bank	3,00,000 /-
Unpaid Purchases	3,00,000 /-
then, Current Ratio	$\frac{10,00,000+5,00,000+ 5,00,000}{3,00,000 + 7,00,000} = 2$

This signifies that the company can meet its current liabilities twice out of currently held assets.

Significance of the current ratio from the point of Audit

The current ratio is significant from the audit's point of view as an abnormally High or Low ratio may indicate one or more of the following scenarios: -

- a. The taxpayer might have issued bogus invoices and has parked the money receivable against it in Sundry debtors thus giving a high current asset ratio.
- b. In case, the taxpayer wanted to offset his output tax-liability by purchasing bogus invoices, it would raise the value of stocks held leading to a higher current ratio.
- c. If the taxpayer has shown high stocks in his books of accounts and the amount due to the creditors is low, it would show a higher current ratio. This may be an indication of suppression of sales by the tax payer as the stocks are being increased into the books of accounts without an increase in the creditors.
- d. However, if the current ratio is low when compared to the previous years or otherwise then there may be a possibility that the stocks held by the business are on the lower side and the taxpayer has been making purchases outside of his books of accounts.
- e. If the creditors are high then this would lead to a fall in the current ratio. For example if the Bank Loan/Credit limit is high but the turnover is not commensurate with it (low debtors/low cash in hand), it may mean that the taxpayer is not routing the sales through his books of accounts.
- f. Higher amount of creditors would decrease the current ratio and the age of the creditors shall be examined in such cases. If the taxpayer has not been making the payments in time, the same would reflect into his creditors account becoming inflated. And if the taxpayer has failed to make the payments within 180 days of the supply of goods and services, then the ITC shall be reversed under the provisions of section 16(2) of PGST Act, 2017.

Hence, any abnormal increase or decrease in the current ratios, when compared with the previous year would suggest manipulation of the financial statement data calling for a detailed investigation of the underlying causes.

(2)Gross Profit Margin Ratio

The Gross profit margin ratio indicates how much profit a company makes from its sales. It is calculated after deducting the cost of goods sold from the total sales value.

$$\text{Gross Profit Margin Ratio} = \frac{\text{Total Sales} - \text{Cost of Goods Sold}}{\text{Total Sales}}$$

Illustration: If for a Company:

Sales during the Period	20,00,000/-
Cost of Goods Sold	15,00,000/-
Gross Profit Margin Ratio	$\frac{20,00,000 - 15,00,000}{20,00,000}$ =0.25

Hence, the company has a Gross Profit Margin ratio of 0.25 meaning that on every sale of Rs. 100/-, the company earns Rs. 25 /- as the gross profit. In other words, this is the Value Added to the cost price of the product and is the base on which the tax to be deposited with the Government is calculated.

Significance of Gross Profit Margin ratio from the point of Audit

The ratio helps in determining the most important factor i.e. the "Value Addition". As given under the example, the company has a value addition of Rs. 25/- on every sale of Rs. 100/-. Now, if the item being sold is taxable @ 18 %, whether the company has paid Rs. 4.50/- on the value added can be verified. Where the tax-paid does not correlate with the Gross-Profit, it is most likely that:

- a) The tax-payer has claimed ineligible ITC thereby reducing its tax liability.
- b) The output tax has been calculated at a lower rate of tax.

The audit may proceed to verify the reasons for less deposit of tax based on the indicator i.e. the Gross Profit Margin Ratio. Furthermore, the GP ratio would remain almost constant across the years. If there is a significant increase/decrease in the ratio, the audit shall examine the causes in detail.

(3) Inventory Turnover Ratio

The Inventory turnover ratio is the number of times a business sells and replaces its stock of goods during a given period. A high inventory turnover ratio means that the goods are sold faster and a low turnover rate indicates weak sales and excess inventories.

$$\text{Inventory Turnover Ratio} = \frac{\text{Cost of Goods Sold}}{\text{Average Inventory}}$$

'Cost of goods sold' is the expense incurred for creating a product and includes the cost of raw materials and labour costs.

' Average inventory' during period is the average of the inventory present on the first and last day.

Illustration: Suppose company's financial figures for f.y. 2018-19 reveal:

Cost of goods sold during a year	50,00,000/-
Value of inventory as on 1 st April 2018	4,00,000/-
Value of inventory as on 31 st March 2019	6, 00,000/-
Inventory turnover ratio	$\frac{50, 00,000}{(4, 00,000 + 6, 00,000)/2} = 10$

Hence, the inventory turnover ratio of 10 shows that the company could sell and replace its inventory 10 times during the year.

Significance of the Inventory Turnover ratio from the point of Audit

The Inventory turnover ratio, when seen in comparison with the previous years, can be indicative of an underlying misrepresentation in the financial statements by the tax-payer. For example, if the Inventory Turnover ratio for the year under audit has decreased significantly in comparison to the previous years then there may be an eventuality that :

- The tax – payer to offset his tax liability with the Input Tax credit has procured bogus purchase invoices without any physical purchase of goods. As this would lead to accumulation of stock in the books of accounts, the Inventory Turnover ratio decreases.
- There is some old stock lying with the dealer which remains unsold.
- The purchases are low but the sales are higher; which means the taxpayer has been making hidden purchases.
- There may be a variation in the valuation of inventory/turnover/cess by the taxpayer when compared with the previous years.
- The stock is getting accumulated in the books of accounts as the sales being reflected is less leading to a decrease in the Inventory Turnover ratio which may indicate suppression of sales by the taxpayer.
- There may also be a possibility that the taxpayer has written-off some of its stocks resulting in a high turnover ratio.

To sum up, the financial ratios are an important indicator of manipulation and suppression of the business data by the tax-payer and can be read as under:

Nature of the	Source Document	Significance and use for	Documents/details
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ratio		the Audit	to verify
Current ratio	Balance Sheet, Profit and Loss account	<p>Basically the ratio of current assets held against the current Liabilities. An abnormal increase in the current ratio may be indicative of:</p> <p>a) Fraudulent creation of assets i.e. stocks and availment of credit without receipt or actual use of inputs.</p> <p>b) Issuance of invoices without any movement of goods.</p>	Stock inventory details, E-way bill for sale and purchase, Goods transport receipts, Bank statements, statement showing debtor details and age, current assets and liability details etc.
Gross Profit Margin ratio	Balance Sheet, Profit and Loss account	<p>Indicates the amount of Gross profit earned against the sale made by the dealer and can be indicative of:</p> <p>a) Wrong or fraudulent claims of ITC.</p> <p>b) Incorrect application of the rate of tax on the goods being sold.</p> <p>c) Rejection/return of the input without corresponding ITC reversal.</p>	Breakup of the goods sold at various rates of tax, GST returns, Profit and loss account, Trial Balance, Notes to the accounts, details of the goods rejected or returned during the period, breakup of the purchases at various rates of tax.
Inventory Turnover ratio	Balance Sheet, Profit and Loss account	This ratio can help in detecting the value addition made by the company and corresponding tax paid	Stock inventory details, E-way bill for sale and purchase, Goods transport receipts, Bank statements, etc.

		<p>by him.</p> <p>a) Accumulation of stock in books without physical purchase or movement of goods and fraudulent availment of ITC.</p> <p>b) Identification of any old stock lying unsold with the dealer on which the ITC is required to be reversed.</p>	
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CHAPTER – 14

THIRD PARTY INFORMATION

Introduction:

In today's world where 360-degree appraisal has become the key word in terms of defining the performance of any institution, the tax administration has also recognized the essence of carrying out the same for the taxpayer. Electronic furnishing of information by the tax payer to various authorities has further facilitated this process. The tax authorities are expected to draw the complete picture of the business being carried out by the taxpayer by correlating the information from various sources and evaluating the consistency between the same. Thus, every taxpayer needs to ensure that information furnished in his/her GST return correlates with the periodic returns and information filed with other departments like income tax returns (ITR) etc. In simple terms, a taxpayer whose income as per ITR is sharply at variance with what is declared in his/her GST returns shall come under the lens of tax authority.

In this regard it may be noted that exchange of data between Income Tax Department and GSTN will enable tax officers to implement the desired intent of both the laws and prevent generation of black money. As per the order issued by the Central Board of Direct Taxes (CBDT) dated April 30, 2019, following important financial fields will be shared by the income tax department with the GSTN through MOU:-

- a) Status of filing of ITR;
- b) Turnover;
- c) Gross total income;
- d) Turnover ratio;
- e) Gross total income range;
- f) Turnover range;
- g) Any other field which will be decided by the concerned authorities themselves.

Before GST was introduced, the department could not reconcile the data filed by the business persons in his/her sales tax return/service tax return and ITR. This was because sales tax return was filed State-wise while and service tax return was filed at the national level. However, post the introduction of GST, such data will now be available at the central level which makes exchange of data between the two authorities easy. Signing of an MOU between the I-T Dept. and GSTN will ensure that the taxpayers furnish same set of information in income-tax return and GST return.

Some of the departments from which information can be solicited for correlating with the information furnished under GST returns are detailed hereunder:

1. Income Tax Department: Payment related information is available from TCS and TDS related sections of Income Tax Act from ITR (26 AS). Further, information regarding turnover, income, advances & expenses etc. declared in the Income Tax return can be correlated with the information submitted in the GST return and detection of any GST evasion can be worked upon in the light of following points:

A. Tax Deducted at Source:

- a) The Information related to payments which is important for GST Authorities can be known through TDS deducted on these Payments under Income Tax Act. As per **section 194 of Income Tax Act, 1961**, the company or person that makes the payment after deducting TDS is called a deductor and the company or person receiving the payment is called the deductee. It is the deductor's responsibility to deduct TDS before making the payment and deposit the same with the government. TDS is deducted irrespective of the mode of payment—cash, cheque or credit—and is linked to the PAN of the deductor and deductee.
- b) All the TDS deduction entries can be checked from FORM 26AS of the taxpayer. The information from such entries can be co-related with the information declared in GST return. For example, the TDS deductions made on account of Rent of land or Building under Section 194 (I) of the Income Tax Act can be co-related with the rental income furnished in the GST return in order to ascertain any evasion of tax. Commonly used TDS Provisions for payments made to person resident in India (Individuals, Firms, Companies, etc.) are tabulated hereunder:

Section	Nature of Payment for Domestic Transactions	Threshold Limit	Individual / HUF	Others	15G-15H
		Rs.	TDS Rate (%)		Allowed
192	Salaries (Annexure-I)	–	As per income tax slabs	–	NO
193	Interest on Securities	10000	10	10	YES
194A	Interest to other than Resident Senior Citizen	10000	10	10	YES
194A	Interest to other than Resident Senior Citizen	10000	10	10	YES
194A	Interest to Resident Senior Citizen	50000	10	10	YES
194C	Contractor – Single Transaction	30000	1	2	NO
194C	Contractor – Aggregated Transaction during the F.Y.	100000	1	2	NO
194H	Commission / Brokerage	15000	5	5	NO
194I	Rent of Land and Building – F&F	180000	10	10	YES
194I	Rent of Plant / Machinery / Equipment	180000	2	2	YES
194IA	Transfer of certain immovable property other than agriculture land	5000000	1	1	NO
194J	Professional Fees / Technical Fees / etc.	30000	10	10	NO
194J	Payment to Call Centre Operator (w.e.f. 01.06.2017)	30000	2	2	NO

Under section 206C of Income Tax Act, 1961 the seller has to collect Tax at Source (TCS) at the rate of 1% from purchaser while selling the specified items or services beyond specified limits. The information regarding collection of TCS is also reflected in 26 AS which can be used to ascertain the payments made for procuring goods or services on which ITC is not available as per section 17(5) of PGST Act, 2017. e.g. Motor cars of value more than 10 Lacs.

Assesses which are liable to collect TCS under Income Tax Act are detailed hereunder:

- a. Central Government or a State Government;
- b. Any local authority, or corporation or authority established under any Central, State or Provincial Act;
- c. Any company, firm or cooperative society;
- d. An individual or Hindu undivided family who is liable to audit as per provisions of section 44AB during the financial year immediately preceding the financial year in which the goods are sold or the services are provided;

The following transactions are covered in section 206C (including both before and after amendment):

- a) Sale of any goods in cash (other than jewelry or bullion) of more than Rs.2 lakhs.
- b) Providing any services whose receipt is in cash exceeding Rs. 2 lakhs (other than those services for which TDS is deductible under any section).
- c) Sale in cash of bullion exceeding Rs.2 lakh and jewelry exceeding 5 lakh rupees.
- d) Sale of motor vehicle exceeding Rs. 10,00,000 in cash or any other mode.

The CBDT has issued two circulars (**Circular No 22/ 2016 and Circular No. 23/2016**) to clarify some points relating to this section. Points in the clarifications are as follows:

- a) If the sales consideration of more than Rs.2 lakhs is partly received in cash and partly in cheque and cash receipts in less than. 2 lakhs then **No TCS is required to be collected**. For example – Sales consideration – 5 lakhs, Received by cheque – 4 lakhs, Received by cash-1 lakh. In this case no TCS is required to be collected as receipt in cash is less than 2 lakhs.
- b) TCS is collected @ 1% only on the cash component and not on the whole of sales consideration. For example – Sales consideration – 5 lakhs, Received by cheque – 2 lakhs, Received by cash – 3 lakh TCS is collected @1% on Rs.3 lakh only.
- c) Only retail sale is covered, this section doesn't apply to sale by manufacturers to dealers/distributors.
- d) The provisions of TCS on sale of motor vehicle exceeding ten lakh rupees is not dependent on mode of payment.
- e) All motor vehicles are covered, whether its a car or any other vehicle.
- f) TCS provision doesn't apply in case of sale to Government, institutions notified under United Nations (Privileges and Immunities) Act 1947, and Embassies, Consulates, High Commission, Legation, Commission and trade representation of a foreign State.
- g) It is applicable to each sale and not to aggregate value of sale made during the year.

Illustration: Motor vehicle worth Rs. 20 lakh is sold and for which payments are made in instalments, one at the time of booking and the other at the time of delivery. At the time of

booking 5 lakh rupees are paid and 15 lakh rupees are paid at the time of delivery. Tax at the rate of 1 % on 5 lakh rupees at the time of booking and at the rate of 1 % on remaining 15 lakh rupees at the time of delivery shall be collected at source. Similar will be for sale of any goods or service.

B. Audit Report u/s 44AD of Income Tax Act 1961 can be analyzed for following points:

- a) Form 3CB at point No 05 can be analyzed for any observation or qualification.
- b) Form 3CD can be analyzed for following points:

- **Part A Point No (4)** regarding liability to pay indirect tax.
- **Part (B):**

- Point No. 9 regarding name of partners/members and their profit sharing ratios;
- Point No.10 regarding Nature of business or profession (if more than one business or profession is carried on during the previous year, nature of every business or profession);
- Point No.11 regarding books of account as prescribed under-section 44AA and documents analyzed;
- Point No 13 regarding Method of accounting employed in the previous year;
- Point No 15 regarding details of capital asset converted into stock-in-trade;
- Point No17 regarding any land or building or both is transferred during the previous year for a consideration less than value adopted or assessed or assessable by any authority of the State Government referred to in section 43CA or 50C.
- Point No 18 regarding particulars of depreciation allowable as per the Income Tax Act, 1961 in respect of each asset or block of asset;
- Point No 21 regarding details of amounts debited to profit and loss account, being in the nature of capital, personal, advertisement, expenditure, etc.;
- Point No 27 regarding amount of Central Value Added Tax credits availed of or utilized during the previous year and its treatment in the profit and loss account and treatment of outstanding Central Value Added Tax credits in the accounts;
- Point No 31 regarding Particulars of each loan or deposits;
- Point No 35 regarding quantitative details of principal items of goods traded and stock;
- Point No 37 regarding whether any cost audit was carried out, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the cost auditor;
- Point No 40 regarding turnover, gross profit, etc. for the previous year and preceding previous year;

- Point No 44 regarding Break-up of total expenditure of entities registered or not registered under the GST;

C. The information available in Trading account, P&L Account and Balance sheet as per Income Tax Act should be in consonance with the GST returns. Trading Account and P & L account can also be used for knowing amount of supply a person has made under GST.

2. Companies Act, 2013:

The **Companies Act 2013** is an Act of the Parliament which regulates incorporation of a company, responsibilities of a company, directors, dissolution of a company. As per Section 148 of Companies Act 2013, Central Government is empowered to make the rules in the area of maintenance of cost records by the companies engaged in the specified industries, manufacturing / providing such goods / services; and for getting such cost records audited. Similarly, it is obligatory on the part of Companies to present and publish the Directors Report and Auditors Report at the end of every financial year in a specified format giving a set of information. Such documents can be source of crucial information that can be correlated with the information furnished in the GST return.

A. Cost Audit Report U/s 148 of the Companies Act, 2013 is mandatory for following sectors:

The Central Government has issued Companies Cost Records and Audit Rules, 2014 dated 31st December, 2014 in this regard. **Rule 4** states that cost audit is compulsory for:

- Regulated Sector:** Applicable to companies having overall turnover exceeding Rs. 50 crores and the particular products which are subject to cost audit should be having Turnover exceeding Rs.25 crores during the preceding Financial year.

Industries covered:

- Telecommunication Services;
 - Generation, transmission, distribution and supply of electricity regulated by the relevant regulatory body or authority under the Electricity Act, 2003 (36 of 2003), other than for captive generation (referred to in the Electricity Rules, 2005);
 - Petroleum products regulated by the Petroleum and Natural Gas Regulatory Board under the Petroleum and Natural Gas Regulatory Board Act, 2006 (19 of 2006);
- Non Regulated Sector:** Applicable to companies having overall turnover exceeding Rs. 100 crores and the particular products which are subject to cost audit should be having Turnover exceeding Rs.35 crores during the preceding Financial year.

Industries covered:

- Machinery and mechanical appliances used in defense, space and atomic energy sectors excluding any ancillary item or items;
- Arms, ammunitions and explosives;
- Port services of stevedoring, pilotage, hauling, mooring, re-mooring, hooking, measuring, loading and unloading services rendered by a Port in relation to a vessel or goods regulate by the Tariff Authority for Major Ports;
- Iron and Steel;
- Rubber and allied products; including products regulated by the Rubber Board constitute under the Rubber Act, 1947 (XXIV of 1947);
- Other machinery and Mechanical Appliances.

The information given at following points in Cost Audit report can be analyzed for compliance of GST Provisions:

- Details in Part (A) regarding details of the company and particularly consolidated verification, reservation & adverse remarks of Auditors.
- Details in Part A(para 3) regarding Cost Accounting Policy.
- Details in Part A (para 04) regarding product/service details and revenue involved.
- Details in Part B related to manufacturing company details.
- Details in Part C related to service sectors company details.
- Details in Part D (para 02) regarding profit Reconciliation.
- Details in Part D (para 03) regarding value addition.
- Details in Part D (para 04) regarding Financial Position and ratio analysis.
- Details in Part D (para 05) regarding Related Party Transactions
- Details in Part D (para 06) regarding Reconciliation of Indirect taxes.

B. Directors Report can be analyzed for following points:

- Financial Summary;
- Investments made/ Details of loans taken;
- CSR Expenses;
- Related Party Transactions;
- Foreign Remittances.

C. Auditors Report can be analyzed for any qualifying or adverse remarks mentioned in Opinions/ Emphasis of matters.

3. Bank Authorities: Access to the information related to transactions in bank account through which business is being carried out will help in gauging the genuineness of the transactions. Information submitted to the Bank / FI can be for immense use of GST Authorities. Normally, as per the prevailing practices there are mainly two types of finance availed by the business organizations from the Banks / FI. These are as under:

- a) **CC Limits against Stock / Debtors:** Details of Stock (Stock Statements) and list of Debtors / Receivables are provided to the Banks at regular interval of time generally monthly. This information can be used by the Department to vet purchases and sales Vs GST obligations. Physical Stock Verification Reports are also available as certified by the Bankers / CA.
- b) **Term Loans:** The Terms Loan are normally disbursed in proportion to the expenditure incurred by the organizations as per the Disbursement Conditions. CA Certificates are submitted in the Banks certifying the expenses incurred while getting released the Disbursements. This information can be used by the Department to vet purchases and sales Vs GST Obligations.

4. Punjab State Power Corporation Limited: In case of some industries which are power intensive and use electricity as main source of power, there is direct correlation of production of finished product with the units consumed. Especially in case of manufacturing units, information regarding the power consumption in terms of units consumed can be used to cross verify the quantity of goods manufactured. This has earlier been worked out in case of Stone crusher industry, Furnace & Ply manufacturing industry. The State of Himachal Pradesh used to get VAT from Stone crusher industry on the basis of electricity consumed per ton of boulder crushed. PSPCL can be directed to furnish monthly or biannual information return under section 150 of PGST Act, 2017 in specified format for providing information regarding units consumed per month for a particular category of manufacturing units.

5. Punjab Mandi Board: Mandi Board gets Market Fee for all the agriculture produces brought to the Mandis in Punjab. The quantity of produce can be calculated if market fee charged on it is known. So the value of such goods is important for produces like cotton, timber and paddy etc. (as Rice bran is taxable and milling charges are also taxable under GST for Rice Shellers) so as to verify whether the due tax has been paid on the same value or not. Punjab Mandi Board can be asked to furnish information under section 150 of PGST Act, 2017 to GST Authorities for a particular taxpayer.

6. Real Estate Regulatory Authority: All building and construction projects are registered with RERA Punjab and their project wise progress of construction and corresponding flow of funds is also reported periodically in addition to the number of units to be constructed and Unit wise

Carpet Area allowed for the project. This information is necessary to correlate with GST payment by the builder dealing in now commercial and mixed projects.

Information under RERA Act:

- a) RERA provides details of a project being developed by a real estate developer in how many phases.
- b) Each phase has a starting date and likely completion date with a separate RERA no.
- c) The likely activities undertaken on the date of application for RERA and projected cost and estimated sales values are also incorporated in RERA application, which is available online.
- d) All the financial (like audited financial statements of last 2 years, director's details, pan, cash flows etc.) and technical documents (like project clearance from aviation, GMADA, pollution etc.) are available on line;
- e) Project details:
 - Under Construction covered under GST.
 - Completed projects don't fall under GST.
- f) Form 5 is given by Statutory Auditor of the company to RERA authorities for following information:
 - Total amount collected.
 - Total Amount Utilized.

(In this certificate percentage completion of the project is also mentioned from which it can be checked that if difference is more than person needs to pay GST liability in cash as GST input should be less because of less utilized amount.
- g) Form 3 is given by chartered accountant to bank under RERA act for withdrawal of amount from designated account in which all receipts as deposited.

7. Mining Department: The users of minor minerals like sand and gravel file their monthly return with the Mining Department. The quantity of raw material obtained can be known from this department which can help GST Authorities to arrive at the GST payable on the value addition on finished product by comparing the quantity of raw material issued and quantity of finished product supplied after taking stock and losses, if any, into consideration. More importantly the information about amount of royalty paid to Mining Department by such mining contractors/stone crushers can be usefully exploited for ascertaining correct amount of supplies under GST.

- 8. Food Safety and Standards Authority of India:** All food processing and food producing Eateries, Restaurants and Hotels need to obtain the registration of FSSAI. Restaurants and eateries are part of unorganized sector so FSSAI may be asked to furnish information under section 150 of PGST Act, 2017 to GST Authorities regarding new licenses given to restaurants/eateries etc. in a particular area. The same information may be made available on their website which can be accessible to GST Authorities so as to keep a tab on tax deposited in this sector after ensuring that every eligible taxable person in the field gets registered under GST.
- 9. Labour Department:** Information regarding the strength of the persons employed in a business entity is important for labour intensive industries which may be useful to correlate with the returns filed by the service provider. Labour Department may be asked to furnish information return under section 150 of PGST Act, 2017 to GST Authorities regarding the number of persons employed in the industry.
- 10. Provident Fund Commissioner of the Area:** Information regarding the strength of the manpower in a business entity is important for manpower intensive industries which may be useful to correlate with the returns filed by the service provider. Provident Fund Commissioner of the area may be asked to furnish information under section 150 of PGST Act, 2017 to the GST Authorities regarding the number of persons employed in the industry.
- 11. Industries Department' SSI Registration Authorities (DIC's):** Officer In-charges of District Industrial Centers responsible for registration of SSI industries may be asked to furnish information under section 150 of PGST Act, 2017 to GST Authorities regarding the coming into existence of new units. Particularly, information regarding quantity of finished product allowed during registration can be correlated with the turnover shown by the industry in GST return. Similarly, the Registrar of Companies and Registrar of Cooperative Societies allowing registration of business activities under their domain can also be directed to submit information return for the above purpose.
- 12. National Highways Authority of India (NHAI):** National Highways Authorities is covered under section 150 of PGST Act, 2017 and may be asked to furnish information to GST Authorities so as to check the movement of vehicles and for assessing the genuineness of transactions as shown in E-Way bill data of the registered persons.
- 13. Insurance Companies:** Insurance Companies can be directed under section 150 of PGST Act, 2017 to furnish information to GST Authorities regarding type of insurance policies based on policy number so as to know which policy is mandatory under law for the employer, because for all other policies ITC is not eligible. Further information regarding claims filed before insurance companies will help in arriving at the ITC to be reversed on value of goods lost, stolen, destroyed etc. as per section 17(5) of PGST Act, 2017. Further, information can be sought from Insurance Regulatory and Development Authority which is the apex body regulating the insurance sector.

14. Telecom Regulatory Authority of India: Information regarding telecom companies can be sought from TRAI which is the apex body regulating the telecom sector.

ANDHRAAN

CHAPTER 15

DEMAND AND RECOVERY

Two important sections in the PGST Act, 2017 which majorly deal with aspect of demand of tax are:

SECTION-73	SECTION-74
Applicable in case of non-payment or short payment of tax for any reason other than fraud or willful-misstatement or suppression of facts.	Applicable in case of non-payment or short payment of tax on account of fraud or wilful-misstatement or suppression of facts.

Grounds of proceeding under Section-73 or Section-74:

- a) Tax not paid;
- b) Tax Short paid;
- c) Tax erroneously refunded;
- d) Input Tax Credit Wrongly Aailed;
- e) Input Tax Credit Wrongly Utilized.

Procedure for issuing Show Cause Notice under Section-73 and Section-74:

A Proper Officer, defined under the PGST Act, 2017, can issue a **Show Cause Notice (SCN)** in both cases, based on the grounds mentioned above, requiring the person 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.

Time limit for the Proper Officer to issue SCN:

- a) At least **3 months** prior to issuance of order, in case of demand being raised under **Section-73** of PGST ACT, 2017.
- b) At least **6 months** prior to issuance of order, in case of demand being raised under **Section-74** of PGST ACT, 2017.

If the grounds raised for proceeding under Section 73 or Section-74 are identical to the ones raised in the previous year, then for the **subsequent period**, a **Statement** containing the non-payment or short payment can be served instead issuing a detailed SCN again.

Time limit for the Proper Officer to issue an order:

- a) Under Section-73, Order is to be issued within three years from the due date of furnishing of annual return for the Financial year to which tax not paid or short paid or ITC wrongly availed or utilised relates to;
- b) Under Section-74, Order is to be issued within five years from the due date of furnishing of annual return for the Financial year to which tax not paid or short paid or ITC wrongly availed or utilised relates to;
- c) In case of erroneous refund, time limit for the order to be issued is within 3 years or 5 years of the erroneous refund under Section 73 or Section 74 respectively.

If any amount payable to the Government remains unpaid, the same shall be recovered under the provision of section 79 of PGST Act,2017, i.e. Recovery Proceedings.

Determination of PENALTY amount under various scenarios:

a) Under Section-73:

➤ Before issuance of Show Cause Notice:

- If the person chargeable with tax comes forward and pays the amount of tax along with interest payable on his own ascertainment of tax or the tax ascertained by the Proper Officer **before issuance of show cause notice, no penalty** shall be payable if the information is given in writing to the Proper Officer and the Proper Officer is satisfied as to the amount ascertained.
- In the above case, if the Proper Officer is of the opinion that the amount ascertained falls short of the amount actually payable, he shall issue a SCN and proceed.

➤ Within 30 days after the issuance of the Show Cause Notice:

- If the person pays the tax and the interest payable **within 30 days after the issuance of the show cause notice**, no Penalty shall be payable and the proceedings shall be deemed to be concluded.

➤ After the issuance of Order:

- After 30 days of issuance of show cause notice or **after the issuance of Order**, the person has to pay the Tax and the Interest payable along with Penalty payable as 10% of tax or Rs. 10,000 whichever is higher

b) Under Section-74:

➤ **Before issuance of Show Cause Notice:**

- If the person chargeable with tax comes forward and pays the amount of tax along with interest payable on his own ascertainment of tax or the tax ascertained by the Proper Officer **before issuance of show cause notice, penalty amount** of 15% of the tax amount shall be payable if the information is given in writing to the Proper Officer and the Proper Officer is satisfied as to the amount ascertained.
- In the above case, if the Proper Officer is of the opinion that the amount ascertained falls short of the amount actually payable, he shall issue a SCN and proceed.

➤ **Within 30 days after the issuance of the Show Cause Notice:**

- If the person pays the tax and the interest payable **within 30 days after the issuance of the show cause notice, penalty amount** of 25% of the tax amount shall be payable and the proceedings shall be deemed to be concluded.

➤ **Within 30 days from the issuance of Order:**

- If the person pays the tax and the interest payable **within 30 days after the issuance of Order, penalty amount** of 50% of the tax amount shall be payable and the proceedings shall be deemed to be concluded.
- After 30 days of issuance of Order, the person has to pay the tax and the interest payable along with penalty payable as 100% of tax.

GENERAL PROVISIONS (provided under Section-75 of the GST Act,2017):

- a) An issue on which the **first appellate authority** has given its decision which is prejudicial to the interest of the Revenue and an appeal to the Appellate Tribunal against such decision is **pending**, then the period spent between the two dates of decision shall be **excluded** in computing the period of 3 years or 5 years respectively, for issue of order.
- b) An issue on which the **Appellate Tribunal** has given its decision which is prejudicial to the interest of the revenue in some other proceedings and an appeal to the High Court against such decision is pending, then the period spent between the two dates of decision shall be excluded in computing the period of 3 years or 5 years respectively, for issue of order.
- c) An issue on which the **High Court** has given its decision which is prejudicial to the interest of the Revenue in some other proceedings and an appeal to the Supreme Court against such decision is pending, then the period spent between the two dates of decision shall be excluded in computing the period of 3 years or 5 years respectively, for issue of order.
- d) The order in pursuance of the Appellate Authority, Appellate Tribunal or a Court can be issued **within two years from the date of communication of the said direction.**

- e) **Opportunity of personal hearing** has to be granted when requested in writing by the person chargeable with tax or where any adverse decision is proposed to be taken against the person.
- f) Personal hearing can be **adjourned** when sufficient cause is shown in writing. However, such adjournment can be granted for a **maximum of 3 times**. The relevant facts and basis of the decision has to be set out in the order.
- g) **(Tax amount +interest +penalty)** cannot be more than what is mentioned in the order and the grounds shall not go beyond what is mentioned in the notice.
- h) When the Tribunal/Court/Appellate authority modifies the amount of tax, correspondingly interest and penalty shall also be modified.
- i) Interest shall be payable in all cases whether specifically mentioned or not.
- j) The adjudication proceedings is deemed to be concluded, if the order is not issued within three years in case of Section 73 or within five years in case of Section 74.
- k) 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.

Tax collected but not deposited with the Central or State Government - Section 76

- a) Any person who has collected the amount from any other person in respect of tax under PGST Act, 2017 and has not paid the said amount to the Government, will have to pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not. Such **amount** is required to be determined along with the applicable **interest** under section 50 and **penalty** as specified.
- b) If the person liable to pay does not agree to this, he should give a cause for it;
- c) An opportunity of hearing is granted where a request is received in writing from the person to whom the notice was issued to show cause;
- d) The proper officer **can issue an order within one year from the date of issue of the notice;**
- e) Where the issuance of order is stayed by an order of the court or Appellate Tribunal, the period of such stay is excluded in computing the period of one year.
- f) The amount paid to the Government is adjusted against the tax payable, if any, by the person in relation to the supplies referred above.
- g) Where any surplus is left after the adjustment, the amount of such surplus shall either be credited to the Consumer Welfare Fund or refunded to the person who has borne the incidence of such amount;
- h) The person who has borne the incidence of the amount, can apply for the refund of the same in accordance with the provisions of Section 54.

RECOVERY PROCEEDINGS (Section- 78 to Section-84)

The taxable amount should be paid by the person within three months from the date of service of order. In cases where the proper officer considers it expedient in the interest of revenue, he may require the said taxable person to make such payment within less than three months.

Recovery of tax—Sec 79

When any amount that is payable by any person, the Proper Officer can adopt one or more of the methods set out in section 79 for recovery of the amounts payable. The methods are:

- a) Deducting the money so payable (Refund, Drawback etc.) to such person which may be under his control;
- b) Detaining and selling any goods belonging to such person;
- c) Issuing notice of recovery to third parties from whom money is due to such person;
- d) Distrain any movable or immovable property belonging to such person;
- e) Certificate action through Collector of District to recover the amount as arrear of land revenue;
- f) Recovery through CGST or UTGST officers;
- g) Enforcing Bond or other instrument, if any executed by such person.

Payment of tax and other amount in instalments— Sec 80

- a) **A taxable person can make payment** of an amount due on **instalment basis**, other than the amount due as per self-assessed returns.
- b) **The Commissioner** can grant permission, in writing, to the taxable person to make payment of any amount due on instalment basis. The instalment period **cannot exceed 24 months**.
- c) The taxable person is also liable to pay interest on the amount due from the first day such tax was due to be payable till the date tax is paid.
- d) Even if default occurs in payment of any one instalment, the taxable person would be required to pay the whole outstanding balance payable on such date of default itself without further notice.

Transfer of property to be void in certain cases (provided under Section-81):

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

Tax dues to be the first charge (Section-82):

Any liability to be paid to the Central or State Government would be given priority in the matter of effecting recovery by placing a **first charge on the property of the taxable person or any other person, subject to the Insolvency and Bankruptcy Code, 2016.** It also includes **any other person** since there are many provisions in the GST Act, which provides for creating a liability or recovery from a person other than the taxable person like **a legal representative, member of partitioned HUF etc.**

Provisional attachment of property (Section-83): During the pendency of any proceedings under certain sections of the proposed Act, the **Commissioner**, by order in writing, attach provisionally any property for a **period of one year** from the date of the order for provisional attachment.

Continuation and validation of certain recovery proceedings (Section-84): Where a notice is already served for recovery of government dues upon a taxable person and upon any appeal, revision application there is reduction or enhancement of such Government dues then:

- a) In case of the enhanced amount, the **Commissioner** shall **serve another notice** on the taxable person, in respect of the enhanced amount.
- b) If notice of demand is already served on taxable person before such appeal, revision or any other proceedings, then recovery of enhanced amount would be continued from the stage at which the initial proceedings stood. There is no need to issue a fresh notice of demand to the extent already covered by earlier notice.
- c) In case the **Government dues are reduced** in such appeal, revision or in other proceedings – the Commissioner is not required to serve fresh notice of demand upon the taxable person and he shall intimate such reduction to taxable person and also to appropriate authority with whom recovery proceedings are pending. Any recovery proceedings are initiated prior to the disposal of such appeal, revision application or other proceeding may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

RELEVANT RULES UNDER PGST RULES, 2017 DEALING WITH DEMAND AND RECOVERY:

RULE-142: Notice and Order for Demand of amounts payable: FORM GST DRC 01 TO DRC 08:

- a) The proper officer shall serve notice and a summary thereof electronically in **FORM GST DRC-01** as per section 73 (1), 74(1) and 76(2) of the PGST Act.

- b) If a person is chargeable with tax, interest and penalty under sub-section (1) of section 73 or 74 of the PGST Act, then the proper officer will first need to communicate the details of tax, interest and penalty, as ascertained by him, in **Part A** of Form **GST DRC-01A**(New sub-rule inserted via **Notification No. 49/2019- Central Tax dated 9th October, 2019**). It is an intimation rather than a show-cause notice. A taxpayer, on receipt of intimation in Form GST DRC-01A, can use the second part of the said form i.e. **Part B**, to communicate to the officer if he has made part-payment of the ascertained liability, or if the liability is not acceptable by him.
- c) The proper officer may serve a statement electronically, containing the details of tax not paid or erroneously refunded in **FORM GST DRC-02** as per section 73 (3), 74(3) of the PGST Act.
- d) The registered person shall inform own ascertainment of tax & payment details to the proper officer in **FORM GST DRC-03** as per section 73(5) & 74 (5) of the PGST Act.
- e) The proper officer shall issue acknowledgement of the information of the said person in **FORM GST DRC-04**.
- f) The proper officer shall issue Order accepting the payment of such person in respect of said notice in **FORM GST DRC-05**.
- g) The representation mentioned in section 73(9) , 74(9) & 76(3) or reply to any notice uploaded in FORM GST DRC 01, is furnished in FORM DRC-06.
- h) **GST DRC-07** is uploaded to electronically upload the summary of order issued by the Proper Officer. **Where a Rectification of Order** has been passed under section 161 or where the uploaded order has been withdrawn, a summary will be uploaded electronically in the **FORM GST DRC-08**.
- i) Where the demand of an order uploaded or modified or quashed in any proceedings, including in appeal, review or revision, or the recovery is made under the existing laws, a summary shall be uploaded on the common portal in **FORM GST DRC-08A**.

RULE-142-A: Procedure for Recovery of dues under existing laws: Summary of order issued under above discussed laws, which becomes recoverable consequent to proceedings launched under the existing law before, on or after the appointed day is recovered and uploaded in the **FORM GST DRC-07 A**.

RULE 143: Recovery by deduction from any money owed: FORM DRC-09:

The proper officer shall deduct the amount from any money owed to such defaulter in **FORM GST DRC-09** as per section 79(1) of the PGST Act.

RULE-144: Recovery by sale of goods under the control of Proper Officer: FORM GST DRC-10,11,12:

- a) The proper officer shall issue auction notice in **FORM GST DRC-10** clearly indicating goods as per section 79(1) of the PGST Act.
- b) The proper officer shall issue notice to the successful bidder in **FORM GST DRC -11**.
- c) The proper officer shall issue certificate to the successful bidder in **FORM GST DRC-12**.

RULE-145: Recovery from a third person: FORM GST DRC-13,14

- a) The proper officer shall serve notice to the third person in **FORM GST DRC-13** as per section 79(1) (c) of the PGST Act directing him to deposit the amount specified in notice.
- b) The proper officer shall issue certificate in **FORM GST DRC-14** on payment received from the third person.

RULE-146: Recovery through execution of a decree: FORM GST DRC-15

Where any amount payable to the defaulter on account of a decree of a civil court, the proper officer shall send a request in **FORM GST DRC-15** to the said court and the court shall credit the net proceeds for settlement of the amount recoverable, as per Section 79 of the PGST Act, 2017.

RULE-147: Recovery by sale of movable or immovable property: FORM GST DRC-16,17

- a) The proper officer shall issue an order of attachment and a notice for sale in **FORM GST DRC-16** for the recovery of the amount. As per Section 79 of the PGST Act, 2017.
- b) The property attached shall be sold through auction/e-auction for which notice shall be issued in **FORM GST DRC-17**.

RULE-148: Prohibition against bidding or purchase by officer:

No officer shall attempt to acquire any interest in the property sold, either directly or indirectly.

RULE-149: Prohibition against sale on holidays:

No sale on Sunday and other general holidays.

RULE-150: Assistance by police:

The officer-in-charge of police station shall depute sufficient number of police officers for providing such assistance as may be required for acquiring property of defaulter.

RULE-151: Attachment of debts and shares, etc. :FORM GST DRC-16:

The proper officer shall issue written order in **FORM GST DRC-16**, for attachment of debt, share and other movable property of the defaulter. A copy of such order shall be affixed on some conspicuous part of the office of the proper officer and another copy shall be sent to the person in possession of the such properties.

RULE-152: Attachment of property in custody of courts or public officer:

The proper officer shall send the order of attachment to such court or officer to withhold the payment of dividend till the recovery of the amount payable to the Government.

RULE-153: Attachment of interest in partnership:

Where the property to be attached consists of an interest of the defaulter, being a partner, in the partnership property, the proper officer makes an order for the sale of such interest.

RULE-154: Disposal of proceeds of sale of goods and movable or immovable property:

The amounts so realized from the sale of goods, movable or immovable property, for the recovery of dues from a defaulter shall, first be appropriated against administrative cost of recovery process, next be appropriated against the amount to be recovered under both PGST and CGST Act or IGST Act, as the case may be, and any balance, be paid to the defaulter.

RULE 155: Recovery through land revenue Authority : FORM GST DRC 18

The proper shall send a certificate to the collector of the district or any other officer authorized in this behalf in **FORM GST DRC-18** to recover from the defaulter the amount specified in the Certificate as if it were an arrear of land revenue. As per section 79(1) (e) of the PGST Act, 2017.

RULE-156: Recovery through court FORM GST DRC-19

The proper officer shall make an application before the Magistrate in **FORM GST DRC-19** to recover from the defaulter the fine imposed under Section 79(1) (f) of the PGST Act, 2017.

RULE-157: Recovery from surety

The proper officer is empowered to recover the amount due by the defaulter from the surety.

RULE-158: Payment of tax and other amounts in installments: FORM GST DRC 20 and 21

On an application filed electronically by a taxable person, in **FORM GST DRC-20**, seeking extension of time for the payment of taxes. Upon consideration, the commissioner may issue an order in **FORM GST DRC-21** allowing the taxable person further time to make payment/monthly installment. (Should not exceed 24 installments)

RULE-159: Provisional attachment of property FORM GST DRC-22 AND 23

- a) The Commissioner shall pass an order in **FORM GST DRC-22** to that effect mentioning the details of property which is attached.
- b) Where the property attached is of perishable or hazardous nature, and the taxable person pays the amount that is payable, then such property shall be released forthwith, by an order in **FORM GST DRC-23**. The Commissioner may issue the release order, if satisfied that the property is not liable for attachment.

RULE-160: Recovery from Company in liquidation: FORM GST DRC-24

The Commissioner shall notify the liquidator for the recovery of any amount representing tax, interest, penalty or any other amount due in **FORM GST DRC-24**.

RULE-161 : Continuation of certain recovery proceedings: FORM GST DRC-25

The order for the reduction or enhancement of any demand shall be issued in **FORM GST DRC-25**.

CIRCULARS/FLYERS/CLARIFICATIONS REGARDING DEMAND & RECOVERY:

- **NOTIFICATION No. 49/2019- Central Tax dated 9th October, 2019:** Regarding introduction of GST DRC-01 A.
- **Flyer number- 51**(issued by **CBIC**)

FAQs on Demands and Recovery:

Q. After issuance of order, is it necessary for the proper officer to issue a recovery notice?

Ans. No, the order itself will be treated as a recovery notice.

Q. How will rectification of order be done by the proper officer?

Ans. As per Section 161, mistakes apparent on record can be rectified and such rectification has to be done within 3 months of the date of issue of order. However, no such rectification will be done after 6 months from the date of the order. This period of 6 months will not be applicable to rectification of mistakes of purely clerical or arithmetic in nature arising from accidental slip or omission. Any rectification of the order, in accordance with the provisions of section 161, shall be made by the proper officer in FORM GST DRC-08

Q. What is the procedure for recovery of dues by sale of goods belonging to the defaulter, which is in the control of the proper officer?

Ans. (1) Where any amount due from a defaulter is to be recovered by selling goods belonging to such person in accordance with the provisions of clause (b) of sub-section (1) of section 79, the proper officer shall prepare an inventory and estimate the market value of such goods and proceed to sell only so much of the goods as may be required for recovering the amount payable along with the administrative expenditure incurred on the recovery process.

(2) The said goods shall be sold through a process of auction, including e-auction, for which a notice shall be issued in FORM GST DRC-10 clearly indicating the goods to be sold and the purpose of sale.

(3) The last day for submission of bid or the date of auction shall not be earlier than fifteen days from the date of issue of the notice referred to in sub-rule (2):

Provided that where the goods are of perishable or hazardous nature or where the expenses of keeping them in custody are likely to exceed their value, the proper officer may sell them forthwith.

(4) The proper officer may specify the amount of pre-bid eligible to participate in the auction, which may be returned to the unsuccessful bidders, forfeited in case the successful bidder fails to make the payment of the full amount, as the case may be.

(5) The proper officer shall issue a notice to the successful bidder in FORM GST DRC-11 requiring him to make the payment within a period of fifteen days from the date of auction. On payment of the full bid amount, the proper officer shall transfer the possession of the said goods to the successful bidder and issue a certificate in FORM GST DRC- 12.

(6) Where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the notice under sub-rule (2), the proper officer shall cancel the process of auction and release the goods.

(7) The proper officer shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be non-competitive due to lack of adequate participation or due to low bids.

Q. How will the dues owed by the defaulter be recovered by the proper officer from a third person (a bank, post office, insurer etc.) who holds money on behalf of the defaulter?

Ans. (1) The proper officer may serve upon a person referred to in clause (c) of sub-section (1) of section 79 (referred to in question as “the third person”), a notice in FORM GST DRC-13 directing him to deposit the amount specified in the notice.

(2) Where the third person makes the payment of the amount specified in the notice issued under sub-rule (1), the proper officer shall issue a certificate in FORM GST DRC-14 to the third person clearly indicating the details of the liability so discharged.

Q. Can recovery of arrears of a person registered in one State be effected from a distinct person located in another state?

Ans. Yes, vide the PGST/CGST (Amendment) Act, 2018, an explanation clause has been inserted in section 79 of the PGST/CGST Act, 2017 to the effect that person in section 79 includes “distinct persons” as referred to in sub-section (4) or, as the case may be, sub-section (5) of section 25. Thus, the tax dues are recoverable from all the persons having the same PAN.

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