

SYLLABUS - 2016

INDIRECT TAXATION

INTERMEDIATE

STUDY NOTES



The Institute of Cost Accountants of India

First Edition : January, 2018

Revised Edition : June, 2018

Revised Edition : February, 2019

Published by :

Directorate of Studies

The Institute of Cost Accountants of India (ICAI)

CMA Bhawan, 12, Sudder Street, Kolkata - 700 016

www.icmai.in

Printed at :

Jayant Printery LLP

352/54, Girgaum Road,

Murlidhar Temple Compound,

Mumbai - 400 002.

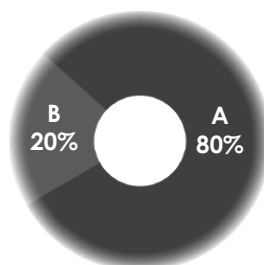
Copyright of these Study Notes is reserved by the Institute of Cost Accountants of India and prior permission from the Institute is necessary for reproduction of the whole or any part thereof.

Syllabus - 2016

PAPER 11 : INDIRECT TAXATION [ITX]

Syllabus Structure

A	Canons of Taxation - Indirect Tax GST	80%
B	Customs Laws	20%



ASSESSMENT STRATEGY

There will be written examination paper of three hours

OBJECTIVES

To provide an in depth study on the various provisions of indirect taxation laws and their impact on business decision-making.

Learning Aims

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

- Understand the principles underlying the Indirect Taxation Statutes (with reference to Goods and Services Tax Act, Customs Act).
- Compute the assessable value of transactions related to goods and services for levy and determination of duty liability.
- Identify and analyse the procedural aspects under different applicable statutes related to indirect taxation.

Skill set required

Level B: Requiring the skill levels of knowledge, comprehension, application, analysis.

Note: Subjects related to applicable statutes shall be read with amendments made from time to time.

A	Canons of Taxation - Indirect Tax GST	80%
B	Customs Laws	20%

SECTION - A : CANONS OF TAXATION – INDIRECT TAX GST

Goods and Services Tax Act & Rules

1.0 Introduction

What is GST

One Nation-One Tax

Dual GST Model

- ▶ Central Goods and Services Tax Act, 2017 (CGST)
- ▶ State Goods and Services Tax Act, 2017 (SGST)
- ▶ Union Territory Goods and Services Tax Act, 2017 (UTGST)
- ▶ Integrated Goods and Services Tax Act, 2017 (IGST)

Goods and Services Tax Network (GSTN)

- ▶ Functions of GSTN (i.e. Role assigned to GSTN) Constitution (101st Amendment) Act, 2016
GST Council
- ▶ Guiding principle of the GST Council
- ▶ Functions of the GST Council

Definitions under CGST Laws

2.0 Levy and Collection of Tax

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

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

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

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

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

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

- ▶ Renting of Immovable Property
- ▶ Information Technology software
- ▶ Transfer of the right to use any goods for any purpose
- ▶ Composite supply

Non-taxable Supplies under CGST Act, 2017

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

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

- (a) a supply of goods and not as a supply of services; or
- (b) a supply of services and not as a supply of goods. Composite and Mixed Supplies (Section 8 of CGST Act, 2017)

Meaning of Composite and Mixed Supplies
Composite Supply Mixed supply
Levy and Collection
Composition Levy
Exemption from tax
Person liable to pay tax
Forward Charge
Reverse Charge
Person who are required to pay tax under section 9(5) of CGST (i.e. Electronic Commerce Operator)

3.0 Time, Value and Place of Supply

Time of supply

Place of supply

Value of supply

Change in rate of tax in respect of supply of goods or services

4.0 Input Tax Credit

Eligibility for taking Input Tax Credit (ITC)

Blocked Credits

Method of Reversal of Credits

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

Distribution of credit by Input Service Distributor (ISD)

5.0 Registration under GST Law

Persons not liable for registration

Compulsory registration

Concept of Distinct Persons under GST

Procedure for registration

Deemed registration

Casual taxable person

Non-resident taxable person

Cancellation vs. Revocation of registration

6.0 Tax Invoice, Credit and Debit Notes and other documents under GST

7.0 Accounts, Other Records

8.0 Payment of Tax

Computation of Tax liability and payment of tax Interest on delay payment of tax

9.0 TDS & TCS under GST

10.0 Returns

11.0 Matching Concept under GST

12.0 GST Audit by Professionals

13.0 E Waybills under GST - Basics

SECTION - B : CUSTOMS LAWS

1.0 Basic Concepts

Introduction Definitions Circumstances of Levy

2.0 Types of Duties

Introduction Types of Duties

- ▶ Basic customs duty
- ▶ IGST (replacement of CVD and Spl. CVD)
- ▶ Protective duties
- ▶ Safeguard duty
- ▶ Countervailing Duty on subsidized articles
- ▶ Anti-dumping duty

3.0 Valuation under Customs

Introduction

Valuation of Imported Goods

Valuation of Export Goods

4.0 Import and Export Procedure

Introduction

Import Procedure (including warehousing)

Export Procedures

Deemed Exports

Duty drawback

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

Contents

SECTION A - CANONS OF TAXATION – INDIRECT TAX GST

Study Note 1 : Introduction

1.1	Fundamentals of GST	1
1.2	Constitution [101st Amendment] Act, 2016	1
1.3	What is GST	3
1.4	Advantages of GST	3
1.5	One Nation - One Tax	3
1.6	Dual GST Model	4
1.7	Goods and Services Tax Network [GSTN]	5
1.8	GST Council	7
1.9	Important Definitions under CGST Law	8

Study Note 2 : Levy and Collection of Tax

2.1	Supply	13
2.2	Scope of Supply	14
2.3	Composite and Mixed Supplies	38
2.4	Levy and Collection	40
2.5	Composition Levy	41
2.6	Exemptions	53
2.7	Person Liable to pay GST	135
2.8	Supply of Goods or Services or both to or by Special Economic Zone	154

Study Note 3 : Time, Value and Place of Supply under GST

3.1	Time of Supply	155
3.2	Place of Supply	165
3.3	Value of Supply	197
3.4	Change in Rate of Tax in respect of Supply of Goods or Services	218

Study Note 4 : Input Tax Credit (ITC)

4.1	Introduction	221
4.2	Eligibility for taking Input Tax Credit (ITC)	223
4.3	Blocked Credits	233
4.4	Method of Reversal of Credits	258
4.5	Input Tax Credit in Special Circumstances	260
4.6	Input Tax Credit in respect of goods sent for Job-work	265
4.7	Distribution of Credit by Input Service Distributor (ISD)	268

Study Note 5 : Registration under GST

5.1	Introduction	271
5.2	Persons not liable for Registration	275
5.3	Compulsory Registration in Certain Cases	275
5.4	Procedure for Registration	286
5.5	Concept of Distinct Person under GST	286
5.6	Deemed Registration	287
5.7	Cancellation of Registration	288
5.8	Revocation of Registration	290

Study Note 6 : Tax Invoice, Credit and Debit Notes and Other Documents under GST

6.1	Tax Invoice	293
6.2	Credit and Debit Notes	297

Study Note 7 : Accounts and Records under GST

7.1	Accounts & Records	301
7.2	Compulsorily Audit	304
7.3	Period for Retention of Accounts	304

Study Note 8 : Payment of Tax

8.1	Computation of Tax Liability and Payment of Tax	307
8.2	Interest on Delayed Payment of Tax	312
8.3	Refund of Tax	316

Study Note 9 : TDS & TCS under GST

9.1	Tax Deduction of Source (TDS)	317
9.2	Collection of Tax at Source (TCS)	322

Study Note 10 : Returns under GST

10.1	Furnishing of Returns	327
10.2	First Return	330
10.3	Revision of Returns	331
10.4	Penalty/Late Fee	331
10.5	Highlights of Proposed New Returns	332

Study Note 11 : Matching Concept under GST

11.1 Matching, Reversal and Reclaim of Input Tax Credit	333
11.2 Matching, Reversal and Reclaim of Reduction in Output Tax Liability	337

Study Note 12 : Audit under GST

12.1 Meaning	343
12.2 Types of Audit	343

Study Note 13 : E-waybills under GST

13.1 E-waybills	347

SECTION B – CUSTOMS LAWS

Study Note 1 : Customs Law - Basic Concepts

1.1 Introduction	353
1.2 Definitions	353
1.3 Circumstances of Levy of Customs Duties	359
1.4 Duty Liability in Certain Special Circumstances	363
1.5 Circumstances under which no Duty will be Levied	365

Study Note 2 : Types of Duties

2.1 Introduction	371
2.2 Types of Duties	371
2.3 Exemption from Customs Duty	379

Study Note 3 : Valuation under Customs

3.1 Introduction	381
3.2 Valuation of Imported Goods	381
3.3 Valuation of Export Goods	396

Study Note 4 : Import & Export Procedures

4.1	Import Procedure under Customs	399
4.2	Goods Cleared for Home Consumption	400
4.3	Warehousing	402
4.4	Export Procedure under Customs	411
4.5	Deemed Export	417
4.6	Duty Drawback	417
4.7	Negative List of Duty Drawback	420
4.8	Imports by 100% Export Oriented Units (EOU)	423
4.9	Import/Procurement by SEZs	424
4.10	Project Import	424

Study Note 5 : Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017

5.1	Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017	425



SECTION - A

CANONS OF TAXATION – INDIRECT TAX GST



Study Note - 1

INTRODUCTION



This Study Note includes

- 1.1 Fundamentals of GST
- 1.2 Constitution [101st Amendment] Act, 2016
- 1.3 What is GST
- 1.4 Advantages of GST
- 1.5 One Nation - One Tax
- 1.6 Dual GST Model
- 1.7 Goods and Services Tax Network [GSTN]
- 1.8 GST Council
- 1.9 Important Definitions under CGST Law

1.1 FUNDAMENTALS OF GST

Difference between Direct Taxes and Indirect Taxes – illustrative list:

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

1.2 CONSTITUTION [101ST AMENDMENT] ACT, 2016

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

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

- (a) Concurrent powers on Parliament and State Legislatures to make laws governing goods and services. It means there will be dual control of State and Central authorities for all assessees.



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

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

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

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

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

The Central Government notified 1st July, 2017 as the date from which the much awaited indirect tax reform in

India, i.e Goods and Services Tax (GST) will be implemented.

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

1.3 WHAT IS GST

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

1.4 ADVANTAGES OF GST

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

1.5 ONE NATION - ONE TAX

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

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

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

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



1.6 DUAL GST MODEL

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

Dual GST model

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

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

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

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

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

It is a revenue source of the respective State Government.

Union Territory Goods and Services Tax (UTGST):

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

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

GST – in Union Territories without Legislature:

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

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

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

The following are Union Territories without Legislature:

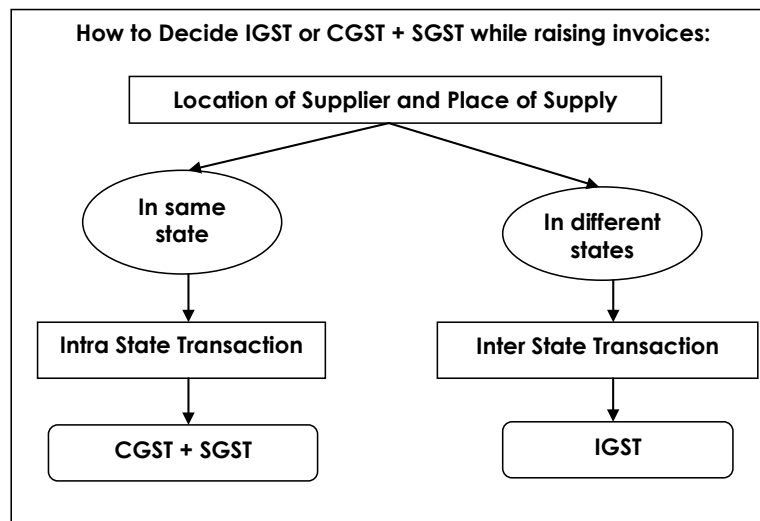
1. Chandigarh
2. Lakshadweep

3. Daman and Diu
4. Dadra and Nagar Haveli
5. Andaman and Nicobar Islands

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

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

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



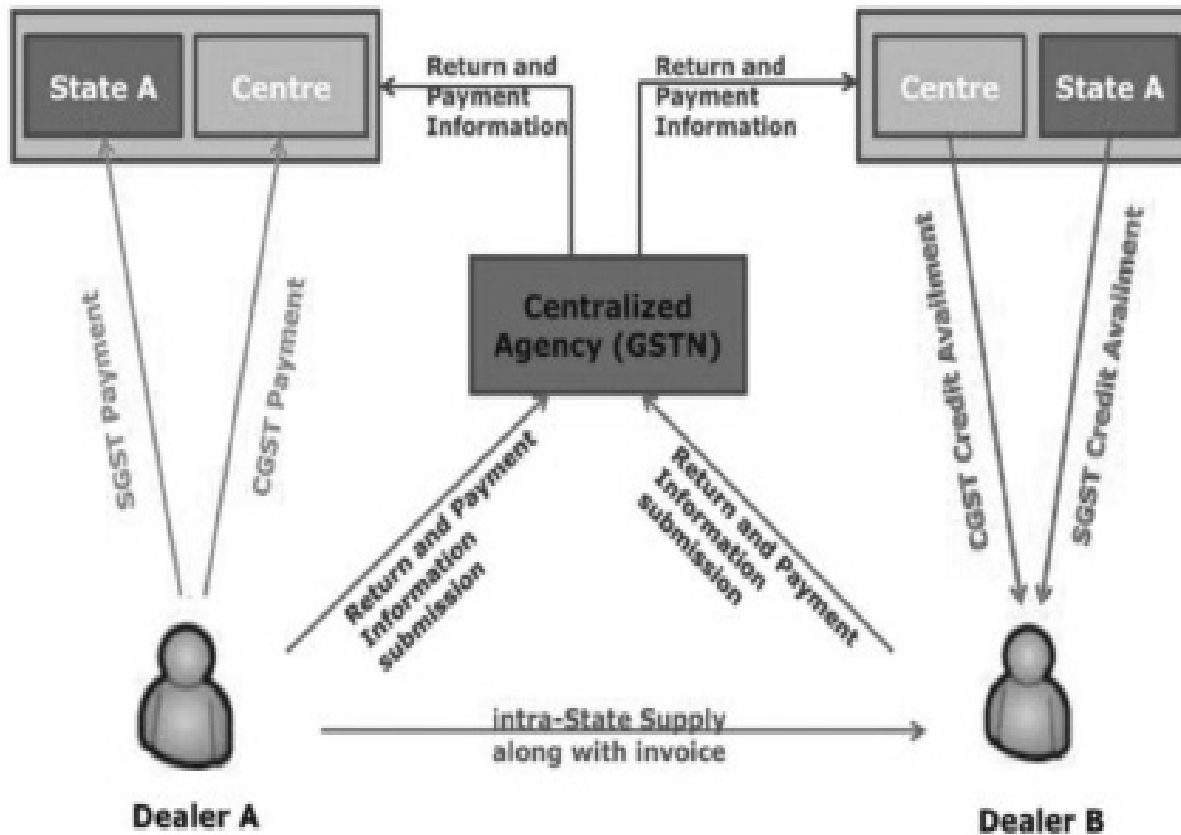
1.7 GOODS AND SERVICES TAX NETWORK (GSTN)

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

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

Goods and Services Tax Network (GSTN):

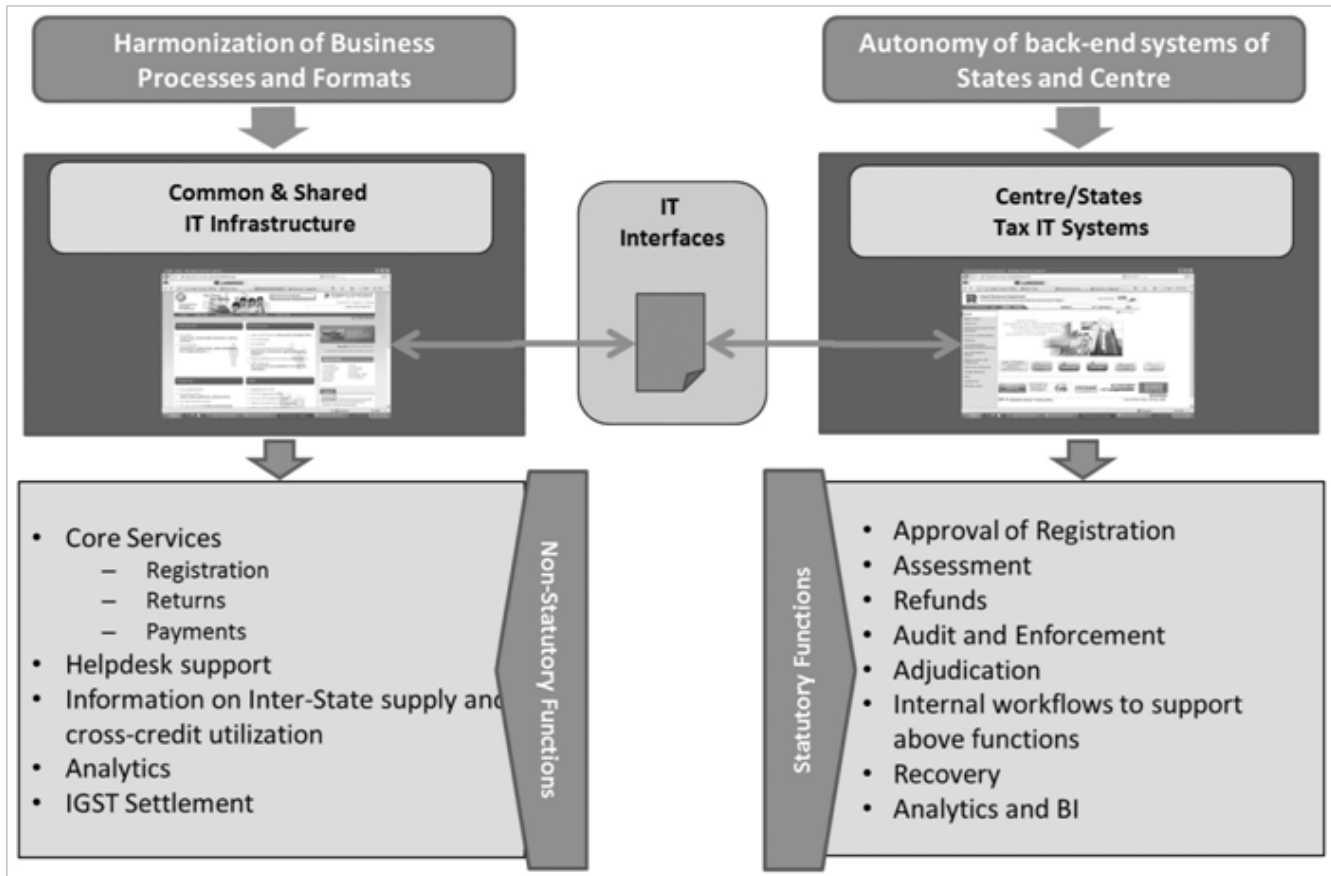
Intra-state transaction - Tax payment and credit flow

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

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

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

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



1.8 GST COUNCIL

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

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

Guiding principle of the GST Council:

The mechanism of GST Council would ensure harmonization on different aspects of GST between the Centre and the States as well as among States. It has been provided in the Constitution (101st Amendment) Act, 2016 that the GST Council, in its discharge of various functions, shall be guided by the need for a harmonized structure of GST and for the development of a harmonized national market for goods and services.

Functions of the GST Council:

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

1. tax rates,
2. exemptions,
3. threshold limits,
4. dispute resolution,
5. GST legislations including rules and notifications etc.



1.9 IMPORTANT DEFINITIONS UNDER CGST LAW

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

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

2. **Sec 2(17), “business” includes:**

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec 2(45), Electronic Commerce Operator means:

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



9. Sec 2(50), "Fixed establishment" means:

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

10. Sec 2(52), Goods means:

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

11. Section 2(56), "India" means:

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

12. Sec 2(62), "input tax" in relation to:

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

- (a) the integrated goods and services tax charged on import of goods;
- (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
- (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
- (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
- (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act, but does not include the tax paid under the composition levy;

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

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

Example 11:

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

(2) Sale of Land etc.

14. Sec 2(84), "person" includes—

- (a) an individual;
- (b) a Hindu Undivided Family;
- (c) a company;



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

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

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

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

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

(17) Section 2(98), "reverse charge" means:

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

(18) Section 2(102), "services" means:

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

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

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



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

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

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

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

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

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

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

Study Note - 2

LEVY AND COLLECTION OF TAX



This Study Note includes

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

2.1 SUPPLY

Taxable Event:

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

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

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

Exceptions:

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

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

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

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

- **omit clause (d) of sub-section (1) of Section 7.**

For the purposes of this Act, the expression “supply” includes—

- all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
- import of services for a consideration whether or not in the course or furtherance of business; and
- the activities specified in Schedule I, made or agreed to be made without a consideration;

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

- **New sub section inserted:**

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

**Supply made in the course or furtherance of business:**

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

Example: 1

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

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

Example: 2

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

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

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

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

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

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

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

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

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

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

Example : 3

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



Example : 4

Illegal Activity vs Prohibited Activity:

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

Example : 5

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

Example : 6

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

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

Example : 7

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

Answer:

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

Example : 8

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

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

Example : 9

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

Example : 10

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

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

**Example : 11**

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

Example : 12

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

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

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

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

Example : 13

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

Example : 14

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

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

Example : 15

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

Example : 16

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

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

Example : 17

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

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

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



Consideration:

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

- (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;

Donation or charity does not attract GST:

Example : 18

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

Example : 19

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

Consideration includes non-monetary consideration.

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

Example : 20

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

Example : 21

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

Example : 22

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

No consideration:

Example : 23

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



Example : 24

the following generally not considered as consideration:

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

Example : 25

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

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

Example : 26

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

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

Clarifications of the CBEC:

Example : 27

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

Answer:

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

Example : 28

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

Answer:

It is not supply.

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

Example : 29

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

Answer:

Yes. These are taxable under GST.

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

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

- (a) it is applicable only for services and not for goods
- (b) It should be import of service (as referred under Section 2(11) of IGST Act, 2017), where
 - i. The supplier of service is located outside India;



- ii. The recipient of service is located in India; and
- iii. The place of supply of service is in India.
- (c) Services shall be provided with consideration
- (d) Services may be in the course or furtherance of business or not in the course or furtherance of business.

Important Points:

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

Example : 30

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

Example : 31

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

Answer:

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

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

Example : 32

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

Answer:

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

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

Example : 33

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

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

Answer:

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

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

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

**Example : 34**

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

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

Answer:

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

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

Example : 35

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

Answer:

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

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

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

SCHEDULE I**ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION**

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

(A) Permanent transfer/disposal of business assets:

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

Example : 36

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



Example : 37

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

Example : 38

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

Answer:

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

Example : 39

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

Note: ITC not availed by Mr. Rahim.

Answer:

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

Example : 40

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

Note: ITC on such furniture not availed.

Answer:

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

Example : 41

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

NOTE: AC machines on which ITC availed.

Answer:

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

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



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

(B) Supply between related persons or distinct persons:

As per Explanation to Section 15,

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

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

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

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

Example : 42

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

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

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

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

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

Example : 43

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

Example : 44

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

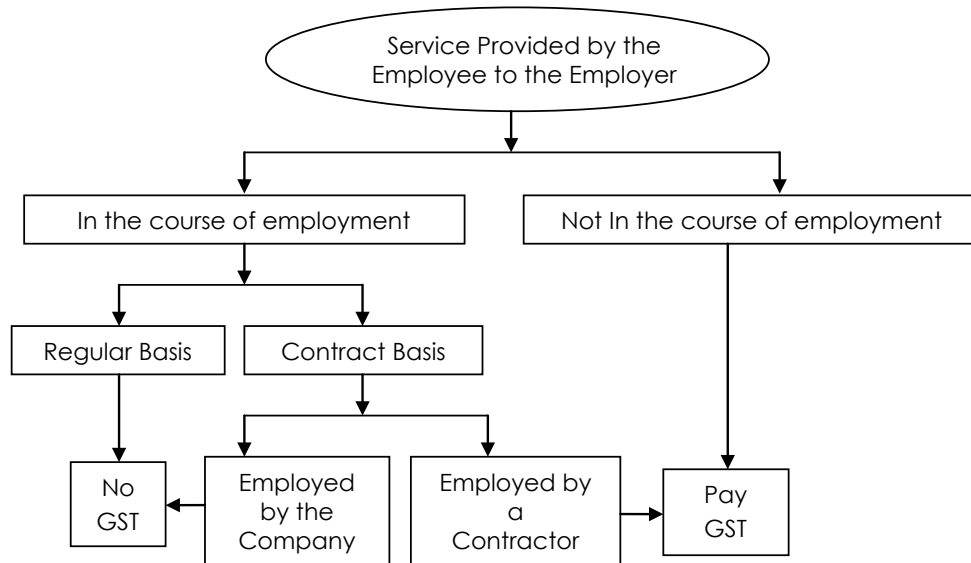
Answer:

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



Employee to the employer:

Supply Includes and Exclude



Example : 45

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

Answer:

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

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

Example : 46

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

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

Answer:

Yes. It is supply of service.

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

Note:

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

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

**Example : 47**

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

Answer:

No. It is not supply.

It is merely an appropriation of profit.

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

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

Fringe benefits - GST

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

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

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

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

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

Note: Section 9(4) of the CGST Act, 2017 is suspended till 31st March 2018.

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

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

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

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

Example : 48

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



Example : 49

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

Example : 50

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

Is it supply of goods? GST will be levied?

Answer:

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

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

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

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

Example : 51

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

(C) Supply to agents or by agents:

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

Example : 52

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

Example : 53

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

Example : 54

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

Answer:

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

GST will be levied.

(D) Importation of Services:

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

Example : 55

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

Example : 56

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

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

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

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

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

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

S.No.	Transaction	Supply of Goods	Supply of Service
1	Transfer		
	(a) Transfer of the title in goods.	Yes	No
	(b) Transfer of right in goods or share (undivided) in goods without the transfer of title.	No	Yes
	(c) Transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed	Yes	No
2	Land and Building		
	(a) Lease, tenancy, easement, licence to occupy land	No	Yes
	(b) Lease or letting of any building including for business or commerce. (Building might be a commercial, industrial or residential complex rent out wholly or partly)	No	Yes
3	Treatment or process		
	Any treatment or process which is applied to another person's goods	No	Yes
4	Transfer of business assets		



	(a) Goods forming part of business are transferred or disposed off by the owner whether or not for a consideration.	Yes	No
	(b) The owner (person carrying on business) uses or allows to use business assets for personal use.	No	Yes
	(c) If the owner ceases to be a taxable person then business assets will be assumed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person. This is not applicable when:- (i) the business is transferred as a going concern to another person; or (ii) the business is carried on by a personal representative who is deemed to be a taxable person.	Yes	No
5	Supply of services		
	(a) Renting of immovable property (however, residential dwelling is exempted from GST)	No	Yes
	(b) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.	No	Yes
	(c) Temporary transfer or permitting the use or enjoyment of any intellectual property right;	No	Yes
	(d) Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software;	No	Yes
	(e) Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act	No	Yes
	(f) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.	No	Yes
6	Composite supply		
	(a) Works contract services;	No	Yes
	(b) Supply by way of or as part of any other service or in any other manner whatsoever, of goods being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption)	No	Yes
7	Supply of Goods		
	Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.	Yes	No

(A) Un-divided share in goods:

Example : 57

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

**(B) Transfer of title in future:****Example : 58**

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

Example : 59

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

Such activities could be:

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

Job work:**Example : 60**

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

Job-work performed by a job worker like cleaning and painting.

Job-work performed by a job worker like converting raw material into finished goods.

Example : 61

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

Answer:

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

Example : 62

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

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

Answer:

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

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

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



(C) Transfer of business assets:

Example : 63

Sale of office computers or furniture is supply of goods.

Example : 64

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

Example : 65

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

Answer:

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

Business assets used for personal purpose:

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

Example : 66

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

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

Example : 67

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

Example : 68

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

Example : 69

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

It is supply of service.

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

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

Example : 70

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

It is supply of service.

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

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

**Example : 71**

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

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

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

Business Discontinued:**Example : 72**

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

Exceptions:

- 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.

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

Example : 73

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

Answer:

Amount to supply = ₹ 15,00,000

It is treated as supply of goods.

Note:

Mr. Raj has to pay GST on ₹ 15 lac.

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

(A) Renting of Immovable Property:**Example : 74**

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

Answer:

It is supply of service.

GST is liable to pay.

Example : 75

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

Answer:

It is a supply of service.

However, specifically exempted from GST.

Note: *It is an agricultural activity.*

**Construction Service:****Example : 76**

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

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

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

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

Answer:

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

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

(B) Information Technology Software:

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

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

Example: 77

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

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

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

Answer:

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

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

CGST is ₹ 6.03 lakhs

[i.e. ₹ 67 Lakhs x 9%].

SGST is ₹ 6.03 lakhs

[i.e. ₹ 67 Lakhs x 9%].

(G) Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act:**Example : 78**

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

Answer:

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



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

Example : 79

Mr. C is a Practicing Cost Accountant given appointment to a client Mr. B representing the company for 10AM on Tuesday. Mr. B cancel the appointment at 9AM on Tuesday (i.e. one hour before appointment time). Advance paid by Mr. B for seeking the appointment is forfeited by Mr. C for cancelling the appointment. In the given case Mr. C, refraining from entering any other person at the given appointment time. This is called as supply of service. Therefore, forfeited amount is leviable to GST.

Tolerate an act or a situation:

Services provided by Government or a local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract; is exempted from GST.

Example : 80

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

Find the following:

who is liable to pay GST on what amount?

total tax liability if any?

Answer:

It is supply of service.

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

Note:

It appears the liquidated damages recovered by local authority for delay in performance in contract will not be covered under exemption list of GST. The contract has been performed in such cases, GST will be payable on the same.

Services provided by Government or a local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract; is exempted from GST.

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

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

Example : 81

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

Answer:

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

**(D) Composite supply :**

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

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

Example : 82

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

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

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

Note: CGST 6% and SGST 6%.

Answer:

Works contract is treated as supply of service

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

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

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

Example : 83

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

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

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



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

Examples : 84

A club has opened up a shop. The members can purchase various goods from such shops. It is a supply of goods.

A local association supplies tea and snacks to its members during its meeting for a nominal payment. It is also called as supply of goods.

Non-taxable Supplies under CGST Act, 2017

As per Section 7(2), Supply excludes :

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

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

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

Services by court or Tribunal

Services by Member of Parliament and others

Services by funeral, burial etc.

Sale of land/Building

Actionable claim other than lottery, betting and gambling.

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

7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.

8. (a) Supply of warehoused goods to any person before clearance for home consumption;

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

Section 7(3) of the CGST Act, 2017

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

- ▶ a supply of goods and not as a supply of services; or
- ▶ a supply of services and not as a supply of goods.

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



As per Circular 51/2018 dated 31.07.2018 -

The GST Council clarifies the applicability of GST of ambulance services provided to Government by private service providers under the National Health Mission (NHM).

Services provided by PSPs to the state governments by way of transportation of patients against consideration in the form of the fee is exempt if :

- a. It is provided as a pure service, and
- b. It is provided as a composite supply of goods and services in which value of the goods does not exceed 25% of the value of composite supply.

As per Circular 55/2018 dated 10.08.2018 -

The GST Council clarifies issues regarding the taxability of services provided by Industrial Training Industries-

1. Whether GST is payable on vocational training provided by private ITIs in designated trades and in other than designated trades –

Accordingly, it is clarify that services provided by a private ITI in respect of other than designated trades notified under apprenticeship act, 1961 would be liable to pay GST and are not exempt.

2. Whether GST is payable on the service, provided by a private Industrial Training Institute for conduct of examination against consideration in the form of entrance fee and also on the services relating to admission to or conduct of examination-

Accordingly, it is clarify that GST shall be payable on the service of conduct of examination against consideration in the form of entrance fee and also on the services relating to admission to or conduct of examination by such institutions, as these services are not covered by the exemption ibid.

As far as Government ITIs are concerned, services provided by a Government ITI to individual trainees/students, is exempt under Sl. No. 6 of 12/2017-CT(R) dated 28.06.2017 as these are in the nature of services provided by the Central or State Government to individuals. Such exemption in relation to services provided by Government ITI would cover both - vocational training and examinations conducted by these Government ITIs.

As per Circular 62/2018 dated 12.09.2018 - Levy of GST on Priority Sector Lending Certificate-reg.

GST will be levied on the Priority Sector Lending Certificates (PSLCs) for the period of 1st Jul 2017 to 27th May 2018 at the rate of 18%. This is will be paid by the seller bank on the forward charge basis.

As per Circular 64/2018 dated 26.09.2018 - **The GST council provides a general clarification regarding GST on residential programmes or camps meant for advancement of religion, spirituality or yoga by religious and charitable trusts.**

Accordingly, it is clarifiesthat taxability of the services of religious and charitable trusts by way of residential programmes or camps meant for advancement of religion, spirituality or yoga may be decided accordingly –

Fee or consideration charged in any other form from the participants for participating in a religious, Yoga or meditation programme or camp meant for advancement of religion, spirituality or yoga shall be exempt. Residential programmes or camps where the fee charged includes cost of lodging and boarding shall also be exempt as long as the primary and predominant activity, objective and purpose of such residential programmes or camps is advancement of religion, spirituality or yoga.

However, if charitable or religious trusts merely or primarily provide accommodation or serve food and drinks against consideration in any form including donation, such activities will be taxable. Similarly, activities such as

holding of fitness camps or classes such as those in aerobics, dance, music etc. will be taxable

As per Circular 73/2018 dated 05.11.2018 - Scope of principal and agent relationship under Schedule I of CGST Act, 2017 in the context of del-credere agent

A DCA 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. This loan is to be repaid by the buyer along with an interest to the DCA at a rate mutually agreed between DCA and buyer. Concerns have been expressed regarding the valuation of supplies from Principal to recipient where the payment for such supply is being discharged by the recipient through the loan provided by DCA or by the DCA himself. Issues arising out of such loan arrangement have been examined and the clarifications on the same are as below:

Sl. No.	Issue	Clarification
1	Whether a DCA falls under the ambit of agent under Para 3 of Schedule I of the CGST Act?	As already clarified vide circular No. 57/31/2018-GST dated 4th September, 2018, whether or not the DCA will fall under the ambit of agent under Para 3 of Schedule I of the CGST Act depends on the following possible scenarios: ▶ In case where the invoice for supply of goods is issued by the supplier to the customer, either himself or through DCA, the DCA does not fall under the ambit of agent. ▶ In case where the invoice for supply of goods is issued by the DCA in his own name, the DCA would fall under the ambit of agent.
2	Whether the temporary short-term transaction based loan extended by the DCA to the recipient (buyer), for which interest is charged by the DCA, is to be included in the value of goods being supplied by the supplier (principal) where DCA is not an agent under Para 3 of Schedule I of the CGST Act?	In such a scenario following activities are taking place: 1. Supply of goods from supplier (principal) to recipient; 2. Supply of agency services from DCA to the supplier or the recipient or both; 3. Supply of extension of loan services by the DCA to the recipient. It is clarified that in cases where the DCA is not an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction based loan being provided by DCA to the buyer is a supply of service by the DCA to the recipient on Principal to Principal basis and is an independent supply. Therefore, the interest being charged by the DCA would not form part of the value of supply of goods supplied (to the buyer) by the supplier. It may be noted that vide notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017 (S. No. 27), services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) has been exempted.



3.	Where DCA is an agent under Para 3 of Schedule I of the CGST Act and makes payment to the principal on behalf of the buyer and charges interest to the buyer for delayed payment along with the value of goods being supplied, whether the interest will form a part of the value of supply of goods also or not?	In such a scenario following activities are taking place: 1. Supply of goods by the supplier (principal) to the DCA; 2. Further supply of goods by the DCA to the recipient; 3. Supply of agency services by the DCA to the supplier or the recipient or both; 4. Extension of credit by the DCA to the recipient. It is clarified that in cases where the DCA is an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction based credit being provided by DCA to the buyer no longer retains its character of an independent supply and is subsumed in the supply of the goods by the DCA to the recipient. It is emphasised that 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. It is further clarified that 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 clause (d) of sub-section (2) of section 15 of the CGST Act.

2.3 COMPOSITE AND MIXED SUPPLIES

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

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

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

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

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

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

Following two conditions are necessary for composite supply:

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

Example : 85

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

Example : 86

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

Example : 87

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

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

Example : 88

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

Answer:

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

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

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

CGST is ₹ 4,950 and SGST is ₹ 4,950

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

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

Example : 89

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

Example : 90

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

Example : 91

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

Answer:

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

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

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



Example : 92

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

Answer:

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

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

2.4 LEVY AND COLLECTION

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

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

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

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

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

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

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

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

Section 9(4) of CGST Act, 2017, central tax (i.e. CGST) in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient (Similar provision under section 5(4) of IGST Act, 2017). This provision suspended till 31.03.2018.

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

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

Summary:

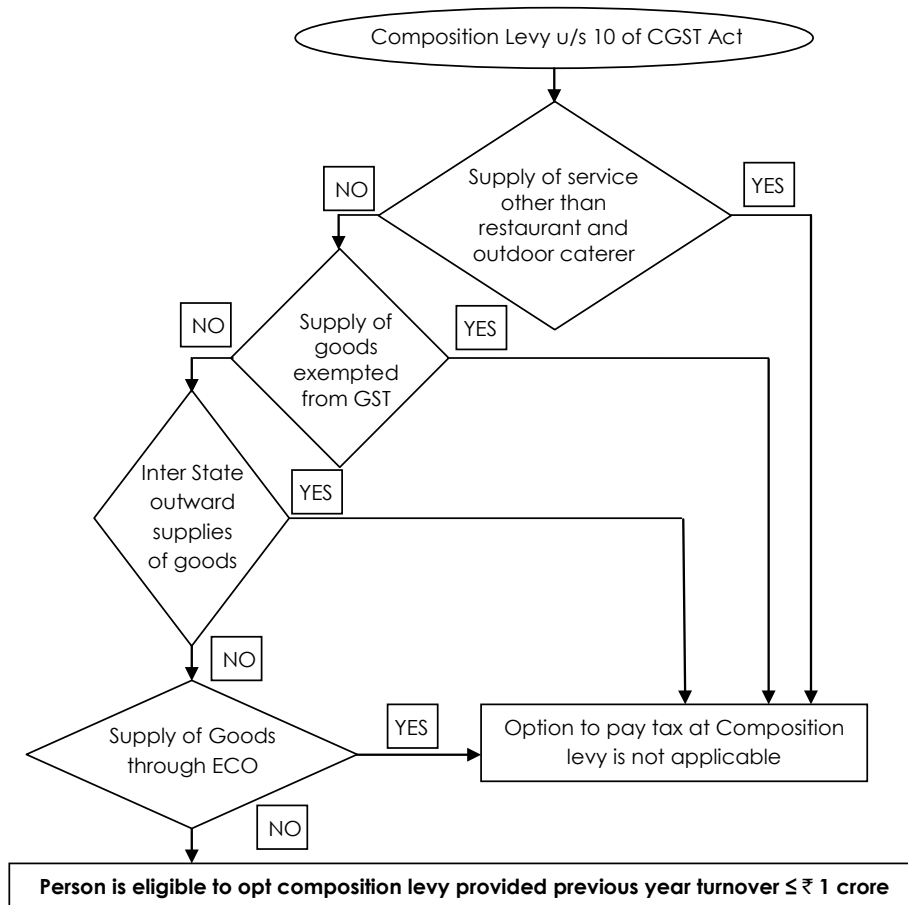
CGST Act, 2017	IGST Act, 2017
Section 9(1): CGST will be levied and collected on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption.	Section 5(1): IGST will be levied and collected on all inter-state supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption. IGST also be levied on import of goods.
Section 9(2): CGST yet to be levied on • Petroleum crude, • High speed diesel, • Motor spirit (commonly known as petrol), • Natural gas and • Aviation turbine fuel	Section 5(2): IGST yet to be levied on • Petroleum crude, • High speed diesel, • Motor spirit (commonly known as petrol), • Natural gas and • Aviation turbine fuel.
Section 9(3): Govt. will decide who is liable to pay GST under Reverse Charge.	Section 5(3): Govt. will decide who is liable to pay GST under Reverse Charge.
Section 9(4): supply by a not registered person, to a registered person, reverse charge applicable. Reverse charge provisions would not be applicable if the aggregate value of such supplies of goods or services or both received by a taxable person from any or all the suppliers, who are not registered, does not exceeds ₹ 5,000 in a day.	Section 5(4): supply by a not registered person, to a registered person, reverse charge applicable. Reverse charge provisions would not be applicable if the aggregate value of such supplies of goods or services or both received by a taxable person from any or all the suppliers, who are not registered, does not exceeds ₹ 5,000 in a day.
This provision is suspended till 31.03.2018.	This provision is suspended till 31.03.2018.
Section 9(5): Electronic Commerce Operator (ECO) is liable to pay tax. Or Any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax, provided ECO not located in taxable territory. Or Where an ECO does not have a representative in the taxable territory, such ECO shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.	Section 5(5): Electronic Commerce Operator (ECO) is liable to pay tax. Or Any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax, provided ECO not located in taxable territory. Or Where an ECO does not have a representative in the taxable territory, such ECO shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

2.5 COMPOSITION LEVY**Composition Scheme**

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



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



Changes to be made prospectively from 15th November 2017:

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

As per Section 10(1) of CGST Act, 2017, Registered person, whose aggregate turnover in the financial year did not exceed ₹ 1 crore (₹ 75 Lakhs for north-eastern states), may opt to pay composition levy. (vide notification No. 46/2017 - Central Tax, Dt.-13/10/2017).

Note: North eastern states includes

1. Arunachal Pradesh;
2. Assam;
3. Manipur
4. Meghalaya
5. Mizoram;
6. Nagaland;
7. Sikkim;
8. Tripura;
9. Himachal Pradesh.

The turnover threshold for Jammu & kashmir and Uttarkhand shall be ₹ 1 Crore

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

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

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

Important points:

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

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

Persons not entitled to avail Composition Scheme:

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

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

Example : 93

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

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

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

Answer:

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



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

Example : 94	
M/s Paul Ltd. being a trader of laptops has two units in Chennai and in Mumbai.	
Place	P.Y. Turnover ₹ in lakhs (Excluding taxes)
Chennai	52.00
Mumbai	12.00
Your are required to answer the following: (a) Is M/s Paul Ltd eligible for composition levy in the current year? (b) If so, can M/s Paul Ltd. opt composition scheme for Chennai location and normal scheme for Mumbai? (c) Need to give separate intimations for opting composition scheme in each State.	

Answer:

- (a) Yes. M/s Paul Ltd. is eligible to avail the composition scheme in both the states namely Tamil Nadu and Maharashtra.
- Since, M/s Paul Ltd. has same PAN, and his aggregate turnover does not exceeds rupees one crore, it is eligible for composition levy, even though the company has multiple registrations under GST.
- (b) No. M/s Paul Ltd. cannot opt composition scheme for one location and normal scheme for another location. Where more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (1) of Section 10 of CGST Act, 2017 unless all such registered persons opt to pay tax under that sub-section.
- (c) Intimation to opt composition scheme in respect of any place of business in any State or Union Territory shall be deemed to be intimation in respect of all other places of business registered on the same Permanent Account Number (PAN).

Example : 95
M/s X & Co., sells electrical cables, motors and wires. Company also undertake to repair switches, motor sets. Turnover during preceding financial year from sale of goods is ₹ 59 lakhs, whereas repairing unit is ₹ 1 lakh. Is M/s X & Co. eligible for composition scheme. Advice.
Answer:
No. Since, M/s X & Co., deals partly with supply of services. Therefore, the benefit of composition scheme will be denied to M/s X & Co.

Example : 96
Mr. Q is a paper merchant own 5,000 sq ft., shop at Chennai. Mr. Q offered extra space available in their shop to supplier to put up their advertisement. His turnover in the previous year from sale of goods ₹ 20 lakhs and advertising services ₹ 2 lakhs. Is Mr. Q eligible for composition scheme in the current year?
Answer:
No. Mr. Q being a paper merchant charging services and hence, the benefit of composition scheme is not allowed.

Example : 97
Hotel King Pvt., Ltd. provider of restaurant services in New Delhi. They also serve beer, whisky and so on. Turnover in the preceding previous year is ₹ 67 lakhs. Is Hotel King Pvt. Ltd. eligible for composition scheme in the current year?
Answer:
Hotel King Pvt. Ltd., is not eligible for composition scheme. Since they are supplying the product, which is not levied to GST (namely beer, whisky).

**Example : 98**

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

Answer:

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

Example : 99

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

Is Peter England eligible for composition scheme?

Answer:

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

Example : 100

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

Answer the following:

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

Answer:

- (a) Hot Breads Pvt. Ltd. is eligible for composition levy in the current year.
- (b) The supply of food and restaurant services category is the only service included under the composition scheme. For a business to be categorised as food and restaurant services, there needs to be an element of service involved.

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

Therefore, department's contention is not correct.

Example : 101

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

**Answer:**

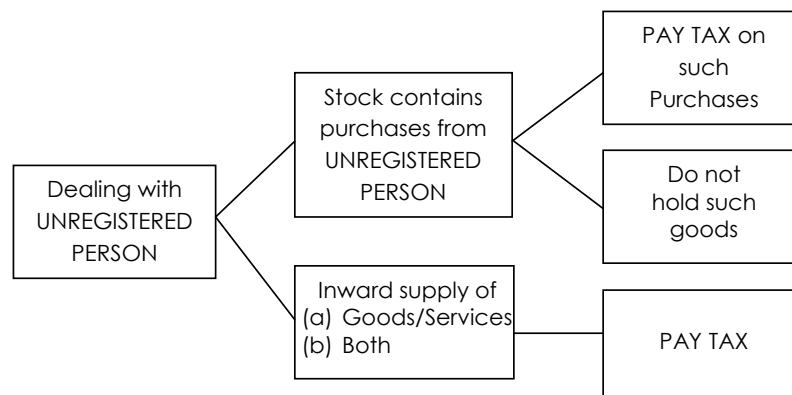
Composition Levy	
Particulars	Value in ₹
Cost of inputs	7,80,000
Add: GST 18% on inputs	1,40,400
Total Cost	9,20,400
Add: Profit margin 40%	3,68,160
Invoice Price	12,88,560
CGST 2.5%	32,214
SGST 2.5%	32,214
Total GST Liability	64,428

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

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

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

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



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

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

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

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

Intimation for Composition levy and Effective Date:

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

Intimation for Composition Levy

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

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

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

Effective date for opting composition Scheme:

Assessee filing intimation	Effective date of composition levy
Form GST CMP-01	Appointed Date
Registered person	Beginning of financial year



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

Summary:

Effective date for Composition Levy

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

Example : 104

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

Answer:

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

Example : 105

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

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

Answer:

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

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

Composition Rate of Tax:

The applicable tax rates are as follows:

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

Summary of 23rd GST Council Meet

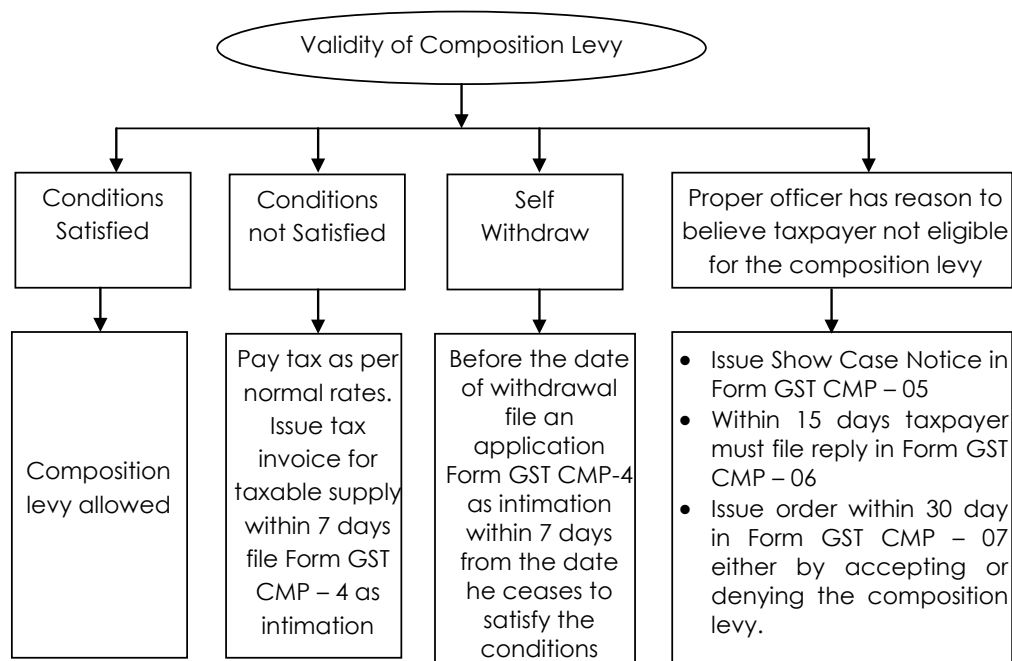
Changes to be made prospectively from 15th November 2017

Changes in Composition Scheme

- (a) Composition scheme limit to be increased to ₹ 1.5 crore (can be extended to ₹ 2 crore later).
 - (b) 1% GST rate for manufacturers & traders.
 - (c) Composition tax of 1% on turnover of taxable goods (turnover of exempted goods to be excluded)
 - (d) Those supplying goods and services (services not exceeding ₹ 5 lakhs in total) eligible for compositions scheme
 - (e) Composition Returns, GSTR-4 due date extended to 24th December 2017
 - (f) Composition dealers cannot make inter-state sales. Input tax benefit not allowed.
- However, no input tax credit (ITC) will be made available.

Validity of Composition Levy

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



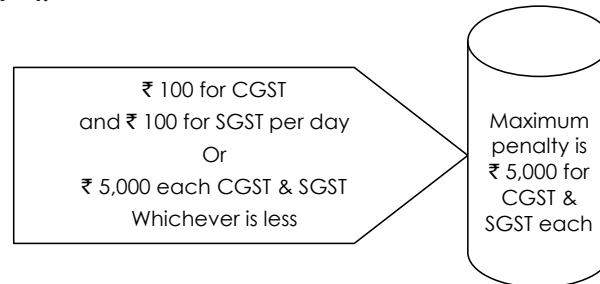


Filing of Return under composition levy:

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

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

Penalty for delay in filing GSTR - 4:



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

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

GSTR – 4 can be revised?

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

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

Various Forms for Composition levy assessee:

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

Composition Scheme (latest amendment):

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

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

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



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

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

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

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

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

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

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

Practical Problems

Example : 106

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

You are required to answer the following:

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

Answer:

- Mr. Sitaram is providing services in consulting firm hence he is not eligible for composition scheme.*
- If a business is ineligible to opt for composition then all other business registered under the same PAN shall automatically ineligible for the composition scheme. So Mr. Sitaram is not eligible for composition scheme only for showroom.*
- Restaurant services and readymade garments show room are eligible for the composition scheme. Hence Mr. Sitaram is eligible for Composition Scheme, since, his aggregate turnover is ₹ 72 lakhs (i.e. less than ₹ 1 crore).*
- Yes, Mr. Sitaram is eligible for composition scheme as turnover of his firm does not exceed ₹ 1 crore in the preceding financial year.*

Example : 107

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

Answer:

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

In this case even though the aggregate turnover not exceeds ₹ 1 crore, Mr. Rahim is not eligible for composition Scheme.

**Example : 108**

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

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

Answer:

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

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

Example : 109

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

Answer:

Mr. Roy is required to do the following compliances:

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

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

Example : 110

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

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

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

Answer:

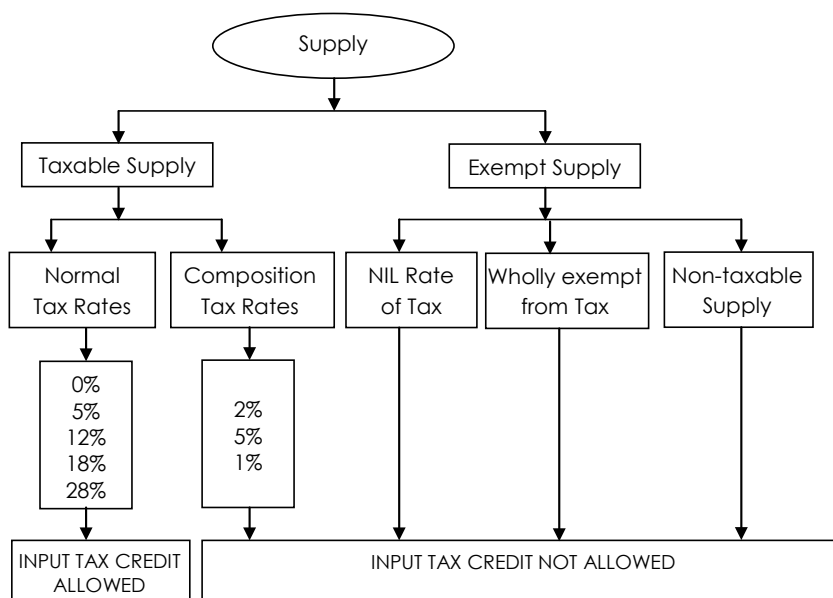
Since, the company is not availing the benefit of input tax credit the said company can pay GST under composition levy under sec. 10(1) of the CGST Act, 2017.

Applicable rate of CGST 1% and SGST 1%.

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

2.6 EXEMPTIONS

Taxable Supply vs Exempted Supply:



Power to grant exemption from tax:

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

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

Exempt Supply:

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

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

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



General Exemptions:

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

Example : 111

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

Absolute Exemption vs Conditional Exemption:

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

Exemption by Special Order:

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

Example : 114

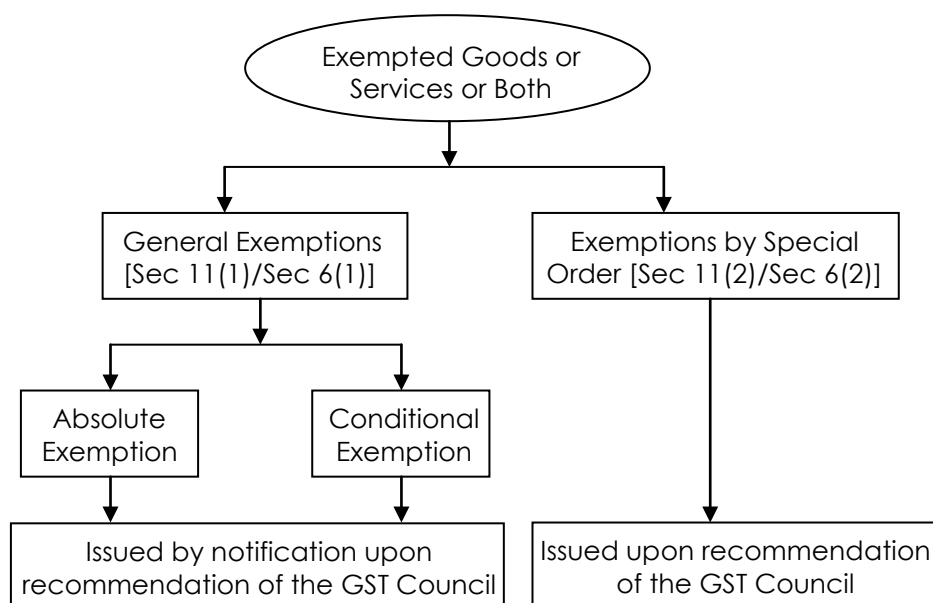
Exemption granted by special order to all assesses registered in one State, from payment of GST by reason, earthquake or assesseees are affected in tsunami. Such special order can be issued only in exceptional nature to be stated in such order.

Explanation in such notification or order:

As per sec 11(3) of the CGST Act, 2017 or sec 6(3) of the IGST Act, 2017, Government is empowered to clarify the scope of applicability of any notification or special order by inserting an explanation in such notification or order. Such clarification shall only be issued by notification within ONE year of issuing of notification or special order and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Example: 115

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

Summary:

The following goods and services are exempted from GST:

S. No.	Exempted goods (Notification No.2/2017-Central Tax (Rate) Dt. 28-06-2017)	Exempted services Notification No. 12/2017- Central Tax (Rate) Dt 28-06-2017)
1	Live animals other than live horses	Services by an entity registered under section 12AA of the Income-tax Act, 1961 by way of charitable activities.
2	Meat and edible meat offal	Services by way of transfer of a going concern, as a whole or an independent part thereof.
3	Fish, crustaceans, molluscs & other aquatic invertebrates	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.
4	Dairy produce; bird's eggs; natural honey; edible products of animal origin, not elsewhere specified	Services by Central Government, State Government, Union territory, local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.
5	1. Human hair, unworked, whether or not washed or scoured; waste of human hair 2. Semen including frozen semen	Services by a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution. Notification No. 32/2017 Central Tax (Rate) dt 13.10.2017, this notification extends the exemption from GST to Central Government, State Government, Union territory, local authority along with Governmental Authority.



6	Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage	Services by the Central Government, State Government, Union territory or local authority excluding the following services— (a) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory; (b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (c) transport of goods or passengers; or (d) any service, other than services covered under entries (a) to (c) above, provided to business entities.
7	Edible vegetables, roots and tubers • Potatoes, fresh or chilled. • Tomatoes, fresh or chilled. • Onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled. • Cabbages, cauliflowers, kohlrabi, kale and similar edible brassicas, fresh or chilled etc.,	Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of up to ₹ 20 lakh (₹ 10 lakh in case of a special category state) in the preceding financial year.
		Explanation:- For the purposes of this entry, it is hereby clarified that the provisions of this entry shall not be applicable to- (a) services,- (i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory; (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) of transport of goods or passengers; and (b) services by way of renting of immovable property.
8	Edible fruit and nuts; peel of citrus fruit or melons, Coconuts, fresh or dried, whether or not shelled or peeled Bananas, including plantains, fresh or dried, Dates, figs, pineapples, avocados, guavas, mangoes and mangos teens, fresh etc.,	Services provided by the Central Government, State Government, Union territory or local authority to another Central Government, State Government, Union territory or local authority: Provided that nothing contained in this entry shall apply to services- (i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory; (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) of transport of goods or passengers



9	Coffee beans, not roasted. Unprocessed green leaves of tea	Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services does not exceed ₹ 5,000: Provided that nothing contained in this entry shall apply to- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers: Provided further that in case where continuous supply of service, as defined in sub-section (33) of section 2 of the Central Goods and Services Tax Act, 2017, is provided by the Central Government, State Government, Union territory or a local authority, the exemption shall apply only where the consideration charged for such service does not exceed ₹ 5,000 in a financial year.
10	Cereals All goods [other than those put up in unit container and bearing a registered brand name]. Fresh ginger, other than in processed form etc.,	Services provided by way of pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for All(Urban) Mission or Pradhan Mantri Awas Yojana.
11	Products of milling industry; malt; starches; insulin; wheat gluten	Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex.
12	Oil seeds and oleaginous fruits, miscellaneous grains, seeds and fruit; industrial or medicinal plants; straw and fodder	Services by way of renting of residential dwelling for use as residence.
13	Lac; gums, resins and other vegetable saps and extracts Lac and Shellac,	Services by a person by way of- (a) conduct of any religious ceremony; (b) renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income-tax Act, 1961 or a trust or an institution registered under sub clause (v) of clause (23C) of section 10 of the Income-tax Act or a body or an authority covered under clause (23BBA) of section 10 of the said Income-tax Act: Provided that nothing contained in entry (b) of this exemption shall apply to,- (i) renting of rooms where charges are ₹ 1,000 or more per day; (ii) renting of premises, community halls, kalyanmandapam or open area, and the like where charges are ₹ 10,000 or more per day; (iii) renting of shops or other spaces for business or commerce where charges are ₹ 10,000 or more per month.



14	Vegetable plaiting materials; vegetable products, not elsewhere specified or included Betel leaves	Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below ₹ 1,000 per day or equivalent.
15	Sugar and sugar confectionery Cane jaggery	Transport of passengers, with or without accompanied belongings, by – (a) air, embarking from or terminating in an airport located in the state of (i) Arunachal Pradesh, (ii) Assam, (iii) Manipur, (iv) Meghalaya, (v) Mizoram, (vi) Nagaland, (vii) Sikkim, or (viii) Tripura or (ix) at Bagdogra located in West Bengal; (b) non-airconditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or (c) stage carriage other than airconditioned stage carriage.
16	Preparations of cereals, flour, starch or milk; pastrycooks' products 1. Puffed rice, commonly known as Muri, flattened or beaten rice, commonly known as Chira, parched rice, commonly known as khoi, parched paddy or rice coated with sugar or gur, commonly known as Murki 2. Pappad, by whatever name it is known, except when served for consumption 3. Bread (branded or otherwise), except when served for consumption and pizza bread.	Services provided to the Central Government, by way of transport of passengers with or without accompanied belongings, by air, embarking from or terminating at a regional connectivity scheme airport, against consideration in the form of viability gap funding; Provided that nothing contained in this entry shall apply on or after the expiry of a period of one year from the date of commencement of operations of the regional connectivity scheme airport as notified by the Ministry of Civil Aviation
17	Miscellaneous edible preparations 1. Prasadam supplied by religious places like temples, mosques, churches, gurudwaras, dargahs, etc.	Service of transportation of passengers, with or without accompanied belongings, by— (a) railways in a class other than— (i) first class; or (ii) an air-conditioned coach; (b) metro, monorail or tramway; (c) inland waterways; (d) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and (e) metered cabs or auto rickshaws (including e-rickshaws).



18	Beverages, spirit and vinegar. Water [other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container	Services by way of transportation of goods- (a) by road except the services of— (i) a goods transportation agency; (ii) a courier agency; (b) by inland waterways.
19	Residues and waste from the food industries; prepared animal fodder	Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India
20	Salt; sulphur; earths and stone; plastering materials, lime and cement	Services by way of transportation by rail or a vessel from one place in India to another of the following goods – (a) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; (b) defence or military equipments; (c) newspaper or magazines registered with the Registrar of Newspapers; (d) railway equipments or materials; (e) agricultural produce; (f) milk, salt and food grain including flours, pulses and rice; and (g) organic manure.
21	Pharmaceutical products Human Blood and its components	Services provided by a goods transport agency, by way of transport in a goods carriage of - (a) agricultural produce; (b) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed ₹ 1,500; (c) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed ₹ 750; (d) milk, salt and food grain including flour, pulses and rice; (e) organic manure; (f) newspaper or magazines registered with the Registrar of Newspapers; (g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or (h) defence or military equipments. Entry No. 21A: "Services provided by a goods transport agency to an unregistered person, including an unregistered casual taxable person, other than the specified recipients" also exempt from GST [vide Notification No. 33/2017 Central Tax (Rate) Dt 13.10.2017].
22	1. Organic manure, other than put up in unit containers and bearing a brand name.	Services by way of giving on hire:- (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or (b) to a goods transport agency, a means of transportation of goods.



23	Essential oils and resinoids perfumery, cosmetic or toilet preparations 1. Kumkum, Bindi, Sindur, Alta	Service by way of access to a road or a bridge on payment of toll charges. Entry 23A: Service by way of access to a road or a bridge on payment of annuity is also exempt from GST (Notification No. 32/2017- Central Tax (Rate) Dt 13.10.2017)
24	Miscellaneous chemical products, Municipal waste, sewage sludge, clinical waste	Services by way of loading, unloading, packing, storage or warehousing of rice.
25	Plastics and articles thereof Plastic bangles	Transmission or distribution of electricity by an electricity transmission or distribution utility.
26	Rubber and articles thereof Condoms and contraceptives	Services by the Reserve Bank of India.
27	Wood and articles of wood, wood charcoal Firewood or fuel wood	Services by way of— (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services); (b) sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers.
28	Paper and paperboard; articles of paper pulp, of paper or of paperboard	Services of life insurance business provided by way of annuity under the National Pension System regulated by the Pension Fund Regulatory and Development Authority of India under the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013).
29	Printed books, newspapers, pictures and other products of the printing industry, manuscripts, typescripts and plans	Services of life insurance business provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government.
30	Raw Silk	Services by the Employees' State Insurance Corporation to persons governed under the Employees' State Insurance Act, 1948 (34 of 1948).
31	Wool, fine or coarse animal hair; horse hair yarn and woven fabric	Services provided by the Employees Provident Fund Organisation to the persons governed under the Employees Provident Funds and the Miscellaneous Provisions Act, 1952 (19 of 1952).
32	Cotton 1. Gandhi Topi, 2. Khadi yarn	Services provided by the Insurance Regulatory and Development Authority of India to insurers under the Insurance Regulatory and Development Authority of India Act, 1999 (41 of 1999).
33	Other vegetable textile fibres; paper yarn, woven fabrics of paper yarns 1. Coconut, coir fibre 2. Jute fibres, raw or processed but not spun	Services provided by the Securities and Exchange Board of India set up under the Securities and Exchange Board of India Act, 1992 (15 of 1992) by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.



34	Other made up textile articles, sets, worn clothing and worn textile articles; rags Indian National Flag	Services by an acquiring bank, to any person in relation to settlement of an amount upto ₹ 2,000 in a single transaction transacted through credit card, debit card, charge card or other payment card service. Explanation.— For the purposes of this entry, “acquiring bank” means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card.
35	Ceramic products	Services of general insurance business provided under following schemes – (a) Hut Insurance Scheme; (b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme); (c) Scheme for Insurance of Tribals; (d) Janata Personal Accident Policy and Gramin Accident Policy; (e) Group Personal Accident Policy for Self-Employed Women; (f) Agricultural Pumpset and Failed Well Insurance; (g) premia collected on export credit insurance; (h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture; (i) Jan Arogya Bima Policy; (j) National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana); (k) Pilot Scheme on Seed Crop Insurance; (l) Central Sector Scheme on Cattle Insurance; (m) Universal Health Insurance Scheme; (n) Rashtriya Swasthya Bima Yojana; (o) Coconut Palm Insurance Scheme; (p) Pradhan Mantri Suraksha Bima Yojana; (q) Niramaya Health Insurance Scheme implemented by the Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999).
36	Glass and glassware 1. Bangles (except those made from precious metals)	Services of life insurance business provided under following schemes- (a) Janashree Bima Yojana; (b) Aam Aadmi Bima Yojana; (c) Life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of fifty thousand rupees; (d) Varishtha Pension Bima Yojana; (e) Pradhan Mantri Jeevan Jyoti Bima Yojana; (f) Pradhan Mantri Jan Dhan Yojana; (g) Pradhan Mantri Vaya Vandan Yojana



37	Tools, implements, cutlery, spoons and forks of base metal; parts thereof of base metal 1. Agricultural implements manually operated or animal driven	Services by way of collection of contribution under the Atal Pension Yojana.
38	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof 1. Handloom [weaving machinery]	Services by way of collection of contribution under any pension scheme of the State Governments.
39	Aircraft; spacecraft and parts thereof	Services by the following persons in respective capacities – (a) business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch; (b) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or (c) business facilitator or a business correspondent to an insurance company in a rural area.
40	Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof	Services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory
41	Musical instruments; parts and accessories of such articles 1. Indigenous handmade musical instruments	One time upfront amount (called as premium, salami, cost, price, development charges or by any other name) leviable in respect of the service, by way of granting long term (thirty years, or more) lease of industrial plots, provided by the State Government Industrial Development Corporations or Undertakings to industrial units
42	Miscellaneous manufactured articles 1. Slate pencils and chalk sticks. 2. Slates	Services provided by the Central Government, State Government, Union territory or local authority by way of allowing a business entity to operate as a telecom service provider or use radio frequency spectrum during the period prior to the 1st April, 2016, on payment of licence fee or spectrum user charges, as the case may be
43	Project imports, laboratory chemicals, passengers' baggage, personal importation, ship stores Passenger baggage	Services of leasing of assets (rolling stock assets including wagons, coaches, locos) by the Indian Railways Finance Corporation to Indian Railways.
Exempted services Notification No. 12/2017- Central Tax (Rate) Dt 28-06-2017)		
44	Services provided by an incubatee up to a total turnover of ₹ 50 lakh in a financial year subject to the following conditions, namely:- (a) the total turnover had not exceeded fifty lakh rupees during the preceding financial year; and (b) a period of three years has not elapsed from the date of entering into an agreement as an incubatee.	



45	Services provided by- (a) an arbitral tribunal to – (i) any person other than a business entity; or (ii) a business entity with an aggregate turnover up to ₹ 20 lakh (₹ 10 lakh in the case of special category states) in the preceding financial year; (b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to- (i) an advocate or partnership firm of advocates providing legal services; (ii) any person other than a business entity; or (iii) a business entity with an aggregate turnover up to ₹ 20 lakh (₹ 10 lakh in the case of special category states) in the preceding financial year; (c) a senior advocate by way of legal services to- (i) any person other than a business entity; or (ii) a business entity with an aggregate turnover up to ₹ 20 lakh (₹ 10 lakh in the case of special category states) in the preceding financial year
46	Services by a veterinary clinic in relation to health care of animals or birds.
47	Services provided by the Central Government, State Government, Union territory or local authority by way of- (a) registration required under any law for the time being in force; (b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force
48	Taxable services, provided or to be provided, by a Technology Business Incubator or a Science and Technology Entrepreneurship Park recognised by the National Science and Technology Entrepreneurship Development Board of the Department of Science and Technology, Government of India or bio incubators recognised by the Bio technology Industry Research Assistance Council, under the Department of Bio technology, Government of India.
49	Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India.
50	Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material.
51	Services provided by the Goods and Services Tax Network to the Central Government or State Governments or Union territories for implementation of Goods and Services Tax.
52	Services by an organiser to any person in respect of a business exhibition held outside India
53	Services by way of sponsorship of sporting events organised – (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State, zone or Country; (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat; (c) by the Central Civil Services Cultural and Sports Board; (d) as part of national games, by the Indian Olympic Association; or (e) under the Panchayat Yuva Kreedha Aur Khel Abhiyaan Scheme.



54	Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of— (a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing; (b) supply of farm labour; (c) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market; (d) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use; (e) loading, unloading, packing, storage or warehousing of agricultural produce; (f) agricultural extension services; (g) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.
55	Carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce
56	Services by way of slaughtering of animals
57	Services by way of pre-conditioning, precooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables.
58	Services provided by the National Centre for Cold Chain Development under the Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination.
59	Services by a foreign diplomatic mission located in India
60	Services by a specified organisation in respect of a religious pilgrimage facilitated by the Ministry of External Affairs, the Government of India, under bilateral arrangement.
61	Services provided by the Central Government, State Government, Union territory or local authority by way of issuance of passport, visa, driving licence, birth certificate or death certificate.
62	Services provided by the Central Government, State Government, Union territory or local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union territory or local authority under such contract.
63	Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use natural resources to an individual farmer for cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products
64	Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Central Government, State Government, Union territory or local authority before the 1st April, 2016: Provided that the exemption shall apply only to tax payable on one time charge payable, in full upfront or in installments, for assignment of right to use such natural resource.
65	Services provided by the Central Government, State Government, Union territory by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges.

66	Services provided – (a) by an educational institution to its students, faculty and staff; (b) to an educational institution, by way of,- (i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory; (iii) security or cleaning or housekeeping services performed in such educational institution; (iv) services relating to admission to, or conduct of examination by, such institution; upto higher secondary; Provided that nothing contained in entry (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent.
67	Services provided by the Indian Institutes of Management, as per the guidelines of the Central Government, to their students, by way of the following educational programmes, except Executive Development Programme: - (a) two year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the Indian Institute of Management; (b) fellow programme in Management; (c) five year integrated programme in Management.
68	Services provided to a recognised sports body by- (a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organised by a recognized sports body; (b) another recognised sports body.
69	Any services provided by, _ (a) the National Skill Development Corporation set up by the Government of India; (b) a Sector Skill Council approved by the National Skill Development Corporation; (c) an assessment agency approved by the Sector Skill Council or the National Skill Development Corporation; (d) a training partner approved by the National Skill Development Corporation or the Sector Skill Council, in relation to- (i) the National Skill Development Programme implemented by the National Skill Development Corporation; or (ii) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or (iii) any other Scheme implemented by the National Skill Development Corporation.
70	Services of assessing bodies empanelled centrally by the Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under the Skill Development Initiative Scheme.
71	Services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana implemented by the Ministry of Rural Development, Government of India by way of offering skill or vocational training courses certified by the National Council for Vocational Training.
72	Services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union territory administration.
73	Services provided by the cord blood banks by way of preservation of stem cells or any other service in relation to such preservation.



74	Services by way of- (a) health care services by a clinical establishment, an authorised medical practitioner or para-medics; (b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.
75	Services provided by operators of the common bio-medical waste treatment facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto.
76	Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets
77	Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution – (a) as a trade union; (b) for the provision of carrying out any activity which is exempt from the levy of Goods and services Tax; or (c) up to an amount of ₹ 5,000 per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.
78	Services by an artist by way of a performance in folk or classical art forms of- (a) music, or (b) dance, or (c) theatre, if the consideration charged for such performance is not more than ₹ 1,50,000: Provided that the exemption shall not apply to service provided by such artist as a brand ambassador.
79	Services by way of admission to a museum, national park, wild life sanctuary, tiger reserve or zoo.
80	Services by way of training or coaching in recreational activities relating to- (a) arts or culture, or (b) sports by charitable entities registered under section 12AA of the Income-tax Act
81	Services by way of right to admission to- (a) circus, dance, or theatrical performance including drama or ballet; (b) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event; (c) recognised sporting event, where the consideration for admission is not more than ₹ 250 per person as referred to in (a), (b) and (c) above.

Example : 116

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

(a) Sale of plastic bangles for ₹ 20,000.

(b) Supply of mobile phones for ₹ 3,20,120

(c) Sale of printed books and newspapers for ₹ 1,25,500

(d) Sale of Dates for ₹ 13,500

(e) Sale of Salt for ₹ 9,180

(f) Sale of Organic manure worth ₹ 2,00,000

(g) Sale of Chemical Fertilizers ₹ 5,75,000 (out of which 30% subsidy received from Government of India).

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

**Answer:****Statement showing tax liability of Mr. Param**

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

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

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

Other exemptions

S. No.	Description of Service
1	Intra-state supplies received by a registered person from any unregistered supplier exempt from CGST under Sec 9(4). However, the said exemption shall not be applicable where the aggregate value of such supplies of goods or services or both received by a registered person from any or all the suppliers, who is or are not registered, exceeds ₹ 5,000 in a day (Notification No. 8/2017 Central Tax (Rate) dated 28.06.2017). This Section 9(4) of the CGST Act, 2017 has been suspended till 31st March 2018.



2	Intra-state supplies received by a TDS deductor under sec 51 of CGST, from any unregistered supplier exempt from CGST from the whole of the central tax leviable thereon under sec 9(4), subject to the condition that the deductor is not liable to be registered otherwise than under section 24(vi) of the CGST Act, 2017 (Notification No. 9/2017 Central Tax (Rates) Dates 28.06.2017). It means he should be registered compulsorily under sec 24(vi) of the CGST, Act, 2017 (i.e. Person who are required to deduct tax under section 51 of the CGST Act, 2017 whether or not separately registered under this Act). After assessing the readiness of the trade, industry and Government departments, it has been decided that registration and operationalization of TDS/TCS provisions shall be postponed till 31.03.2018.
3	Services imported by unit/developer in SEZ exempt from IGST. All services imported by a unit/developer in the Special Economic Zone (SEZ) for authorized operations are exempted from the whole of the integrated tax leviable thereon under sec 3(7) of Customs Tariff Act, 1975 read with section 5 of the IGST Act, 2017 [As per Notification No. 18/2017 -Integrated Tax (Rate) date 5th July 2017].

Exempted services under GST:

1. Services by an Entity Registered under Section 12AA of the Income Tax Act, 1961

Following are the specified charitable activities:-

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

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

- (i) public health by way of -
 - (A) care or counselling of (I) terminally ill persons or persons with severe physical or mental disability, (II) persons afflicted with HIV or AIDS, or (III) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or
 - (B) public awareness of preventive health, family planning or prevention of HIV infection;
- (ii) advancement of religion or spirituality or Yoga (w.e.f. 21-10-2015);
- (iii) advancement of educational programmes or skill development relating to,-
 - (A) abandoned, orphaned or homeless children;
 - (B) physically or mentally abused and traumatized persons;
 - (C) prisoners; or
 - (D) persons over the age of 65 years residing in a rural area;
- (iv) preservation of environment including watershed, forests and wildlife;

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

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

- exempted from GST.

Example : 117

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

Answer:

It is taxable supply. GST will be levied.

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

**Example : 118**

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

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

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

Answer:

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

Case Study : 1

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

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

Department Contention:

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

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

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

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

2. Services by way of Transfer of a Going Concern

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

**Example : 119**

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

Answer:

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

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

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

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

ARTICLE 243G OF SCHEDULE XI	TWELFTH SCHEDULE (Article 243W)
(1) agriculture, including agriculture extensions.	1. Urban planning including town planning.
(2) land improvement, implementation of land reforms, land consolidation & soil conservation.	2. Regulation of land-use and construction of buildings.
(3) minor irrigation, water management & water shed development.	3. Planning for economic and social development.
(4) Animal husbandry, dairying & poultry.	4. Roads and bridges.
(5) fisheries	5. Water supply for domestic, industrial and commercial purposes.
(6) social forestry & farm forestry.	6. Public health, sanitation conservancy and solid waste management.
(7) minor forestry produce.	7. Fire services.
(8) small scale industries, including food processing industries.	8. Urban forestry, protection of the environment and promotion of ecological aspects.
(9) khadi, village & cottage industries.	9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
(10) rural housing	10. Slum improvement and upgradation.
(11) drinking water	11. Urban poverty alleviation.
(12) fuel & fodder.	12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
(13) roads, culverts, bridges, ferries, waterways & other means of communication.	13. Promotion of cultural, educational and aesthetic aspects.
(14) rural electrification, including distribution of electricity.	14. Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
(15) non-conventional energy.	15. Cattle pounds; prevention of cruelty to animals.
(16) poverty alleviation programmes.	16. Vital statistics including registration of births and deaths.
(17) education including primary & secondary schools, technical training & vocational education.	
(18) adult & non-formal education.	
(19) Libraries.	
(20) cultural activities.	
(21) markets & fairs.	
(22) health & sanitation, including hospitals, primary health centres & dispensaries.	



(23) family welfare	16. Vital statistics including registration of births and deaths.
(24) women & child development.	
(25) social welfare including welfare of handicapped & mental retarded.	17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
(26) welfare of the weaker sections & in particulars of the SC & ST's	18. Regulation of slaughter-houses and tanneries.
(27) public distribution system.	
(28) maintenance of community asserts.	

Example : 120

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

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

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

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

Find the following:

(a) Is it taxable supply?

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

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

Answer:

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

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

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

CGST 9% = ₹ 1,08,000

SGST 9% = ₹ 1,08,000

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

Example : 121

Validate the following statement:

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

Answer:

The given statement is valid:

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



Example : 122

Validate the following statement:

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

Answer:

The given statement is valid:

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

Example : 123

Validate the following statement:

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

Answer:

The given statement is invalid:

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

Therefore, there is no supply.

GST does not arise in the given case.

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

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

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

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

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

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

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

(c) transport of goods or passengers; or

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

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

List of services which are specifically exempted:

1. **Entry No. 4:** Services by Central Government, State Government, Union territory, local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.

2. **Entry No. 7:** Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover up to ₹ 20 lakhs (₹ 10 lakhs in case of a special category states) in the preceding financial year.

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

(a) services,-

- (i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union Territory;



- (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
 - (iii) of transport of goods or passengers; and
- (b) services by way of renting of immovable property.
3. **Entry No. 8:** Services provided by the Central Government, State Government, Union Territory or local authority to another Central Government, State Government, Union Territory or local authority;
 Provided that nothing contained in this entry shall apply to services-
 - (i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union Territory;
 - (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
 - (iii) of transport of goods or passengers;
4. **Entry No. 9:** Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services does not exceed ₹ 5,000:
 Provided that nothing contained in this entry shall apply to services-
 - (i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union Territory;
 - (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
 - (iii) of transport of goods or passengers;
 Provided further that in case where continuous supply of service, as defined in sub-section (33) of section 2 of the Central Goods and Services Tax Act, 2017, is provided by the Central Government, State Government, Union territory or a local authority, the exemption shall apply only where the consideration charged for such service does not exceed ₹ 5,000 in a financial year.
5. **Entry No. 42:** Services provided by the Central Government, State Government, Union territory or local authority by way of allowing a business entity to operate as a telecom service provider or use radio frequency spectrum during the period prior to the 1st April, 2016, on payment of licence fee or spectrum user charges, as the case may be.
6. **Entry No. 47:** Services provided by the Central Government, State Government, Union territory or local authority by way of-
 - (a) registration required under any law for the time being in force;
 - (b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force
7. **Entry No. 61:** Services provided by the Central Government, State Government, Union territory or local authority by way of issuance of passport, visa, driving licence, birth certificate or death certificate.
8. **Entry No. 62:** Services provided by the Central Government, State Government, Union territory or local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union territory or local authority under such contract.
9. **Entry No. 63:** Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use natural resources to an individual farmer for cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products.
10. **Entry No. 64:** Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Central Government, State Government, Union territory or local authority before the 1st April, 2016:
 Provided that the exemption shall apply only to tax payable on one time charge payable, in full upfront or in installments, for assignment of right to use such natural resource.
11. **Entry No. 65:** Services provided by the Central Government, State Government, Union territory by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges.



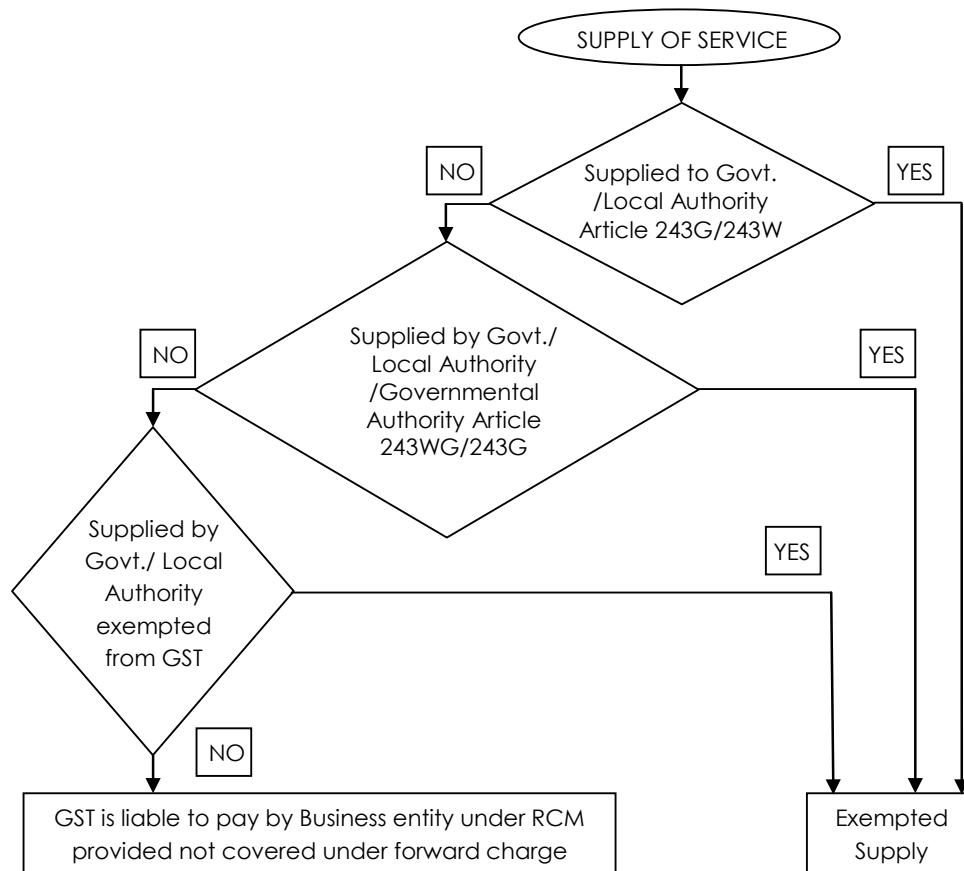
Reverse Charge Mechanism (RCM) applicable:

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

Definitions:

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

Summary:



**Example : 124**

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

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

Example : 125

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

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

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

(a) Who is liable to pay GST?

(b) Total tax liability if any?

(c) Rework, if the previous total turnover ₹ 11,10,000 then find the GST liability in the current year?

Note: Applicable rate of GST 18%

Answer:

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

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

(b) GST 18% on ₹ 75,000 = 13,500

Re-work

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



Example : 126

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

Answer:

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

Example : 127

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

Answer:

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

Example : 128

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

Answer:

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

Example : 129

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

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

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

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

Note: Applicable rate of GST 18%



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

Example : 130

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

Answer:

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

Example : 131

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

Applicable rate of GST 18%

Find the following:

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

(b) Total GST liability if any.

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

Answer:

(a) It is supply of service.

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

(b) GST liability = ₹ 21,600

Note:

(i) It appears the liquidated damages recovered by local authority for delay in performance in contract will not be covered under exemption list of GST. The contract has been performed in such cases, GST will be payable on the same.

(ii) Services provided by Government or a local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract; is exempted from GST.



Example : 132

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

Whether your answer will be different if registration fee is ₹ 6,000?

Is it taxable supply? Attract GST?

Answer:

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

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

Example : 133

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

Answer:

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

Therefore, the given activity is exempted from GST.

Example : 134

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

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

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

Applicable rate of GST 18%.

Answer:

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

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

CGST 9% on ₹ 15,000 = ₹ 1,350

SGST 9% on ₹ 15,000 = ₹ 1,350

Example : 135

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

Answer:

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

Example : 136

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

Answer:

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

Example : 137

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

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

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

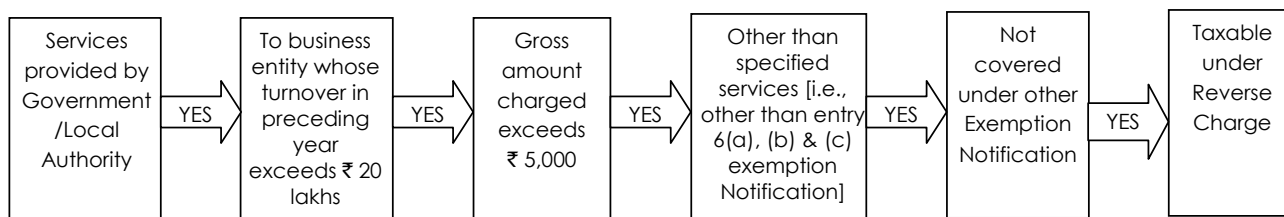
Whether your answer is different if periodic payment required to be made by the assignee.

Answer:

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

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

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

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


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

Entry No. 10 Pure labour services for Housing Scheme

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

“original works” means all new constructions;

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

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

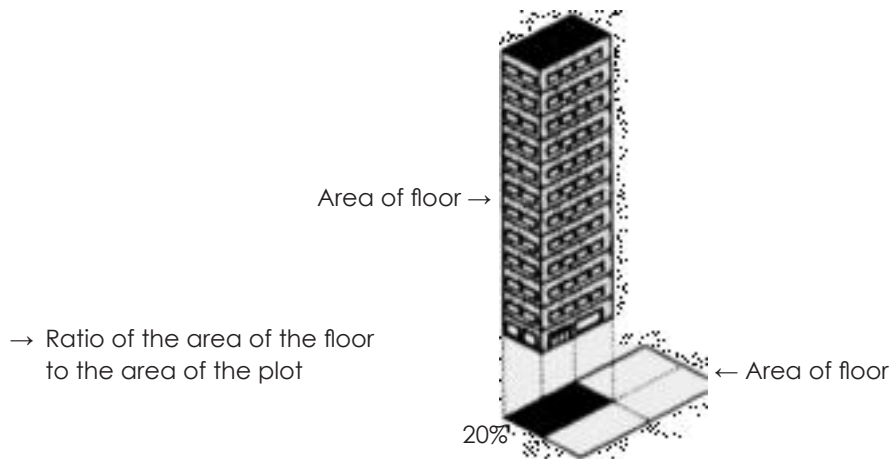
The Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana scheme where in Housing for All mission will be implemented through four verticals which are as follows:

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



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

Floor Space Index (FSI)



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

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

Example : 138

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

Find the following:

- Exempted value of supply.
- Taxable value of supply.
- Taxable person.
- GST liability.

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

Note: Taxable person is willing to avail benefit of ITC.

Answer:

(a) Build up area (10,000 × 1 FSI)	= 10,000 sq. ft.
Value of build up area (₹ 900 × 10,000 sq. ft.)	= ₹ 90,00,000
Value of exempted supply	= ₹ 90,00,000
(b) Build up area (10,000 × 0.5 FSI)	= 5,000 sq. ft.
Value of build up area (₹ 900 × 5,000 sq. ft.)	= ₹ 45,00,000
Value of taxable supply of service	= ₹ 45,00,000

DLF is the person liable to pay GST under forward charge.

GST liability:

CGST 6% on ₹ 45 lakh = ₹ 2,70,000 and

SGST 6% on ₹ 45 lakh = ₹ 2,70,000

**Entry No. 11 Construction, erection and related services pertaining to single residential unit:**

Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex is exempted from GST.

Example : 139

Hemanta Builders is constructing a two-floor residential house. Is it taxable supply?

Answer:

Yes, the given activity is a taxable supply and GST will be levied.

Example : 140

Shyam contractors undertaken to construct new single shop for M/s X & Co. Is it taxable supply?

Answer:

Yes, the given activity is a taxable supply and GST will be levied.

Entry No. 12 Services by way of renting of residential dwelling for use as residence is also exempt from GST

The following are taxable supplies:

- Residential house taken on rent for commercial purposes
- House is given on rent and the same is used as a hotel or a lodge
- Rooms in a hotel or a lodge are let out where tariff per day per room ₹ 1000 or more.

Entry No. 13 Charitable / religious activities

Services by a person by way of-

- (a) conduct of any religious ceremony;
- (b) renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income-tax Act, 1961

or

a trust or an institution registered under sub clause (v) of clause (23C) of section 10 of the Income-tax Act

or

a body or an authority covered under clause (23BBA) of section 10 of the said Income-tax Act:

Provided that nothing contained in entry (b) of this exemption shall apply to,-

- (i) renting of rooms where charges are ₹ 1,000 or more per day;
- (ii) renting of premises, community halls, kalyanmandapam or open area, and the like where charges are ₹10,000 or more per day;
- (iii) renting of shops or other spaces for business or commerce where charges are ₹ 10,000 or more per month.

Important Note:

No GST on the supply of services by way of renting of precincts of a religious place meant for the general public by a person.

So the GST rate on Services way of renting of precincts of a religious place meant for the general public is to be taken as nil.

This implies that if immovable properties owned by charitable trusts like marriage hall, convention hall, rest house for pilgrims, shops situated within the premises of a religious place are rented out, income from letting out of such property is wholly exempt from GST.

But if such properties are not situated in the precincts of a religious place meaning thereby not within walls or boundary walls of the religious place, income from such letting out will lose this exemption and income from it will be liable to GST.



The term "religious place" as per the clause (zy) of the said notification means "a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation or spirituality".

Precincts means:

Service by a person by way of -

renting of precincts of a religious place meant for general public.

renting of such area will not be liable for payment of GST.

The purpose for which the precincts is rented is not relevant.

Entry No. 80 Services by way of training or coaching in recreational activities relating to-

(a) arts or culture, or

(b) sports by charitable entities registered under section 12AA of the Income-tax Act

are exempt from GST.

Example : 141

Kapleswara Charitable Trust registered under Section 12AA of the Income Tax Act, 1961, supplied the following services during the taxable period. Find the taxable supply or exempted supply from the following:

(a) Income from Navratri functions, other religious functions, and religious poojas conducted for ₹ 2,12,345/-

(b) During Ganeshutsav or other religious functions, charitable trusts rent out their space to agencies for advertisement hoardings, income from such advertisement ₹ 4,98,765/-

(c) Donation for religious ceremony is received with specific instructions to advertise the name of a donor for ₹ 1,00,001/-.

Answer:

Particulars	Nature of supplies	Remarks
Income from Navratri functions etc.	Exempted supply	Meant of religious ceremony
Income for renting out space	Taxable supply	Advertisement services
Donation received with reciprocity	Taxable supply	Donation is compensating against consideration

Example : 142

Sri Durga Charitable Trust registered under section 12AA of the Income Tax Act and also registered person under GST Law.

Provided the following services in the month of October.

(1) Services by way of training or coaching in recreational activities relating to sports for ₹ 4,00,000/-.

(2) Fee from organizing yoga camps or other fitness camps for ₹ 5,00,500/-

(3) Organizes fitness camps in reiki, aerobics, etc., and receive donation from participants ₹ 2,25,000/-.

(4) Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material for ₹ 20,000

Assume applicable rate of GST for taxable supplies @18%.

Answer:

Particulars	Value in ₹	Remarks
training or coaching in recreational activities relating to sports	Nil	Exempted supply.
Fee from organizing yoga camps or other fitness camps	5,00,500	Since, not covered under advancement of religion , spirituality or yoga, it is taxable supply.
Donation for Organizes fitness camps in reiki, aerobics	2,25,000	Covered under health and fitness services, which is not exempted.
Public libraries	Nil	Exempted supply.
Total	7,25,500	
GST 18%	1,30,590	(7,25,500 x 18%)

Case Study : 2

Department Claim: Tirumal Tirupati Devasthanams, Triupati registered under section 12AA of the Income Tax Act, 1961 was running guest houses for pilgrims. Renting of precincts of a religious place meant for general public, by charging more than ₹ 1,000 per day. Therefore, the assessee were liable to pay GST.

Assessee Contention: Since, they were running guest houses without any profit motive hence they were not liable to pay GST.

Decide the case wheather assessee contention is right or Department claim is justifiable?

Answer:

Renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income-tax Act, 1961 is exempt from GST.

However, w.e.f 1-7-2017, this exemption shall not be applicable to

Renting of rooms where charges are ₹ 1,000/- or more per day,

Renting of premises, community halls, kalyanmandapam or open area, etc where charges are ₹ 10,000/- or more per day, and

Renting of shops or other spaces for business or commerce where charges are ₹ 10,000/-or more per month.

Thus, the law gives a limited exemption to renting of only religious precincts or a religious place meant for general public by the entity registered under Section 12AA of the Income Tax Act or Sec 10(23C)(v) or Sec 10(23BBA) of the Income Tax Act, 1961.

In the given case, it is not exempt from GST. Therefore, department claim is justifiable.

Entry No. 14 Renting of Hotel, Inn, Guest house, Club or Camp site etc;

Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below ₹ 1,000 per day or equivalent is a exempted supply under GST.

The following are taxable supply of services:



GST Rates on Hotels, resorts, Inn and Lodges:

S.No.	Particulars	GST Rate	ITC
1	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having room tariff ₹1,000 and above but less than ₹2500 per room per day	12%	Fully allowed
2	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes where room tariff of ₹ 2,500/ and above but less than ₹ 7,500/- per room per day	18%	Fully allowed
3	Bundled service by way of supply of food or any other article of human consumption or any drink, in a premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organizing a function) together with renting of such premises	18%	Fully allowed
4	Accommodation in hotels including 5 star and above rated hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, where room rent is ₹ 7,500/- and above per night per room	28%	Fully allowed

Example : 143

Alisha Hotel Ltd. provider of rooms. Rent charged per day per room is as follows:

	₹
Room Rent	= 550
Furniture rent	= 400
Air-conditioner rent	= 150
Refrigerator rent	= 50
Less: Discount	= (250)
Net amount charged	= 900

During the month of Oct 2017, 20 rooms are let out throughout the month, and balance 35 rooms are let out only for 15 days.

Input Tax Credit available ₹ 7,500.

The following GST rates are applicable for the hotel industry:

12%, 18% and 28%.

Find the GST liability if any for the month of Oct 2017.

Answer:

working note:

(1) Since, Declared Tariff is ₹ 1,150, Alisha Hotel Ltd., is liable to pay GST @12%.	
Room Rent	550
Furniture rent	400
Air-conditioner rent	150
Refrigerator rent	50
Declared Tariff	1,150
(2) Taxable Services	
(20 rooms x 31 days x ₹ 900)	₹ 5,58,000
(35 rooms x 15 days x ₹ 900)	₹ 4,72,500
Total taxable services	₹ 10,30,500

Statement showing GST liability of Alisha Hotel Ltd.		
Particulars	Value in (₹)	
Taxable supply of services	10,30,500	
GST liability:		
	6% CGST	6% SGST
Output tax	61,830	61,830
Less: ITC	-3,750	-3,750
Total tax	58,080	58,080

Entry No. 15 Transportation of passengers by any mode of conveyance

Transport of passengers, with or without accompanied belongings, by –

(a) air, embarking from or terminating in an airport located in the state of

- (i) Arunachal Pradesh,
- (ii) Assam,
- (iii) Manipur,
- (iv) Meghalaya,
- (v) Mizoram,
- (vi) Nagaland,
- (vii) Sikkim, or
- (viii) Tripura or
- (ix) at Bagdogra located in West Bengal;

(b) non-airconditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or

(c) stage carriage other than airconditioned stage carriage.

are exempted from GST.

(a) Transport of Passengers by AIR

Passengers embarking from or terminating in an airport located in the state of

- Arunachal Pradesh
- Assam
- Manipur
- Meghalaya
- Mizoram
- Nagaland
- Sikkim
- Tripura

North-Eastern States

In round trip tickets involving multiple journeys that involves embarkation or disembarkation at North-Eastern States / Bagdogra alone will be covered under exemption

or at Bagdogra located in West Bengal
are exempted from GST



The GST rate applicable for transport of passengers by air in economy class is 5% with input tax credit allowed on input services.

The GST rate for transport of passengers, with or without accompanied belongings, by air, embarking from or terminating in a Regional Connectivity Scheme Airport is also fixed at 5% with input tax credit allowed on input services.

The GST rate for transport of passengers by air in other than economy class is 12% with full input tax credit.

Summary:

Transportation of Passengers by Air	GST Rate	Input Tax Credit		
		Inputs	Capital goods	Input service
Economic class	5%	Not allowed	Not allowed	allowed
Business class	12%	allowed	allowed	allowed
Embarking from or terminating in a Regional Connectivity Scheme Airport	5%	Not allowed	Not allowed	allowed

Example : 144

Air Bus Ltd, furnishes you the following information for computation of its GST liability for the month of Oct 2017.

(a) Passenger travelling from Mizoram to Chennai – 2000 passengers, gross value per ticket	₹ 2,500
(b) Passenger travelling from Chennai - USA 500 passengers, USA - Chennai – 200 passengers, gross value per ticket	₹ 45,000
(c) Passengers travelling from Mumbai – Tripura - Mumbai with single ticket – 1000 passengers gross value per ticket	₹ 5,000

Air Bus Ltd. charging 40% passenger tax which is not included in the gross value per ticket.

Find the GST liability?

All passengers are travelled in economic class except point (b).

Answer:

Statement Showing GST Liability of Air Bus Ltd. for Oct 2017.

(a) From Mizoram to Chennai	exempted supply
(b) Passenger travelling from Chennai-USA (500 passengers x 45,000)	2,25,00,000
Passenger tax 40%	90,00,000
(c) From Mumbai – Tripura - Mumbai	exempted supply
Value of Taxable Supply of Services	3,15,00,000
CGST 6%	18,90,000
SGST 6%	18,90,000
Total Tax	37,80,000

Note: Compulsory Inclusions: Any taxes, fees, charges levied under any law other than GST law, are required to be added to the price (if not already added) to arrive at the taxable value.

Regional Connectivity Scheme – exempted from GST

Services provided to the Central Government, by way of transport of passengers with or without accompanied belongings, by air, embarking from or terminating at a regional connectivity scheme airport, against consideration in the form of viability gap funding: Provided that nothing contained in this entry shall apply on or after the expiry of a period of one year from the date of commencement of operations of the regional connectivity scheme airport as notified by the Ministry of Civil Aviation.

**Entry No. 17 Service of transportation of passengers with or without accompanied belongings by—**

- Inland waterways (i.e. National waterways)
- Public transport, other than predominantly for tourism purpose, in a vessel between places located in India (by coastal waterways);

are exempted from GST.

Place of Supply – Transportation of passengers:

The Place of Supply of Services where location of supplier and recipient is in India, [Sec. 12 of the IGST Act, 2017]:

S. No.	Nature of service	Place of supply of service [Sec. 12(9) of the IGST Act 2017];
1	Passenger transportation service. Including: Rail, Mono Rail, Metro Rail, Road, Air, Vessel, boat, Cycle rickshaw, Bullock cart, Camel etc.	Provided to a registered person: • Location of recipient of Service. Provided to a un-registered person: • Place where the passenger embarks on the continuous journey.

Place of supply of service where location of Supplier of Service or Location of Recipient of Service is outside India [Sec. 13 of IGST]

S. No.	Nature of service	Place of supply of service [Sec. 13(10) of the IGST Act 2017]:
1	Passenger transportation service. Including: Rail, Mono Rail, Metro Rail, Road, Air, Vessel, boat, Cycle rickshaw, Bullock cart, Camel etc.	where the passenger embarks on the conveyance for a continuous journey.

Example : 145

Compute value of taxable supply of services of Air Speed Airlines located in Chennai for transportation of passengers by air from the following data relating to sums received exclusive of GST –

- (1) **Passengers embarking at Arunachal Pradesh: ₹5 lakhs;**
- (2) **Amount for journey terminated at Assam: ₹4 lakhs;**
- (3) **Amount charged from passenger for flights starting from USA to Chennai: ₹ 250 lakhs;**
- (4) **Amount charged from passengers flying from Chennai to Sydney (Business class): ₹ 540 lakhs (including passenger taxes levied by government and shown separately on ticket: ₹ 100 lakhs). All passengers booked ticket from Delhi Office of Air Speed Airlines.**
- (5) **Passengers embarking from Chennai to Coimbatore (Economic class): ₹ 4 lakhs. Passengers booked tickets from Chennai office of Air Speed Airlines.**

Applicable rate of GST 5% and 12%. Find the IGST, CGST & SGST if any.

Answer:

Statement Showing GST Liability of Air Speed Airlines:

(a) embarking at Arunachal Pradesh	exempted supply
(b) where journey terminated at Assam	exempted supply
(c) from USA to Chennai	exempted supply
(d) from Chennai to Sydney (Business class)	4,40,00,000
Passenger tax	1,00,00,000



(e) from Chennai to Coimbatore	4,00,000 (Economic class)
Value of Taxable Supply of Services	5,44,00,000
IGST 12% on ₹ 5,40,00,000	64,80,000
CGST 2.5% on ₹ 4,00,000	10,000
SGST 2.5% on ₹ 4,00,000	10,000
Total Tax	65,00,000

NOTE: Compulsory Inclusions: Any taxes, fees, charges levied under any law other than GST law, are required to be added to the price (if not already added) to arrive at the taxable value.

Air Travel Agents - GST

Air Travel agents are the mediator between the ultimate customer and the airlines e.g. Makemytrip.com, PayTM are all examples of Air travel agents because they acts as a mediator between the customer and the airline companies like Air India, Spice Jet etc.

Exemption: Air Travel Agents are not entitled for any exemption.

Payment of tax at the option of the Air Travel Agent:

- (A) air travel agents are required to pay 18% GST on commission earned from airlines and also service charges, handling charges etc. (by whatever name called) collected from the customers / passengers.

There is no bar on air travel agents in availing ITC on input services to support the output services of travel agents.

OR

- (B) As per rule 32 (3) of the CGST rules, 2017 permits an air travel agent to discharge GST at fixed percentage of basic fare on which commission is normally paid by the airlines to the agent. In such a case, the effective value and the effective rate of GST is tabulated below:-

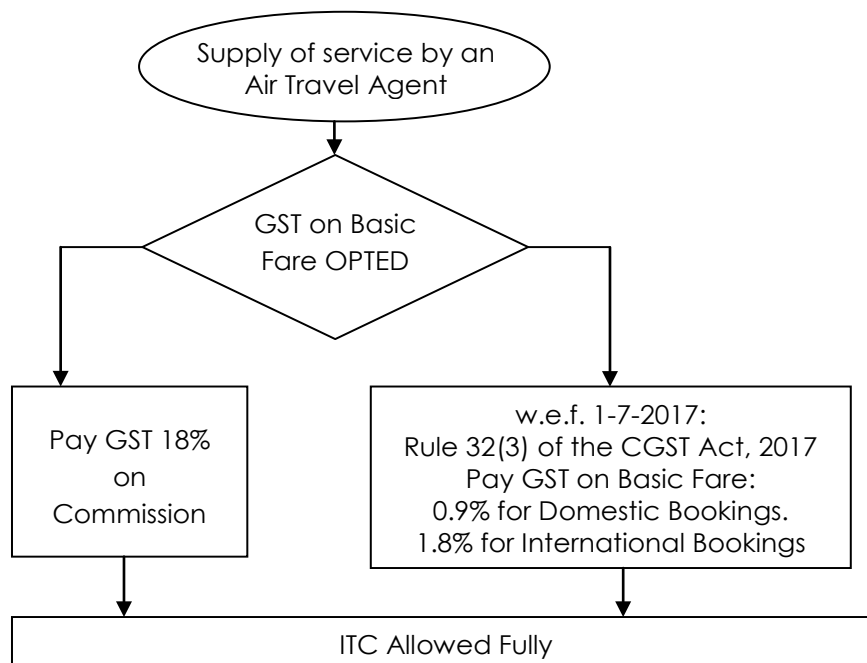
Air travel agent	Domestic booking	International booking
Value of taxable supplies	5% on Basic Fare	10% on Basic Fare

Air Travel Agent has to pay GST 18% on the above value of taxable supplies.

An air travel agent can pay tax under any of the 2 options on transaction to transaction basis. The rules do not bind the travel agent to opt for any of the options uniformly throughout the given financial year.

Input Tax Credit : Full ITC is available to the air travel agents.

Summary

**Example : 146**

Compute the GST liability of Mr. Zed, an air travel agent, for the quarter ended Dec. 31, 2017 using the following details:

Particulars	Amount (₹)
Basic air fare collected for domestic booking of tickets	50,00,000
Basic air fare collected for international booking of tickets	80,00,000
Commission received from the airlines on the sale of domestic and international tickets	4,50,000
Year ending bonus received from airlines	50,000

In the above case, would the GST liability of Mr. Zed be reduced if he opts for the special provision for payment of GST as per Rule 32(3) of the CGST Rules, 2017. The applicable rate of GST 18%.

Answer:

Statement Showing GST liability of Mr. Zed for the quarter ending 31st Dec 2017:

	₹
Commission received from the airlines on the sale of domestic and international tickets	4,50,000
Year ending bonus or incentive	50,000
Taxable supply of services	5,00,000
GST @18% on ₹ 5 lakh	90,000

Statement Showing GST liability of Mr. Zed for the quarter ending 31st Dec 2017

	₹
Basic air fare (domestic booking) [50,00,000 x 5%]	2,50,000
Basic air fare (international booking) [80,00,000 x 10%]	8,00,000
Total taxable supply of service	10,50,000
GST 18% on ₹ 10,50,000	1,89,000

Note: The GST liability of Mr. Zed would not be reduced in the aforesaid option.



Therefore, special provision under Rule 32(3) of CGST Rules, 2017 is not economical.

(b) non airconditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or

A contract carriage (other than radio taxi) for the transportation of passengers (non-AC) (excluding tourism) are exempted from GST.

"contract carriage" has the same meaning as assigned to it in clause (7) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

Note: Transport of passengers by any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, ITC fully allowed, if GST paid @ 12%. Otherwise, pay GST @ 5% without ITC, except the input tax credit of input service in the same line of business.

Tour and Travel services:

"Tour operator" means any person engaged in the business of planning, scheduling, organizing, arranging tours (which may include arrangements for accommodation, sight-seeing or other similar services) by any mode of transport and includes any person engaged in the business of operating tours".

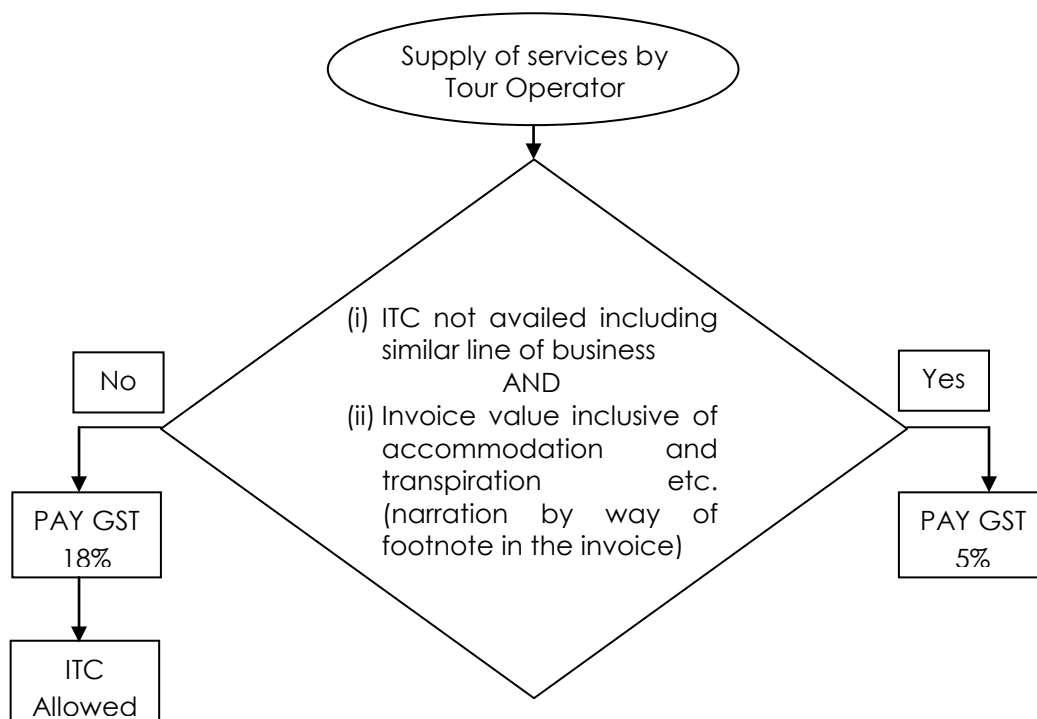
GST @ 5% has been applied on services of tour operator without benefit of Input Tax Credit (ITC) on goods and services. 5% GST will be payable on the gross amount charged by the tour operator from the customer. This GST is uniform for all services – package tours, hotel accommodation only etc.

The concessional GST rate of 5% is subject to meeting the following conditions:-

- (i) Input Tax Credit on goods and services used in supplying output services of tour operator has not been taken.
- (ii) The invoice / bill issued for supply of output service indicates that it is inclusive of charges of accommodation and transportation required for such a tour. This narration can be given by way of footnote in the invoice.

In case any of the above conditions are not met, the benefit of concessional rate of 5% would not apply and in that event the Department may demand full 18% GST from the tour operator.

Rate of GST and ITC:



**Important Note:**

- (i) House Boats (moving): Services provided by house boats (moving) in Kerala and cruise ships, are also covered as Tour Operators Services. In both these cases, accommodation, food, transportation, sightseeing and other value added services are provided as combo package.
- (2) Tours conducted through luxury trains like Maharaja Express, Deccan Odyssey, Heritage of India etc. are also covered as Tour Operators Services.
- (3) The services provided by static house boats (in Kashmir) by way of providing accommodation and food to the tourists are not covered within the ambit of tour operators as such. These services are akin to services of hotels, inns, guest houses, campsites and other commercial places for residential or lodging purposes. The rate of GST in these cases will be linked with the declared tariff per day.

Example : 147

Riya Tours Co. has arranged four package tours during Oct 017. The particulars of the services and charges are as under:

- (1) Tour 1: Charges received ₹ 35 lakhs. The package includes transportation, accommodation, food, and tourist guide, entry fees for monuments.**
- (2) Tour 2: Charges received ₹ 65 lakhs. The package includes transportation and accommodation for stay.**
- (3) Tour 3: Charges received ₹ 40 lakhs. The charges are solely for arranging accommodation for stay. However, the bills issued to the clients do not mention it clearly that the charges are solely for arranging the accommodation for stay.**
- (4) Tour 4: Charges received ₹ 50 lakhs (inclusive of charges of stay). The bill issued to the client's mentions it clearly that the charges are solely for arranging the accommodation for stay.**

Compute the value of taxable supply of services and GST.

Note: Applicable rates of GST 5% and 18%. All transactions taken place at inter state level.

Asnwer:

Statement Showing GST of Riya Tours Co. for Oct 2017

Particulars	Value ₹ in lakhs	Value ₹ in lakhs
Tour 1: Packaged Tour	35	
Tour 2: Transportation and Accommodation	65	
Tour 3: Accommodation for stay		40
Tour 4: Accommodation for stay	50	
Taxable supply of services	150	40
GSR Rate	5%	18%
IGST	7.50	7.20
Less: ITC	Not allowed	Allowed
Net GST liability	7.50	7.20

(c) Stage carriage other than airconditioned stage carriage.

"Stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;

**Example : 148**

M/s. R Ltd. is engaged in providing service of transportation of passengers, he furnished the following information in the month of Oct 2017. Find the GST liability.

- (1) Service of transportation of passengers by National Waterways: ₹ 50 lakhs;
- (2) Service of transportation of passengers by Stage carriage (non-A/c): ₹ 5 lakhs;
- (3) Service of transportation of passengers by contract carriage for tourism: ₹ 120 lakhs (bills inclusive of accommodation and transportation etc. indicated as narration at the bottom of invoice);
- (4) Transportation of passenger from Mumbai to Chennai port in a vessel and such service is not for tourism purpose: ₹ 12 lakhs;

Note:

R Ltd. is willing to avail exemption benefits if any. Taxable supplies of Mr. R in the previous year were ₹ 22 lakhs.

Answer:

Statement showing GST liability M/s. R. Ltd.

Nature of service (Transport of passengers)	₹ in Lakhs
By National Waterways	Exempted supply
By Stage carriage [non-A/c]	Exempted supply
By Contract carriage for tourism (Bill inclusive of accommodation and transportation etc. indicated as narration at the bottom of invoice)	120
In a vessel from Mumbai in Chennai and such service is not for tourism	Exempted supply
Taxable supply of services	120
GST liability @ 5% on 120 lakhs (Note: Input tax credit not allowed)	6

Entry No. 17 Service of transportation of passengers with or without accompanied belongings by—

- (a) railways in a class other than—
 - (i) first class; or
 - (ii) an air-conditioned coach;
- (b) metro, monorail or tramway;
- (c) inland waterways;
- (d) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and
- (e) metered cabs or auto rickshaws (including e-rickshaws).

Note:

- (1) The rate of GST on Transport of passengers by rail (other than sleeper class) fixed by GST council at the introduction of GST in July, 2017 is 5% with ITC of input services.
- (2) E-rickshaws exempt from GST.

Services Relating to Transportation of Passengers covered under NIL Rate of GST

- (1) Ordinary Coach
- (2) Metro
- (3) Monorail
- (4) Tramway
- (5) Metered Cabs
- (6) E-rickshaws

Example : 149

Indian railways has provided following services –

- (1) Transport of passengers by general class : ₹ 15,00,000;
- (2) Transport of passengers by sleeper class : ₹ 10,00,000;
- (3) Transport of passengers by 1st Class air conditioned coach: ₹ 5,00,00,000;
- (4) Transport of passengers by 2 tier air conditioned coach: ₹ 20,00,00,000;
- (5) Transport of passengers by 3-tier air conditioned coach: ₹ 30,00,00,000;

Compute value of taxable supplies and GST liability. Applicable GST rate is 5%.

Answer:

Statement showing GST liability

Nature of service (Transport of passengers)	Value in ₹
General class	Exempted supply
Sleeper class	Exempted supply
1st Class air conditioned coach	5,00,00,000
2 tier air conditioned coach	20,00,00,000
3-tier air conditioned coach	30,00,00,000
Taxable supply of service	55,00,00,000
GST @5% on ₹ 55 crore	2,75,00,000

Entry No. 18 Services by way of transportation of goods

- (a) by road except the services of—
 - (i) a goods transportation agency;
 - (ii) a courier agency;
 - (b) by inland waterways.
- are exempted from GST.

Goods transported by Road not covered under GST.

GOODS TRANSPORTED FROM WEST COAST CANAL FROM KOTTAURAM TO KOLLAM IS CALLED AS JAL AND WATERWAYS are not taxable Supply. NO GST (Liquor)



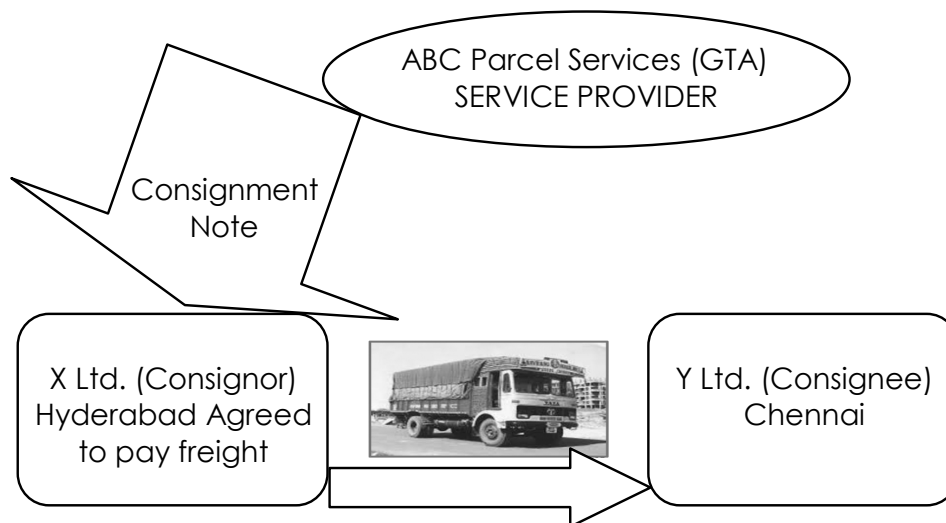
Services by way of Transport of Goods (i.e., Liquor) in a vessel from Chennai Port to Port Blair Port attract GST

**Goods Transport Agency – GST will be levied:**

Under GST laws, the definition of Goods Transport Agency is provided in clause (ze) of notification no.12/2017-Central Tax (Rate) dated 28.06.2017. (ze) "goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called;

Example : 150

ABC Parcel Services is a goods transport agency issued consignment note to X Ltd. for transporting of goods from Hyderabad to Y Ltd of Chennai. Hence, ABC Parcel Services is a provider of GTA service.



Individual truck/tempo operators who do not issue any consignment note are not covered within the meaning of the term GTA. As a result, the services provided by such individual transporters who do not issue a consignment note will be covered by the entry at Sl. No. 18 of notification no. 12/2017 - Central Tax (Rate), which is exempt from GST.

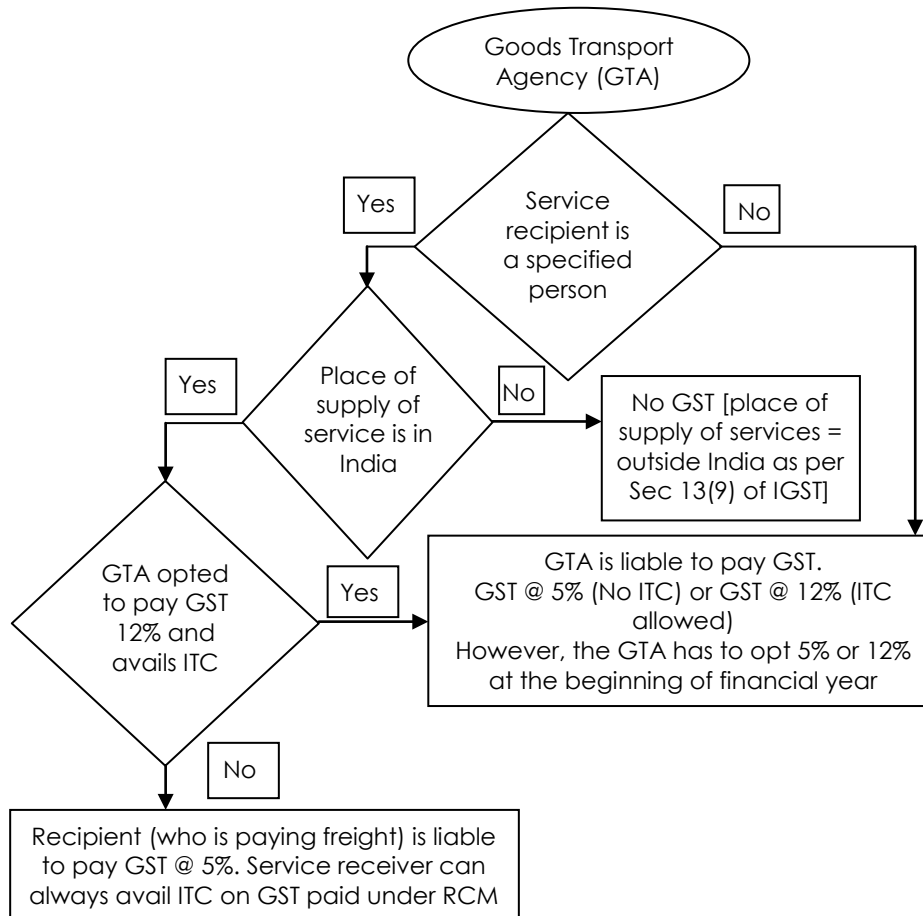
Thus, it is to be seen that mere transportation of goods by road, unless it is a service rendered by a goods transportation agency, is exempt from GST.

GTA - Reverse charge:

S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
1	GTA Services	Goods Transport Agency (GTA)	Any factory, society, co-operative society, registered person, body corporate, partnership firm, casual taxable person; located in the taxable territory.	Recipient

Thus, it is to be seen that mere transportation of goods by road, unless it is a service rendered by a goods transportation agency, is exempt from GST.

Person liable to pay GST:



Entry No. 21 GTA services specifically exempt:

In terms of notification no.12/2017-Central Tax (Rate) dated 28.06.2017 (Sr. No. 21), the following services provided by a GTA (Heading 9965 or 9967) is exempt from payment of tax:

Services provided by a goods transport agency, by way of transport in a goods carriage of:

- agricultural produce;
- goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed ₹ 1,500;
- goods, where consideration charged for transportation of all such goods for a single consignee does not exceed ₹ 750;
- milk, salt and food grain including flour, pulses and rice;
- organic manure;
- newspaper or magazines registered with the Registrar of Newspapers;
- relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or
- defence or military equipments.

Similarly, the following services received by the GTA (Heading 9966 or 9973) is also exempt in terms of notification no.12/2017- Central Tax (Rate) dated 28.06.2017 (sr.no.22)



Entry No. 21A: "Services provided by a goods transport agency to an unregistered person, including an unregistered casual taxable person, other than the specified recipients" also exempt from GST [vide Notification No. 33/2017 Central Tax (Rate) Dt 13.10.2017].

Entry No. 22: Services by way of giving on hire:

to a goods transport agency, a means of transportation of goods.

Thus, if the GTA hires a means of transportation of goods, no GST is payable on such transactions.

In case of GTA provided services to SPECIFIED PERSONS:

The following businesses (recipient of services) is required to pay GST under reverse charge:-

1. Factory registered under the Factories Act, 1948;
2. A society registered under the Societies Registration Act, 1860 or under any other law
3. A co-operative society established under any law;
4. A GST registered person
5. A body corporate established by or under any law; or
6. A partnership firm whether registered or not (including AOP)
7. Casual taxable person

The liability to pay GST devolves on the recipients for supply of services by a goods transport agency (GTA) who has not paid central tax at the rate of 6%. Thus in cases where services of GTA are availed by the above categories of persons in the taxable territory the GTA supplier has the option to pay tax (and avail ITC) @12% (6% CGST + 6% SGST); and if the GTA does not avail this option, the liability to pay GST will fall on the recipients.

In all other cases where the recipients do not fall in the categories mentioned above, the liability will be on the supplier of GTA services.

Important note;

- (1) It has been clarified that ancillary services such as loading/ unloading, packing/unpacking, transshipment, temporary storage etc., would form part of the goods transport agency's (GTA) service if such services are provided by a GTA in the course of transportation of goods and the charges for such services are included in the invoice issued by the GTA, and not by any other person.

Place of supply of services in case of transportation of goods:

Place of supply of services by way of transportation of goods including by mail or courier [Sec. 12(8) of IGST Act, 2017]:

S. No.	Nature of service	Place of supply of service
1	Services by way of Transportation of goods including by mail or courier	Provided to a registered person: • Location of recipient of Service. Provided to a un-registered person: • Location at which such goods are handed over for their transportation.



Place of provision of a service of transportation of goods, other than by way of mail or courier [Sec. 13(9) of IGST]

Place of supply of Service = Destination of such Goods

Example : 151

Discuss whether GST is leviable in respect of transportation services provided by Jayawati Ram Goods Transport Agency in each of the following independent cases:

Customer	Nature of service provided	Amount charged (₹)
A	Transportation of milk	22,00,000
B	Transportation of books on a consignment transported in a single goods carriage	1,30,000
C	Transportation of chairs for a single consignee in the goods carriage	600

Note: Jayawati Goods Transport Agency registered person under GST Law. Opted to pay CGST 6% and SGST @6%.

Answer:

Statement showing GST liability of Jayawati Goods Transport Agency:

Customer	Nature of Service	Taxable supply (₹)	Remarks
A	Transportation of milk	Nil	Exempted supply.
B	Transportation of books on a consignment transported in a single goods carriage.	1,30,000	Taxable supply
C	Transportation of chairs for a single consignee in the goods carriage.	Nil	Freight ₹ 600 is exempted from GST
	Total taxable supply	1,30,000	
	CGST 6% on ₹ 1,30,000	7,800	
	SGST 6% on ₹ 1,30,000	7,800	

Example : 152

ABC & Co., a goods transportation agency located in Delhi, transports a consignment of new colour TVs from the factory of XYZ Ltd. in Cochin, to the premises of a dealer in Jammu (taxable territory). As per mutually agreed terms between ABC & Co., and XYZ Ltd., the dealer in Jammu is the person liable to pay freight. The amount of freight exclusive of taxes is ₹ 4,50,000. State the person liable to pay GST and amount of tax payable. ABC & Co. not availing input tax credit. Applicable tax rates for GTA is 5% and 12%.

Note:

Consignment note issued by ABC & Co. for transporting goods.

Answer:

Person liable to pay GST is dealer in Jammu (i.e. taxable territory).

GST liability is as follows:

Total freight = ₹ 4,50,000

IGST 5% on ₹ 4,50,000 = ₹ 22,500

**Example : 153**

M/s Navatha a transporter registered under GST, located in Vijayawada. M/s C Ltd. of Chennai registered under GST, received services from M/s Navatha for transport of goods from its warehouse in Vijayawada to Guntur. M/s Navatha delivered goods at Guntur. (Both Vijayawada and Guntur are in Andhra Pradesh)

Find the place of supply of service and GST?

Whether your answer is different, if M/s C Ltd. of Chennai is not a registered person under GST?

Answer:

If the recipient is registered person:

POS = Chennai (i.e. location of recipient).

M/s C Ltd., is liable to pay IGST.

If the recipient is not a registered person:

POS = Vijayawada (i.e. Location at which such goods are handed over for their transportation).

M/s C Ltd., of Vijayawada is liable to pay CGST & SGST.

Example : 154

A & Co., a goods transportation agency located in Chennai, transports a consignment of new Laptops from the factory of X Ltd. in Cochin, to the premises of X Ltd. Branch office located in Bengaluru. As per mutually agreed terms between A & Co., and X Ltd., the Branch office in Bengaluru is the person liable to pay freight. The amount of freight exclusive of taxes is ₹ 5,40,000. State the person liable to pay GST and amount of tax payable.

A & Co. availing input tax credit. Applicable tax rates for GTA is 5% and 12%.

Note:

Consignment note issued by A & Co. for transporting goods.

Answer:

Person liable to pay GST is A & Co., (namely GTA).

IGST liability 12% on ₹ 5,40,000 = ₹ 64,800

Entry No. 19: Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India

S.No.	Transportation of goods by Air	Taxable supply	GST Rate	Remarks
1	Within India	Yes	18%	Exemption not granted
2	From India to outside India	No	Nil	Destination of goods outside India
3	From outside India into India	No	Nil	Covered under Entry no. 19 of exemption list

Entry No. 20: Transport of goods by rail and vessel

Services by way of transportation by rail or a vessel from one place in India to another of the following goods –

- (a) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
- (b) defence or military equipments;
- (c) newspaper or magazines registered with the Registrar of Newspapers;
- (d) railway equipments or materials;



- (e) agricultural produce;
- (f) milk, salt and food grain including flours, pulses and rice; and
- (g) organic manure.

are exempted from GST

GST Rate and ITC for transportation of Goods by Rail or Vessel:

- The rate is 5% (CGST 2.5% + SGST 2.5%) or IGST @ 5%.
- ITC of Input services available, but not for input Goods.

Example : 155

Compute taxable value for transport of goods by rail within India (all sums exclusive of all taxes) –

- (1) Transport of postal mails and postal bags : ₹ 55 lakhs;
- (2) Transportation of household effects: ₹ 50 lakhs
- (3) Transport of petroleum products: ₹ 25 lakhs;
- (4) Transport of relief materials to flood affected areas: ₹ 25 lakhs;
- (5) Transport of newspapers and magazines registered with registrar of newspapers: ₹ 15 lakhs
- (6) Transport of milk: ₹ 15 lakhs;
- (7) Transport of alcoholic beverages: ₹ 7 lakhs;
- (8) Transport of defence and military equipments: ₹ 40 lakhs;
- (9) Transport of chemical fertilizers: ₹ 90 lakhs;
- (10) Transport of other taxable goods: ₹ 200 lakhs (including ₹ 20 lakhs demurrages).

Answer:

Statement showing GST liability:

Nature of service	₹ in lakhs
Transport of postal mails and postal bags	55
Transportation of household effects	50
Transport of petroleum products	25
Transport of relief materials to flood affected areas	Exempted supply
Transport of newspapers and magazines registered with registrar of newspapers	Exempted supply
Transport of milk	Exempted supply
Transport of alcoholic beverages	7
Transport of defence and military equipments	Exempted supply
Transport of chemical fertilizers:	90
Transport of other taxable goods (including demurrages of ₹ 20 lakhs)	200
Taxable value of supply	427

Example : 156

Validate the following:

Air Speed Airlines transported Fruits (i.e. agricultural produce) from Chennai airport to Meghalaya. Is it exempted supply of service under GST?

Answer:

The given statement is invalid.

Transportation of goods within India by Air, exemption not granted. Hence, GST will be levied.


Entry no. 22: Services by way of giving on hire:

- (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or
- (b) to a goods transport agency, a means of transportation of goods.

Entry No. 54: Agriculture

- (d) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use; specially exempted.

Entry no. 23: Service by way of access to a road or a bridge on payment of toll charges exempted from GST:

The activity of toll collection outsourced to any third party agency who undertakes the work for consideration, is not exempted from payment of GST.

Entry 23A: Service by way of access to a road or a bridge on payment of annuity is also exempt from GST (Notification No. 32/2017- Central Tax (Rate) Dt 13.10.2017)

Example: 157

Intertoll India Consultants was undertaken a contract to collect toll on commission basis from Noida Toll Bridge Company (i.e. agency authorised to levy toll). Noida Toll Bridge Company's collection in the month of Oct 2017 is ₹ 2 crore. Commission paid to Intertoll India Consultants @ 5% on the gross receipts.

Find the exempted value of supply and taxable supply.

Exempted value of supply = ₹ 2 crore

Taxable value of supply = ₹ 10 lakh

(₹ 2 crore x 5%)

Note:

The activity of toll collection outsourced to any third party agency who undertakes the work for consideration is a taxable supply and GST will be levied.

Entry no. 24: Service by way of loading, unloading, packing, storage or warehousing of rice exempted from GST:
Example : 158

Find the taxability for the following independent cases:

- (a) *Packing of pulses in retail packs for ₹ 42,000.*
- (b) *Packing of tomato ketchup for ₹ 54,000*
- (c) *Commission on sale of rice for ₹ 10,125.*
- (d) *Storage of rice flour in the warehouse for ₹12,000.*

Answer :

- (a) *taxable supply of services*
- (b) *taxable supply of services*
- (c) *taxable supply of services*
- (d) *taxable supply of services*

**Entry No. 25: Transmission or distribution of electricity by an electricity transmission or distribution utility exempt from GST:**

Services provided by

- The Central Electricity Authority
- A State Electricity Board
- A State Transmission Utility
- A Transmission licensee or distribution licensee under the Electricity Act,

are exempted from GST.

Note:

Charges collected by a developer or a housing society for distribution of electricity within a residential complex installation of gensets attract the GST.

Example : 159

The Resident Welfare Association (RWA) of Star Heaven Building Housing Society in Delhi provides the following information pertaining to amounts received by it in the month of Oct, 2017.

Particular	(₹)
Electricity charges levied by State Electricity Board on the members of RWA (The same was collected from members and remitted to the Board on behalf of members).	3,50,000
Electricity charges levied by State Electricity Board on the RWA in respect of electricity consumed for common use of lifts and lights in common area. (Bill was raised in the name of RWA. RWA collected the said charges by apportioning them equally among 100 families and then, remitted the same to the Board.)	4,00,000

Find the GST liability if any. The applicable rate of GST 18%.

Note:

The Gross receipts of RWA was ₹ 24,50,000.

Answer:

Statement showing GST liability for the month of Oct 2017

Particular	(₹)
Electricity charges levied by State Electricity Board on the members of RWA (i.e. Pure agent reimbursement expenses).	Nil
RWA collected Electricity charges by apportioning them equally among 100 families and then, remitted the same to the Board.	4,00,000
Value of taxable supply of service	4,00,000
CGST 9%	36,000
SGST 9%	36,000

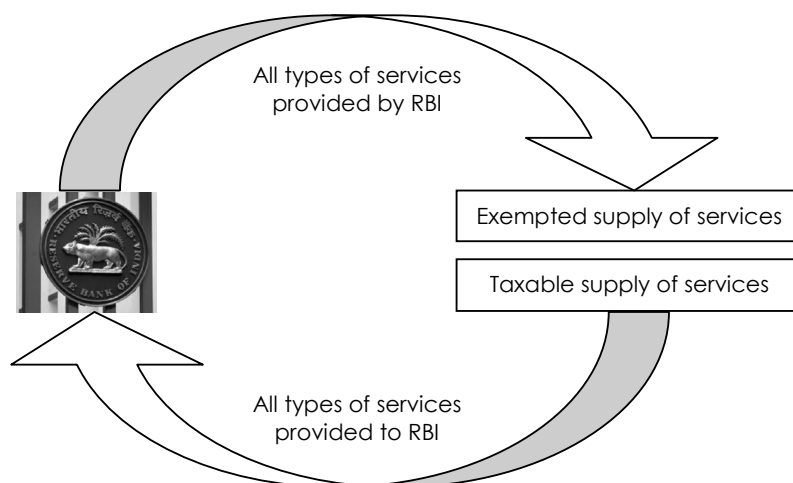
Note: it is assumed that electricity charges are not covered under monthly maintenance. However, monthly maintenance exempted from GST provided per month not exceeds ₹ 5,000 under entry no. 77.

Entry no. 26: Services by the Reserve Bank of India exempt from GST:

As per IGST Act, 2017: Services received by the Reserve Bank of India from outside India in relation to management of foreign exchange reserves also exempt from GST:

For examples:

- External asset management,
- custodial services,
- securities lending services etc.


Entry No. 27 Banking and NBFC's Services are exempted from GST:

Services by way of—

- extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services);
- sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers.

Example : 160

Robinson Bank Ltd. furnishes the following information relating to services provided and the gross amount received during the month of December 2017. Compute the value of taxable supply of services and GST payable:

Particulars	₹ in Lakhs
(i) Amount of commission received for debt collection service	10
(ii) Discount earned on bills discounted	4.5
(iii) Dealing in sale and purchase of forward contract	5.7
(iv) Charges received on credit card and debit card facilities extended	3.8
(v) Penal interest recovered from the customers for the delay in repayment of loan	2.6
(vi) Commission received for service rendered to Government for tax collection	6.0
(vii) Interest earned on reverse repo transaction	25.0

(Show the workings with explanation wherever required). (Rate of GST is 18%)

Answer:

Particulars	₹ in Lakhs
(i) Amount of commission received for debt collection service	10
(ii) Discount earned on bills discounted	nil
(iii) Dealing in sale and purchase of forward contract	nil
(iv) Charges received on credit card and debit card facilities extended	3.8
(v) Penal interest recovered from the customers for the delay in repayment of loan	2.60
(vi) Commission received for service rendered to Government for tax collection	6.0
(vii) Interest earned on reverse repo transaction	nil
Taxable supply of services	22.40
Total tax GST 18%	4.032

**Example : 161**

MP Bank Ltd., furnishes the following information relating to services provided and the gross amount received:

Particulars	₹ in Lakhs
Merchant Banking Services	8
Asset Management (including portfolio management)	3
Service charges for services to the Government of India	1.5
Interest on overdraft and cash credits	2
Banker to the issue	5
Locker rent	2

Repayment of financial lease made by the customer to the bank ₹80 lakhs which includes a principal amount of ₹50 lakhs.

Compute the value of taxable supply of services under “Banking and other financial services” as per the Central Goods and Services Tax Act, 2017 and also find the CGST and SGST where rate of GST is 9% each.

Note:

Input Tax Credit availed by the bank on the asset which is given on financial lease

Answer:

Statement showing GST liability of MP Bank Ltd

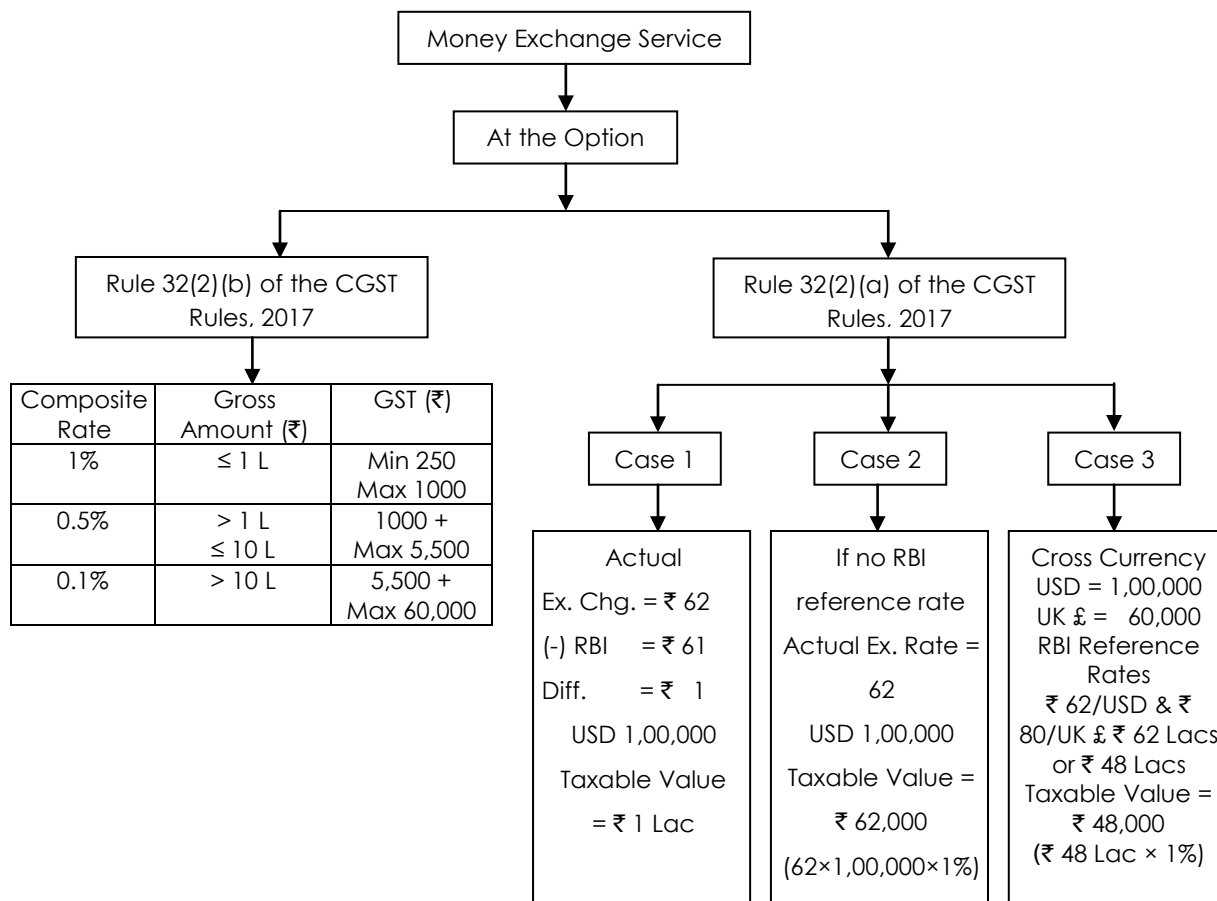
Particulars	₹ in Lakhs
Merchant banking services	8.00
Asset Management	3.00
Service charges for services to the Government of India	1.50
Interest on overdraft and cash credits	Nil
Banker to the issue	5.00
Locker rent	2.00
Financial lease (supply of service)	80.00
Taxable supply of services	99.50
CGST 9%	8.955
SGST 9%	8.955

Place of Supply of Banking and NBFC service including Stock broking services [Sec 12(12) of IGST]:

S. No.	Nature of service	Place of supply of service
1	Banking and NBFC service including Stock broking services	- Location of recipient of Service on the records of the supplier of service. Otherwise: - Location of supplier of service.

Services provided by a banking company, or financial company, or a NBFC to account holders (specified services) [Sec. 13(8) of the IGST Act, 2017]

Money exchange services – GST will be levied in case of supply of services to general public at large.



Example : 162

On 25th July 2017, Mr. X located in Chennai converted USD 100 into INR, actual exchange rate INR 62 per USD through Akbar Travel a money exchanger. RBI's reference rate for buying and selling was ₹ 61/61.5 respectively on such date. Akbar Travel registered under GST and located at Chennai.

(a) Find the Value of supply as per Rule 32(2)(a) of the CGST Rules, 2017 and GST where address of the recipient is available with Supplier?

(b) How much GST is liable to pay, in case where the RBI reference rate for a currency is not available.

Note:

Applicable rate of GST 18%.

Answer:

(a) The value of supply = $(62-61) \times 100 = \text{INR } 100$

Thus the value of taxable supply of Akbar Travel will be INR 100 and GST will be levied on this amount.

GST = ₹ 18/-

9% CGST = ₹ 9

9% SGST = ₹ 9

(b) The value of supply = ₹ 62 (i.e. 1% of INR 6,200)

GST = ₹ 11.16

9% CGST = ₹ 5.58

9% SGST = ₹ 5.58

**Example : 163**

Prince Financial Corporation located in Mumbai being a money exchanger provided the following service in the month of July 2017 to M/s Agarwal Bengaluru.

(a) US\$ 1,000 is changed into UK £ 571.4286 (i.e. 1UK POUND = US\$ 1.75).

(b) RBI reference rate for that currency at that time for 1US\$ is ₹ 61 and for 1UK POUND = ₹ 85

Find the GST liability as per Rule 32(2)(a) of the CGST Rules, 2017.

Applicable rate of GST 18%.

Answer:

Taxable supply = ₹ 486/- (₹ 48,571 x 1%)

IGST = ₹ 87.48 (i.e. @18% on ₹ 486)

USD 1000 x ₹ 61 = ₹ 61,000

UKP 571.4286 x ₹ 85 = ₹ 48,571

Whichever is less is ₹ 48,571

Example : 164

M/s. M Ltd., Mumbai is an authorised money changer. It has entered the following transactions (intra-state supplies) of money changing in the month of July 2017:

(i) 450 transactions of conversion of Dollar into Indian Rupees of ₹ 22,000 per transaction;

(ii) 125 transactions of conversion of Euro into Indian rupees of ₹ 500 lakhs per transaction;

Input Tax Credit on input services ₹ 3,00,000 (CGST ₹ 1,50,000 & SGST ₹ 1,50,000) and input goods ₹ 4,00,000 (CGST ₹ 2,00,000 & SGST ₹ 2,00,000) is available. ITC on capital goods is ₹ 2,50,000 (capital goods purchased in the current year as intra-state purchases). Find GST payable as per Rule 32(2)(b) of the CGST Rules, 2017.

Answer:

(i) Conversion of Dollar into Indian Rupees (₹ 22,000 x 1% = ₹ 220, whereas minimum is ₹ 250 per transaction).

450 transactions x ₹ 250 = ₹ 1,12,500.

(ii) Conversion of Euro into Indian rupees

(Upto ₹10 Lakhs = ₹ 5,500) + (₹ 490 lakhs x 0.1%) = ₹ 54,500

(Maximum is ₹ 60,000).

125 transactions x ₹ 54,500 = ₹ 68,12,500

Particulars	CGST	SGST	Total	Remarks
Output Tax	6,23,250	6,23,250	12,46,500	(1,12,500 + 68,12,500) x 18%
Less: ITC on				
Input service	(1,50,000)	(1,50,000)	(3,00,000)	
Inputs	(2,00,000)	(2,00,000)	(4,00,000)	
Capital Goods	(1,25,000)	(1,25,000)	(2,50,000)	
Net output tax c/f	1,48,250	1,48,250	2,96,500	

**Entry No. 28**

Services of life insurance business provided by way of annuity under the National Pension System regulated by the Pension Fund Regulatory and Development Authority of India under the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013).

Example : 165

Kotak Mahindra Pension Fund provided the following services in a financial institution:

(a) Annual Premium of ₹ 6,000 collected from each individual in relation to National Pension Scheme. No. of subscribers 200.

(b) Monthly premium collected ₹ 8,750 towards general insurance to cover risk. No. of subscribers 500.

Applicable rate of GST 18%.

Find the GST liability.

Answer:

(a) annual premium of ₹ 6,000 collected in relation to National Pension Scheme is exempted from GST.

(b) Monthly premium of ₹ 8,750 for 500 subscribers will attract GST @18%. Therefore, GST liability is ₹ 7,87,500 per month.

Entry No. 29

Services of life insurance business provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government exempt from GST.

Group Insurance means it covers a defined group of people, for example members of a professional association, or a society or employees of an organization. Group Insurance may offer life cover, health cover, and/or other types of personal insurance.

Group insurance has several advantages chief among which is a life cover made available to members irrespective of age, gender, socio economic background or profession, so long as they belong to the group that is applying for insurance.

Premium for these types of insurance is exempt from GST.

Entry No. 30:

Services by the Employees' State Insurance Corporation to persons governed under the Employees' State Insurance Act, 1948 (34 of 1948) exempt from GST.

Entry No. 31

Services provided by the Employees Provident Fund Organisation to the persons governed under the Employees Provident Funds and the Miscellaneous Provisions Act, 1952 (19 of 1952) exempt from GST.

Entry No. 32

Services provided by the Insurance Regulatory and Development Authority of India to insurers under the Insurance Regulatory and Development Authority of India Act, 1999 (41 of 1999) are exempted from GST.

Entry No. 33

Services provided by the Securities and Exchange Board of India set up under the Securities and Exchange Board of India Act, 1992 (15 of 1992) by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market are exempted from GST.

**Entry No.34****Debit card, credit card other payment card services where amount upto ₹ 2,000 exempted from GST:**

Services by an acquiring bank, to any person in relation to settlement of an amount upto ₹ 2,000 in a single transaction transacted through credit card, debit card, charge card or other payment card service.

Explanation.— For the purposes of this entry, “acquiring bank” means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card.

S. No.	Mode of payment	Transaction Amount in ₹	Service Charges	GST 18%	Remarks
1	Debit card	1,000	5	Exempted	As per Entry No. 34 of NT No. 12/2017 Dt 28.06.2017 Central Tax (Rate)
2	Credit card	2,000	20	Exempted	-do-
3	Debit card/ Credit card	2,124	21.24	3.82	Value of goods ₹ 1,800 plus GST ₹ 324 together exceeds ₹ 2,000, hence GST will be levied.
4	Internet Banking	1,000	5	0.90	Service charges attract GST. Since, payment mode of payment other than card.
5	Bank charges		200	36	Fixed monthly /quarterly charges fully taxable.

Entry No. 35**Services of general insurance business are exempted from GST:**

Services of general insurance business provided under following schemes –

- (a) Hut Insurance Scheme;
- (b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme);
- (c) Scheme for Insurance of Tribals;
- (d) Janata Personal Accident Policy and Gramin Accident Policy;
- (e) Group Personal Accident Policy for Self-Employed Women;
- (f) Agricultural Pumpset and Failed Well Insurance;
- (g) Premia collected on export credit insurance;
- (h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture;
- (i) Jan Arogya Bima Policy;
- (j) National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana);
- (k) Pilot Scheme on Seed Crop Insurance;
- (l) Central Sector Scheme on Cattle Insurance;
- (m) Universal Health Insurance Scheme;
- (n) Rashtriya Swasthya Bima Yojana;
- (o) Coconut Palm Insurance Scheme;
- (p) Pradhan Mantri Suraksha BimaYojna;
- (a) Niramaya Health Insurance Scheme implemented by the Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999).



Entry No. 36

Services of life insurance business provided under following schemes are exempted from GST:

- (a) Janashree Bima Yojana
- (b) Aam Aadmi Bima Yojana;
- (c) Life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of fifty thousand rupees;
- (d) Varishtha Pension Bima Yojana;
- (e) Pradhan Mantri Jeevan Jyoti Bima Yojana;
- (f) Pradhan Mantri Jan Dhan Yojana;
- (g) Pradhan Mantri Vaya Vandana Yojana

Entry No. 37

Services by way of collection of contribution under the Atal Pension Yojana is also exempt from GST

Entry No. 38

Services by way of collection of contribution under any pension scheme of the State Governments.

Entry No. 39

Services by the following persons in respective capacities are exempted from GST –

- (a) business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch;
- (b) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or
- (c) business facilitator or a business correspondent to an insurance company in a rural area.

Business facilitators or correspondent services are as follows:

- (a) Enrollment of customers, including collection of biometric and other details, provide card (ID Card, Debit Card, Credit Card), PIN.
- (b) Provide transaction facility:
 - (i) Deposit of money in an account with any bank
 - (ii) Withdrawal of money from an account with any bank
 - (iii) Remittances from an account with a bank to an account with the same or any other bank.
 - (iv) Balance Enquiry and issue Receipts/ Statement of Accounts.
- (c) Disbursal of credit facilities to borrowers involving small amounts strictly as per the instructions of the Bank.
- (d) Other activities:
 - i. Identification of borrowers and classification of activities as per their requirements.
 - ii. Collection and prima facie scrutiny of loan applications including verification of primary data.
 - iii. Creating awareness about savings and other products offered by the Bank and education and advice on managing money & debt counseling.



- iv. Preliminary scrutiny of data and submission of applications to the Bank for its review.
- v. Promotion, nurturing, monitoring and handholding of Self Help Groups and/or Joint Liability Groups and/or Credit Groups and others.
- vi. Facilitating the repayment of dues owed to the bank by its customers.
- vii. Marketing of third party financial products.

Recovery Agent Services to banking or NFBs - GST will be levied under RCM:

S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
8	Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company.	A recovery agent	A banking company or a financial institution or a non-banking financial company, located in the taxable territory	Recipient

Example : 166

Mr. X being a registered person under GST Law provided the following services in the month of Oct 2017:

- (a) Services provided to Gramena Bank located in rural area in the nature of Enrollment of customers and charge ₹ 20,000.
- (b) Disbursal of credit facilities to borrowers involving small amounts strictly as per the instructions of the Bank locate in a village and collected ₹ 12,250.
- (c) Facilitating the repayment of dues owed to the AB bank (Mylapore Branch, Chennai) by its customers and collected fee ₹ 55,000 from the bank.
- (d) Recovery agent services to the LB Bank of India, Mount Road Branch, Chennai, for ₹ 2,20,500.

Find the GST liability to be paid by Mr. X. Applicable rate of GST @18%.

Particulars	Value in ₹
Enrollment of customers in rural area bank	Exempted supply
Disbursal of credit facilities as per bank located in rural area	Exempted supply
Facilitating the repayment of loan to bank in urban area	55,000
Recovery agent services to the LB Bank of India	Reverse charge applicable
Total taxable supply	55,000
CGST 9%	4,950
SGST 9%	4,950

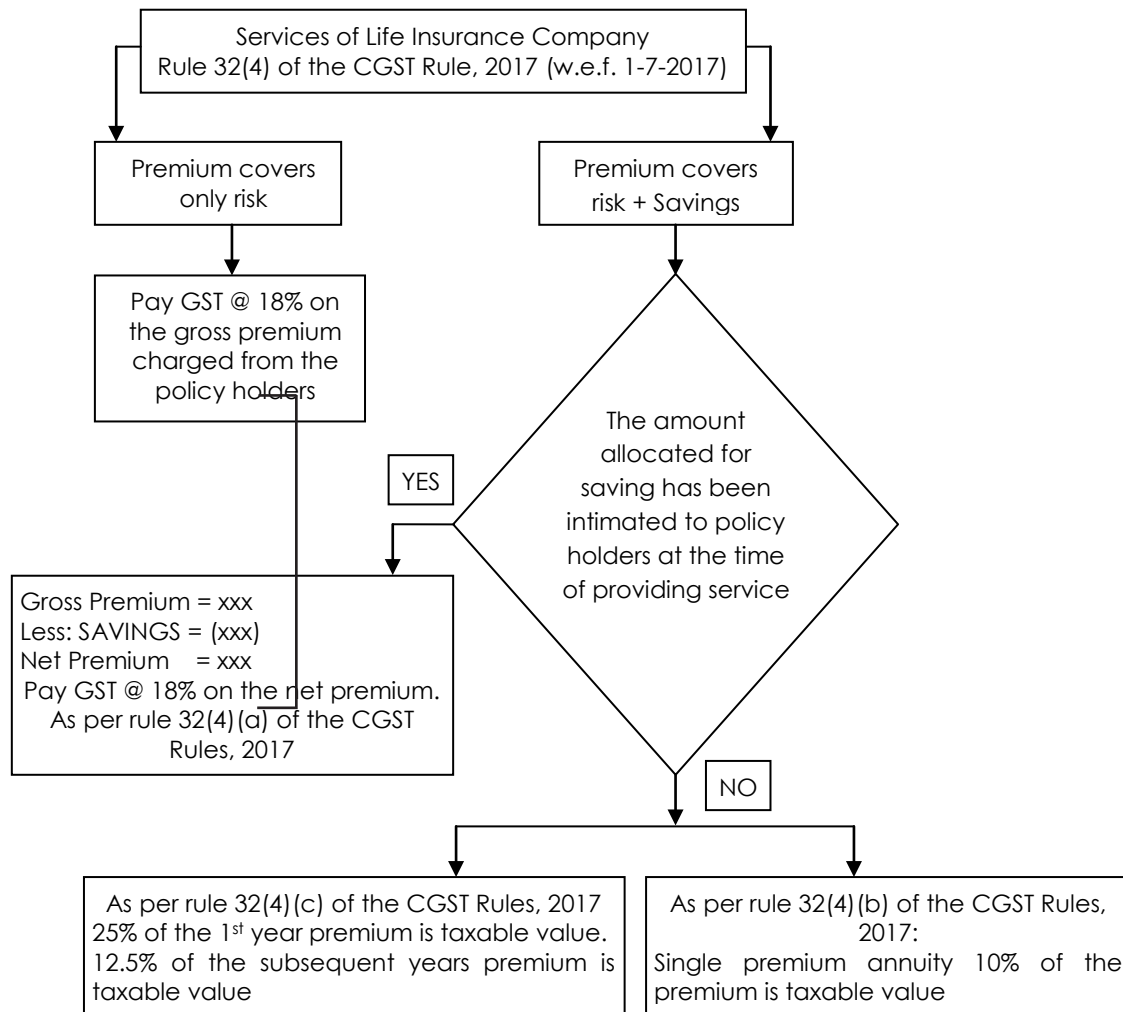
Entry No. 40

Services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory is exempted from GST.

For example: Granting monthly pensions to the aged over 65 years, those without subsistence income or family support, paid by the Central Government of India under the National Social Assistance Programme (NSAP). Pension amount to the Insurance companies exempt from GST.

All other insurance premiums collected by insurance companies are taxable supplies and GST will be levied.

w.e.f. 1-7-2017, Services of Life Insurance Company [Rule 32(4) of the CGST Rule, 2017] - taxable value of supply:



Example : 167

Arihant Life Insurance Company Ltd. (ALICL) has started its operations in the year 2017-18 (w.e.f. 1-7-2017). During the year 2017-18, Arihant Life Insurance Company Ltd. (ALICL) has charged gross premium of ₹ 180 lakhs from policy holders with respect to life insurance policies; out of which ₹ 100 lakh have been allocated for investment on behalf of the policy holders.

Compute the GST liability of ALICL for the year 2017-18 under rule 32(4) of the CGST Rules, 2017

- (i) if the amount allocated for investment has been intimated by ALICL to policy holders at the time of providing service.**
- (ii) if the amount allocated for investment has not been intimated by ALICL to policy holders at the time of providing of service.**
- (iii) if the gross premium charged by ALICL from policy holders is only towards risk cover.**

Applicable rate of GST 18%.

**Answer:**

- (i) **GST liability of ALICL for the year 2017-18 will be computed as under:**
 $= ₹14.40 \text{ lakhs } (₹ (180-100) \text{ lakhs} \times 18\%)$
- (ii) **25% of the 1st year premium is value of taxable supply. Thus, GST liability of ALICL for the year 2017-18, being first year of its operations, will be computed as under:**
Value of taxable supply = ₹ 180 lakhs $\times$ 25% = ₹ 45 lakhs
GST liability = ₹ 8.10 lakhs (i.e. ₹ 45 lakhs $\times$ 18%)
- (iii) **GST liability of ALICL for the year 2017-18 will be computed as under:**
 $= ₹ 32.40 \text{ lakhs } (₹ 180 \text{ lakhs} \times 18\%)$

Example : 168

LIC of India provides you the following information for the month of Oct 2017. You are required to compute GST payable by the company if the company has opted to pay GST as per Rule 32(4) of CGST Rules, 2017:

General policies : Total premiums collected ₹12,000 lakhs (Out of which 1st year premium is ₹5,000 lakhs)

Only Risk Cover Policies : Premiums collected ₹500 lakhs.

Variable Insurance Policies: Premiums collected ₹8,000 lakhs. (80% of the amount is allocated for investments on behalf of policy holder for which policy holder is given separate break up in premium receipts).

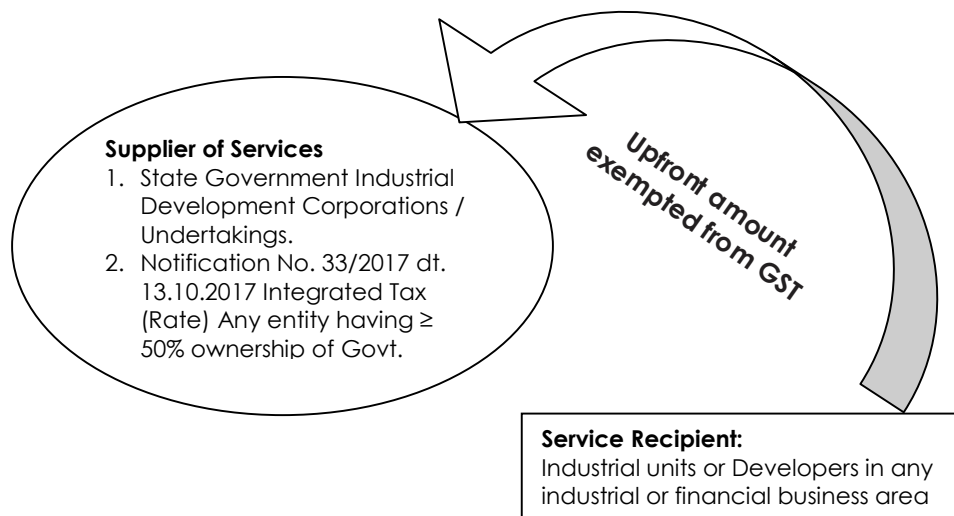
Answer:

Statement showing GST liability of LIC of India for the month of OCT 2017 under Rule 32(4) of the CGST Rules, 2017 :

Particulars	Value ₹ in lakhs	Working note
General policies		
1st Year premium	1,250	5,000 $\times$ 25%
2nd Year Premium	875	7,000 $\times$ 12.5%
Only Risk cover policies	500	
Variable insurance policies premium	1,600	(8,000 – 6,400)
Total taxable supply of service	4,225	
CGST 9%	380.25	(4,225 $\times$ 9%)
SGST 9%	380.25	(4,225 $\times$ 9%)

Entry No. 41**Upfront Fee in Long Term Lease exempted from GST:**

One time upfront amount (called as premium, salami, cost, price, development charges or by any other name) leviable in respect of the service, by way of granting long term (thirty years, or more) lease of industrial plots, provided by the State Government Industrial Development Corporations or Undertakings to industrial units.

**Entry No. 42 already covered.**

Services provided by the Central Government, State Government, Union territory or local authority by way of allowing a business entity to operate as a telecom service provider or use radio frequency spectrum during the period prior to the 1st April, 2016, on payment of licence fee or spectrum user charges, as the case may be.

Entry No. 43

Services of leasing of assets (rolling stock assets including wagons, coaches, locos) by the Indian Railways Finance Corporation to Indian Railways exempted from GST.

Entry No. 44**Services provided by an incubatee**

Services provided by an incubatee up to a total turnover of ₹ 50 lakhs in a financial year subject to the following conditions, namely:-

- (a) the total turnover had not exceeded fifty lakh rupees during the preceding financial year; and
 - (b) a period of three years has not elapsed from the date of entering into an agreement as an incubatee.
- are exempted from GST.

“INCUBATEE” means an entrepreneur located within the premises of a Technology Business Incubator (TBI) or Science and Technology Entrepreneurship Park (STEP) recognized by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Government of India and who has entered into an agreement with the TBI or the STEP to enable himself to develop and produce hi-tech and innovative products.



Example : 169

Cloud M Power Technologies Pvt. Ltd., is a business incubatee provided following taxable services in the financial year 2017-18 (after July 2017):

Cloud computing services	=	₹ 25,00,000
Mobile application services	=	₹ 20,00,000
Social networking and location aware applications	=	₹10,00,000

Note:

(i) Previous year taxable services is ₹ 22,00,000.

(ii) Service provider enter into an agreement with STEP in the year 2016-17.

Find GST liability of Cloud M Power Technologies Pvt. Ltd. for the financial year 2017-18. Assume applicable rate of GST 18%.

Answer:

Statement showing GST liability of Cloud M Power Technologies Pvt. Ltd for the year 2017-18:

Particulars	Taxable Services in (₹)	Remarks
Cloud computing services	Nil	Exempted up to ₹ 50 lakh
Mobile application services	Nil	-do-
Social networking and location aware applications	5,00,000	Over and above ₹ 50 Lakh is taxable in the financial year 2017-18
Taxable services	5,00,000	
CGST 9%	45,000	(5,00,000 x 9%)
SGST 9%	45,000	(5,00,000 x 9%)

Entry No. 45

Arbitral tribunal, Advocate or Senior Advocate services

Service Provider	Service Receiver	Taxable	Comments
Arbitral Tribunal	Any person Or Business entity with a turnover up to ₹ 20 lakhs (₹10 lakhs in case of special category states) in the P.Y.	No	All types of legal services are exempted
Arbitral Tribunal	Business entity with a turnover > ₹ 20 lakhs (> ₹10 lakhs in case of special category states) in the P.Y.	Yes. Business entity is liable to pay GST under reverse charge	All types of legal services like Advisory, consultancy, representational services before any court, tribunal or authority are taxable
Individual Advocate or Firm of Advocates (Other than a senior advocate), by way of legal services	An advocate or firm of advocates Or Other than a business entity Or Business entity with a turnover up to ₹ 20 lakhs (₹ 10 lakhs in the case of special category states) in the P.Y.	No	All types of legal services like Advisory, consultancy, representational services before any Court, Tribunal or Authority are exempted

Individual Advocate or Firm of Advocates	Business entity (includes sole proprietors firm) with a turnover > ₹ 20 lakhs (> ₹ 10 lakhs in case of special category states) in the P.Y.	Yes. Business entity is liable to pay GST under Reverse Charge	All types of legal services like Advisory, consultancy, representational services before any Court, Tribunal or Authority are Taxable
Senior advocate by way of legal services	Other than a business entity Or Business entity with a turnover up to ₹ 20 lakhs (₹ 10 lakhs in the case of special category states) in the P.Y.	No	All types of legal services like Advisory, consultancy, representational services before any court, tribunal or authority are exempted
Senior advocate by way of legal services	Business entity (includes sole proprietors firm) with a turnover > ₹ 20 lakhs (> ₹ 10 lakhs in case of special category states) in the P.Y.	Yes. Business entity is liable to pay GST under Reverse Charge	All types of legal services like Advisory, consultancy, representational services before any Court, Tribunal or Authority are Taxable

Summary:

Service provider	Recipient of service	Taxability	Who Is liable to pay GST
Arbitral Tribunal	Business entity P.Y. Turnover > ₹ 20 lakhs (> ₹ 10 lakhs in case of special category States)	Taxable supply	Recipient is liable to pay GST.
Advocates			
Senior Advocates			

Entry No. 46

Services by a veterinary clinic in relation to health care of animals or birds exempted from GST:

Example : 147

Good and Bad Pvt. Ltd. provided the bio-medical waste treatment facility to a veterinary clinic. Is it a taxable supply of service? If so, will GST be levied?

Answer:

It is taxable supply of service.

Scope of the exemption under entry 75 is restricted to services provided by operators of the common Bio-medical Waste Treatment Facility to a clinical establishment and not to veterinary clinic.

Entry No. 47 already covered.

Services provided by the Central Government, State Government, Union territory or local authority by way of-

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

Entry No. 48

Supply of services by a Technology Business Incubator exempted from GST

A “**business incubator**” is a company that helps new and startup companies to develop by providing services such as management training or office space or equipment's or some time monetary assistance and capital.

Taxable services, provided or to be provided, by



- a Technology Business Incubator or
- a Science and Technology Entrepreneurship Park recognised by the National Science and Technology Entrepreneurship Development Board of the Department of Science and Technology, Government of India or
- bio incubators recognised by the Biotechnology Industry Research Assistance Council, under the Department of Biotechnology, Government of India.

are exempted from GST.

Example : 171

Technopark Technology Business Incubator, provided the following taxable services in the financial year 2017-18 (on or after 1-7-2017):

1. **Entrepreneurship Awareness Camps to a Business incubatee for ₹ 20 lakhs.**
2. **Commercial space provided to AB Ltd. a non-incubatee for ₹ 2 lakhs.**

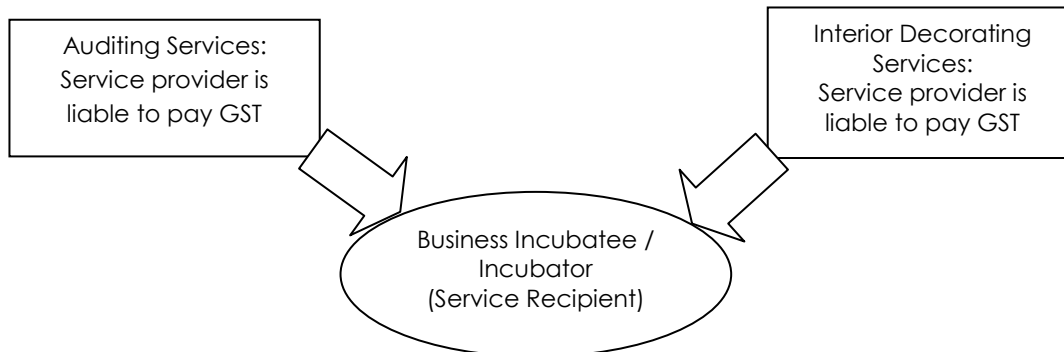
Find GST liability of Technopark Technology Business Incubator?

Answer:

Statement showing GST liability of Technopark Technology Business Incubator

Particulars	Taxable services in (₹)	Remarks
Entrepreneurship Awareness Camps to a Business incubatee.	Nil	Exempted service.
Commercial space provided to AB Ltd. a non-incubatee	Nil	Exempted service
Taxable supply of services	Nil	

Services provided to Business incubatee / Incubator presently not exempted from GST:



Entry No. 49

Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India exempted from GST:

Entry No. 50

Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material exempted from GST.

Entry No. 51

Services provided by the Goods and Services Tax Network to the Central Government or State Governments or Union territories for implementation of Goods and Services Tax exempted from GST.

Entry No. 52

Services by an organiser to any person in respect of a business exhibition held outside India exempted from GST

Place of supply of service:

Place of supply of services provided by way of organization of a [Sec. 12(7) of IGST Act, 2017]:

S. No.	Nature of service (Section 12(7) of IGST Act, 2017)	Place of supply of service
1	Cultural	Services ancillary thereto or assigning of sponsorship to such events. Provided to a registered person: • Location of recipient of Service Provided to an un-registered person: • Location where the event is actually held and • if the event is held outside India, the place of supply shall be the location of the recipient.
2	Artistic	
3	Sporting	
4	Scientific	
5	Educational	
6	Entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events	

Place of supply of services supplied by way of admission to, or organization of [Sec 13(5) of IGST Act]:

Nature of service (Section 13(5) of IGST)	Place of supply of service
• Cultural • Artistic • Sporting • Scientific • Educational • Entertainment event • Celebration • Conference • Fair • Exhibition • Similar events and • Services ancillary to such admission or organisation	Where event is actually held.

Example : 172

Mr. X an event organiser, located in Chennai received an order from M/s Lesley publications, Mumbai to conduct a book fair at Chennai. Find the Place of supply of service and GST in the following two cases:

Case 1: Lesley publications is a registered person.

Case 2: Lesley publications is a un-registered person.

Answer:

Case 1: Mumbai (i.e. location of recipient of service)

Mr. X of Chennai is liable to pay IGST.

Case 2: Chennai (i.e. location where the event is actually held)

Mr. X of Chennai is liable to pay CGST & SGST.



Example : 173

Mr. D of Delhi being an event organizer hosted an exhibition at Mumbai to exhibit the products of exhibitor namely, Chennai Silks, Chennai, a registered person.

Answer:

POS = Chennai (i.e. location of service recipient).

IGST is liable to pay by Mr. D of Delhi

Example : 174

Mr. C of Chennai being an event organizer hosted an exhibition at Dhaka to exhibit the products of exhibitor (namely Chennai Silks) located Chennai.

Answer:

POS = Chennai (i.e. location of service recipient)

GST is not liable to pay by Mr. C.

Note: Services by an organiser to any person in respect of a business exhibition held outside India is exempted from GST (vide Entry No. 52).

Example : 175

Mr. Roy a Jalandhar based comedian hosted a comedy show at Singapore with help of event organizer located in Dubai.

Answer:

POS = Singapore.

GST will not be levied.

Example : 176

Mr. D of Delhi being an event organizer hosted an exhibition at Mumbai to exhibit the products of exhibitor (namely M/s S Silks Ltd. of Singapore).

Answer:

POS = Mumbai

IGST is liable to pay by Mr. D of Delhi

Entry No. 53:

Services by way of sponsorship of sporting events organised,-

- (a) by a national sports federation,
 - (b) by Association of Indian Universities, Inter-university Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
 - (c) by Central Civil Services Cultural and Sports Board;
 - (d) as part of national games, by Indian Olympic Association; or
 - (e) under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme;
- are exempted from GST.

**Entry No. 81****Services by way of right to admission to-**

- (a) circus, dance, or theatrical performance including drama or ballet;
- (b) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event;
- (c) recognised sporting event,

where the consideration for admission is not more than ₹ 250 per person as referred to in (a), (b) and (c) above.

Example : 177

M/s DLF Ltd., sponsored ₹ 20 lakhs in respect of a Tournament organized by Board of Council for Cricket in India (BCCI).

(a) Is it taxable supply of service?

(b) If so who is liable to pay GST?

Answer:

(a) Yes, the given service is taxable supply of service.

(b) M/s DLF Ltd., is liable to pay GST under reverse charge being a recipient of such sponsorship services from BCCI.

Note: BCCI is not a National Sports Federation.

Example : 178

BCCI conducted a tournament in the month of October 2017, in India (i.e. India vs. Australia) by selling tickets in the following denominations:

a) 1,00,000 tickets @ 195 per ticket

b) 10,000 tickets @ 350 per ticket.

Find the GST if any?

Answer:

(a) Where the consideration for admission is not more than ₹ 250 per person is exempted from GST.

(b) GST liability is as follows:

₹ 350 x 10,000 tickets = ₹ 35,00,000

CGST @14% = ₹ 4,90,000

SGST @14% = ₹ 4,90,000

Note:

(1) Entry fee per person per ticket exceeding ₹ 250 fully taxable.

(2) Admission to all sports events organized by recognized sports federations were to attract 28% GST



Entry No. 54

Agriculture activities exempted from GST

The following are exempted :

- Cultivation, harvesting,
- Commission on sale of Agricultural Produce
- All types of testing activities which are directly related to production of any agricultural produce
- Supply of farm labour
- Trimming, sorting etc., thereby marketable in the primary market
- Renting of agro machinery
- Loading, unloading, packing, storage and warehousing of agricultural produce
- Agricultural extension services
- Services by any agricultural produce marketing committee

Entry No. 55

Carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce also exempt from GST.

Agriculture or Agricultural Produce includes the following exempt from GST:

Breeding of Fish
Rearing of Silk Worms
Cultivation of Ornamental Flowers
Horticulture Forestry
Poultry Farm

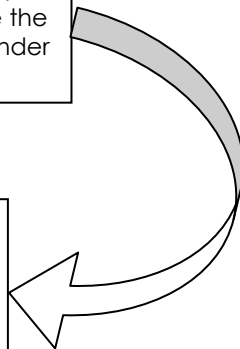
Plantation Crops like rubber, tea or coffee also covered under agricultural produce exempt from GST:

Plantation of Rubber
Tea Plantation
Plantation of Coffee

Cleaning of wheat carried out outside the farm covered under Exemption. Hence, no GST

Shelling of paddy carried out outside the firm not covered under exemptions list

However, if shelling is done by way of a service (i.e., on job work) then the same would be covered under the exemption relating to "carrying out of intermediate production process as job work in relation to agriculture". Since, covered under entry 55 exempted from GST



**Example : 179**

Mark Agro Products Ltd., furnishes the following details of various services provided by it in the month of August, 2017:

S. No.	Particulars	Amount (₹)
1	Rearing of Silkworm and horticulture	2,50,000
2	Plantation of tea and coffee	2,00,000
3	Renting of vacant land for performing marriage ceremony	4,50,000
4	Sale of wheat on commission basis	50,000
5	Sale of rice on commission basis	2,00,000

Compute the value of taxable supply of services and the GST liability for Mark Agro Products Ltd. for the month of August 2017. Assume rate of GST 18%.

Answer:

S. No.	Particulars	Amount (₹)
1	Rearing of Silkworm and horticulture	Exempted Supply
2	Plantation of tea and coffee	Exempted Supply
3	Renting of vacant land for performing marriage ceremony	4,50,000
4	Sale of wheat on commission basis	Exempted Supply
5	Sale of rice on commission basis	2,00,000
	Taxable Supply	6,50,000
	GST 18% of ₹ 6,50,000	1,17,000

Example : 180

From the following information find GST liability of M/s A. Ltd. for the month of October 2017:

Particulars	₹ in Lakh
(i) Renting of Agro-machinery	5.0
(ii) Cultivation of Ornamental flowers	2.5
(iii) Processing of Tomato Ketchup under the brand name of Y Ltd.	3.0
(iv) Plantation of Rubber	3.5
(v) Processing of Potato chips on jobwork basis	1.5

Assume applicable CGST 2.5% & SGST 2.5%.

Answer:

Statement Showing GST Liability of M/s A. Ltd. for the month of October 2017:

Particulars	₹ in Lakh
(i) Renting of Agro-machinery	Exempted supply of Service
(ii) Cultivation of Ornamental flowers	Exempted supply of Service
(iii) Processing of Tomato Ketchup under the brand name of Y Ltd.	3.0
(iv) Plantation of Rubber	Exempted supply of Service
(v) Processing of Potato chips on jobwork basis	1.5
Taxable supply of service	4.50
CGST 2.5%	0.1125
SGST 2.5%	0.1125



Entry No. 56

Services by way of slaughtering of animals are exempt from GST

Services by way slaughtering services exempted from GST

Services by way of slaughtering of all animals are exempted from GST

Example : 181

Validate the following:

- (1) State Government grant fresh license to slaughterhouses by charging fee of ₹ 12,000. It is taxable supply of service and GST will be levied.**
- (2) Meat shops selling meat is taxable supply of goods and GST will be levied.**

Answer:

- (1) The given statement is invalid:**

It is exempted supply of service under entry no. 4 of notification no. 12/2017-Central Tax (Rate) dt.28-06-2017 and hence, GST will not be levied.

- (2) The given statement is invalid:**

It is exempted supply of goods under Notification No.2/2017-Central Tax (Rate) Dt. 28-06-2017 and hence, GST will not be levied.

Entry No. 57

Services by way of pre-conditioning, precooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables.

Services by way of Pre-conditionig, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or later the essential characteristics of the said fruits or vegetables are exempted from GST.

Entry No. 58

Services provided by the National Centre for Cold Chain Development under the Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination exempted from GST

Entry No. 59

Services by a foreign diplomatic mission located in India are exempt from GST

Entry No. 60

Services by a specified organisation in respect of a religious pilgrimage facilitated by the Ministry of External Affairs, the Government of India, under bilateral arrangement are exempted from GST

To claim exemption from GST the following conditions should be satisfied:

1. Services shall be provided by specified organizations.
 - (a) Committee or State Committee as defined in Section 2 of the Haj Committee Act, 2002 (OR)
 - (b) Kumaon Mandal Vikas Nigam Limited a Government of Uttarakhand Undertaking; or
2. The service shall be in respect of a religious pilgrimage.
3. Religious pilgrimage shall be facilitated by Ministry of External Affairs of the Government of India, under bilateral arrangement.



Entry No. 61 Already covered

Entry No. 62 Already covered

Entry No. 63 Already covered [under the heading 'List of Services which are specifically exempted']

Entry No. 64 Already covered

Entry No. 65 Already covered

Entry No. 66

Services provided by Educational Institution or to Educational Institution

(a) Services provided by educational institution to its students, faculty and staff. "educational institution" means an institution providing services by way of: (i) pre-school education and education up to higher secondary school or equivalent; (ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force; (iii) education as a part of an approved vocational education course.	All the services are Exempted from GST
(b) Services provided to an educational institution, by way of,- i. Transportation of students, faculty and staff ii. Catering, including any mid-day meals scheme sponsored by the Government; iii. Security or clearing or house-keeping services performed in such educational institution; iv. Services relating to admission to, or conduct of examination by, such institution. "Educational institution" means an institution providing services by way of: (i) pre-school education and education up to higher secondary school or equivalent. Thus, institutions other than above will not be entitled to claim exemption.	Exempted from GST.

Example : 182

Transport facility provided by a school to its students through a fleet of buses and cabs owned by the School.

Answer:

Exempted supply of service. GST will not be levied.

Example : 183

Transport facility provided by a school to its students through a private Bus/Cabs Operator.

Answer:

Exempted supply of service. GST will not be levied.

Example : 184

Service provided by a private transport operator to a school in relation to transportation of students to and from a school.

Answer:

Exempted supply of service. GST will not be levied.



Example : 185

Service provided by a School in relation to a tour to its students and staff.

Answer:

Exempted supply of service. GST will not be levied.

Example : 186

Service provided by a private transport operator to a school in relation to a tour and travel services of students and staff.

Answer:

Taxable Supply. GST will be levied

Example : 187

Mr. C a practicing CMA provided services to the Institute of Cost Accountants of India by way of teaching to Students.

Answer:

Taxable supply.

Example : 188

Restaurant services provided to the students of the Institute of Cost Accountants of India (ICAI), which is accessible by the others also. Is it taxable service?

Answer:

Taxable supply.

Example : 189

Security services provided by a Safety and Security Bureau in Chennai, to the ICAI New Delhi for four months. Monthly charges ₹ 1,200. Is it taxable supply of service? Applicable GST 18%. Find the GST liability.

Answer:

This given activity is a taxable supply of service. Security Bureau is liable to pay GST .

IGST liability = ₹ 864

(₹ 1,200 pm x 4 months) x 18%

Example : 190

Campus Interviews conducted by the Institute of Cost Accountants of India, by collecting entry fee from the corporate houses. Is it taxable supply of service under GST?

Answer:

Yes. It is taxable supply of service.

Example : 191

Hr. Sec. School provided auditorium hall on rent to Guideline Academy in Chennai. Monthly charges ₹ 1,21,200 through out the year (w.e.f 1-7-2017). Is it taxable supply of service? Applicable GST 18%. Find the GST liability.

Answer:

This given activity is a taxable supply of service. Hr. Sec. School is liable to pay GST .

GST liability = ₹ 1,96,344

(₹1,21,200 pm x 9 months) x 18%

**Entry No. 67****Service supplied by Indian Institute of Management (IIM's) are exempted from GST**

Services provided by the Indian Institutes of Management, as per the guidelines of the Central Government, to their students, by way of the following educational programmes, except Executive Development Programme, -

- Two year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT), conducted by Indian Institute of Management;
- Fellow programme in Management
- Five year integrated programme in Management.

Example : 192

Indian Institute of Management, Ahmedabad provided the following services in the month of July 2017:

- Post Graduate Diploma in Management services provided to those candidates who selected through Common Admission Test (CAT) for ₹ 25 lakhs.*
- Services provided by way of Executive Development Programme ₹ 55 lakhs.*

Find the GST liability if rate of GST is 18%?

Answer:

- Post Graduate Diploma in Management where admission to such programme is through Common Admission Test (CAT) is exempted supply of service. Exempted from GST.*
- Executive Development Programme is taxable supply. GST is ₹ 9.9 lakhs (₹ 55 lakhs x 18%)*

Entry No. 68**Recognised sport body exempted from GST**

Services provided to a recognised sports body by-

- an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognised sports body;
- Another recognised sports body;

Recognised sports body means,-

- The Indian Olympic Association
- Sports Authority of India.
- A national sports federation recognised by the Ministry of Sports and Youth Affairs of the Central Government, and its affiliated federations.
- National sports promotion organizations recognised by the Ministry of Sports and Youth Affairs of the Central Government.
- The International Olympic Association or a federation recognised by the International Olympic Association
- A federation or a body which regulates a sport at international level and its affiliated federations or bodies regulating a sport in India.

Sports players participated in IPL tournament or acting as brand ambassador, or appear in T.V. Commercial advertisements are fully taxable under GST.



Example : 193

Mr. M.S. Dhoni provided services to Chennai Super Kings (a franchisee) in a premier league. Is it taxable service?

Answer:

Yes, it is taxable in the hands of Mr. M.S. Dhoni.

Since, the service of a player to a franchisee which is not a recognized sport body.

Example : 194

Mr. Krishnamachari Srinivasan provided services as umpire in a premier league (IPL). Is this service taxable?

Answer:

No. the given service is exempt from GST.

Since, services of an individual as umpire, provided directly to a recognized sport body (BCCI) shall be exempt.

Entry No. 69

NSDC exempted from GST

Any services provided by NSDC:

Any services provided by

- (i) The National Skill Development Corporation set up by the Government of India;
- (ii) A Sector Skill Council approved by the National Skill Development Corporation;
- (iii) An assessment agency approved by the Sector Skill Council or the National Skill Development Corporation;
- (iv) A training partner approved by the National Skill Development Corporation or the Sector Skill Council

in relation to

- (a) The National Skill Development Programme implemented by the National Skill Development Corporation; or
- (b) A vocational skill development course under the national Skill Certification and Monetary Reward Scheme; or
- (c) Any other Scheme implemented by the National Skill Development Corporation.

are exempted from GST

Entry No. 70

Services of assessing bodies empanelled centrally by the Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under the Skill Development Initiative Scheme.

This exemption has been provided to assessing bodies who are empanelled by Directorate General of Training and the entrepreneurship by way of assessments under Skill Development Scheme.

Example : 195

Industrial and Technical Consultancy Organisation of Tamilnadu Limited (ITCOT) is accredited for conducting assessment for Modular Employable Skills (MES) courses under SDI scheme.

Following services provided in the month of Oct 2017:

- 1. Skill development services for ₹ 20 lakhs;**
- 2. Skill Assessment examination and certification under SDI for ₹ 25 lakhs;**
- 3. Feasibility reports to various industries for ₹ 60 lakhs.**

Find the GST liability?

Note:

- (i) ITCOT is a registered person under GST Law.**
- (ii) Assume GST applicable @ 18%.**



Answer:		
Statement showing GST liability		
Particulars	Value ₹ (lakhs)	Remarks
Skill development services	20	Taxable supply of service
Skill Assessment examination and certification	Nil	Exempted supply of service
Feasibility reports to various industries	60	Taxable supply of services
Total taxable services	80	
GST 18%	14.40	

Entry No. 71**Deen Dayal Upadhyaya Grameen Kaushalya Yojana exempted from GST****Exemption to certain training providers**

Services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana under the Ministry of Rural Development by way of offering skill or vocational training courses certified by National Council For Vocational Training.

The exemption is provided subject to the following conditions:

- Project implementing agency under Deen Dayal Upadhyaya Grameen Kaushalya Yojana under Ministry of Rural Development
- The services shall be in the nature of skill or vocational training courses certified by National Council for Vocational Training

The service provider may be Government Agency or any private agency but he should provide the services as mentioned above.

Entry No. 72

Services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union territory administration.

Validate the following Statement:

The Government of Tamil Nadu granted the aid of ₹ 20 lakhs to Nicolas Educational and Research Institute for providing training in Automotive Service Technician (two and three wheelers) for the year 2017-18 under the Pradhan Mantri Kaushal Vikas Yojana is taxable supply of service under GST.

Answer:

The given statement is invalid. It is exempted supply of service, since, covered under Entry No. 72, NT 12/2017 Central Tax (Rate) with nil rate of tax.

Entry No. 73**Cord Blood Bank exempted from GST**

Specified services provided by Cord Blood Banks have been exempted from levy.

"Services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation".

**Entry No. 74**

Health care services exempted from GST

Health Care Services

Exempted Services	Taxable Services
Services in recognized systems of medicines in India are exempt. Nursing staff, physiotherapists, technicians, lab assistants, 108 services etc. w.e.f. 1-4-2015 Ambulance services provided by an entity which is not a clinical establishment or an authorised medical practitioner or paramedics would also be exempt from GST.	Hair transplant or cosmetic or plastic surgery, except when undertaken due to congenital defects, developmental abnormalities, injury.

As per Section 2(h) of the Clinical Establishments Act, 2010 the following systems of medicine are recognized systems of medicines:

1. Allopathy
2. Yoga
3. Naturopathy
4. Ayurveda
5. Homoeopathy
6. Siddha
7. Unani
8. Any other system of medicine that may be recognized by the Central Government.

Diagnosis, treatment or care provided in these systems of medicines in India are excluded from the purview of taxability.

Pranic healing treatment: taxable supply of services

Acupressure treatment: taxable supply of services

Acupuncture treatment: taxable supply of services

Reiki treatment: taxable supply of services

Reiki is an ancient Eastern healing method that uses energy to balance the mind, body and spirit. Reiki is one of the oldest healing systems in use today.

Colour therapy: taxable supply of services

Entry No. 75

Bio-medical wastage treatment facility exempted from GST

Services provided by operators of the common Bio-medical Waste Treatment Facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto exempt from GST.

Example : 196

Synergy Waste Management (P) Ltd. provided following services to Apollo Hospitals Chennai during the month of Oct 2017:

- (i) Collection, transportation, Treatment & Disposal of Bio-Medical Waste for Rs. 5,25,000.
- (ii) Training on Segregation of Bio-Medical Waste to Hospital Staff to further increase efficiency of Bio-Medical Waste Management Services for Rs. 1,25,000.
- (iii) Laundry services for Rs. 50,000.
- (iv) Common Bio-medical Waste Treatment Facility services provided to Arvind pharma company during Oct 2017 for Rs. 2,00,000.

Find the GST liability for the month of OCT 2017?

**Answer:****Statement showing GST liability of Synergy Waste Management (P) Ltd.**

Particulars	Value in ₹	Remarks
Collection, transportation, Treatment & Disposal of Bio-Medical Waste	Nil	Exempted supply of service
Training on Segregation of Bio-Medical Waste	Nil	Exempted supply of service
Laundry services	50,000	Taxable service
Common Bio-medical Waste Treatment Facility services provided to Arvind pharma company.	2,00,000	Taxable service. Since, exemption is given to a clinical establishment by way of treatment or disposal of bio-medical waste
Total taxable supply of service	2,50,000	
GST 18%	45,000	

Example : 197**Validate the following statement:**

Hospital charging room rent per day per room is ₹ 1,200 on rooms provided to in-patients. It is exempted supply of service.

Answer:

The given statement is valid. it is treated as health care service and hence "room rent in hospitals is exempt".

Example : 198

Kamakshi charitable trusts running a hospital by hiring visiting doctors/specialists.

Medical services to patients at a concessional rate charged by hospital for ₹ 2,25,500 from patients and paid to visiting doctors/specialists ₹ 2,00,000.

Find the following:

Exempted supply if any.

GST liability if any. Applicable rate of GST 18%.

Answer:

Fee collected from Patients ₹ 2,25,500 is exempted from GST.

Hospital is liable to pay GST on such amount (i.e. ₹ 25,500) deducted from fees paid to doctors. GST payable is ₹ 4,590.

Entry No. 76

Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets; are exempted from GST

Entry No. 77**Service by an unincorporated body or a non- profit entity**

Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution -

- (a) as a trade union;
- (b) for the provision of carrying out any activity which is exempt from the levy of GST; or



- (c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;

are exempted from GST.

Example : 199

Green Tree society provided following services in the month of Oct 2017:

- (i) Banquet hall provided to a Member of the society on hire for the purpose of celebrating his son birthday party for ₹ 25,000.
- (ii) Payment of electricity bill issued by third person, in the name of its members; collected ₹ 1,10,000 from its members and paid to electricity department ₹1,00,000.
- (iii) contribution per month per member is ₹ 5,500 for 20 members and ₹ 2,500 for 30 members has been received in the Oct 2017.

Find the tax liability of the Green Tree Society for the month of Oct 2017.

Answer:

Statement showing GST liability of Green Tree society for the month of OCT 2011:

Particulars	Amount (₹)	Remarks
Banquet hall rent	25,000	Taxable service
Service charges	10,000	Taxable service
Maintenance charges	1,10,000	5,500 x 20
Total taxable value of supply of services	1,45,000	
GST @18%	26,100	

Entry 78

Artist exempted from GST

Services by an artist by way of a performance in folk or classical art forms of-

- (a) music, or
- (b) dance, or
- (c) theatre,

if the consideration charged for such performance is not more than ₹ 1,50,000:

Provided that the exemption shall not apply to service provided by such artist as a brand ambassador.

The following artists are exempted from GST if consideration not exceeds ₹ 1,50,000 for such performance:

Example : 200

Mr. Navab, a performing artist, provides the following information relating to August, 2017.

Receipts from:	₹
Performing classical dance	98,000
Performing in television serial	2,80,000
Services as brand ambassador	12,00,000
Coaching in recreational activities relating to arts	2,10,000
Activities in sculpture making	3,10,000
Performing western dance	90,000

Determine the value of taxable supply of services and GST payable by Mr. Navab for August, 2017. GST @ 18%.



Answer:		
Receipts from	Value in ₹	Remarks
Classical dance	Nil	Exempt as receipt is less than or equal to ₹ 1,50,000
Performing in television serial	2,80,000	
Brand ambassador	12,00,000	
Coaching in recreational activities in relation to arts	Nil	
sculpture making	3,10,000	
Western dance	90,000	
Value of taxable supply of service	18,80,000	
GST 18%	3,38,400	

Entry No. 79

Admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo exempted:

Admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo exempted:

Entry No. 80 already covered

Entry No. 81

Admission to entertainment exempted from GST

Services by way of right to admission to-

- (a) circus, dance, or theatrical performance including drama or ballet;
- (b) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event;
- (c) recognised sporting event,

where the consideration for admission is not more than ₹ 250 per person as referred to in (a), (b) and (c) above.

Exempted from GST:

Admission to award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event, where the consideration for admission is not more than 250 per person.

Admission to recognized sporting events exempt from GST provided fee is less than or equal to ₹ 250 per person.

Recognized sporting event means:

- (i) Organized by a recognized sports body where the participating team or individual represent any district, state zone or country;
- (ii) Recognised sport body means refer Entry No. 68.

Example : 201

Admission to IPL is ₹ 195 and entertainment tax ₹ 25. Whether this is activity exempt from GST?

Answer:

Exempted supply of service. Since, transaction value ₹ 220 (i.e ₹ 195 plus ₹ 25) not exceeds ₹ 250 per ticket.



Admission to fashion show : Attract GST

Since, this activity is specifically not exempted from any exemption Notification.

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

(1) Services received from a provider of service located in a non- taxable territory by –

- (a) the Central Government, State Government, Union territory, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;
- (b) an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or
- (c) a person located in a non-taxable territory:

Provided that the exemption shall not apply to –

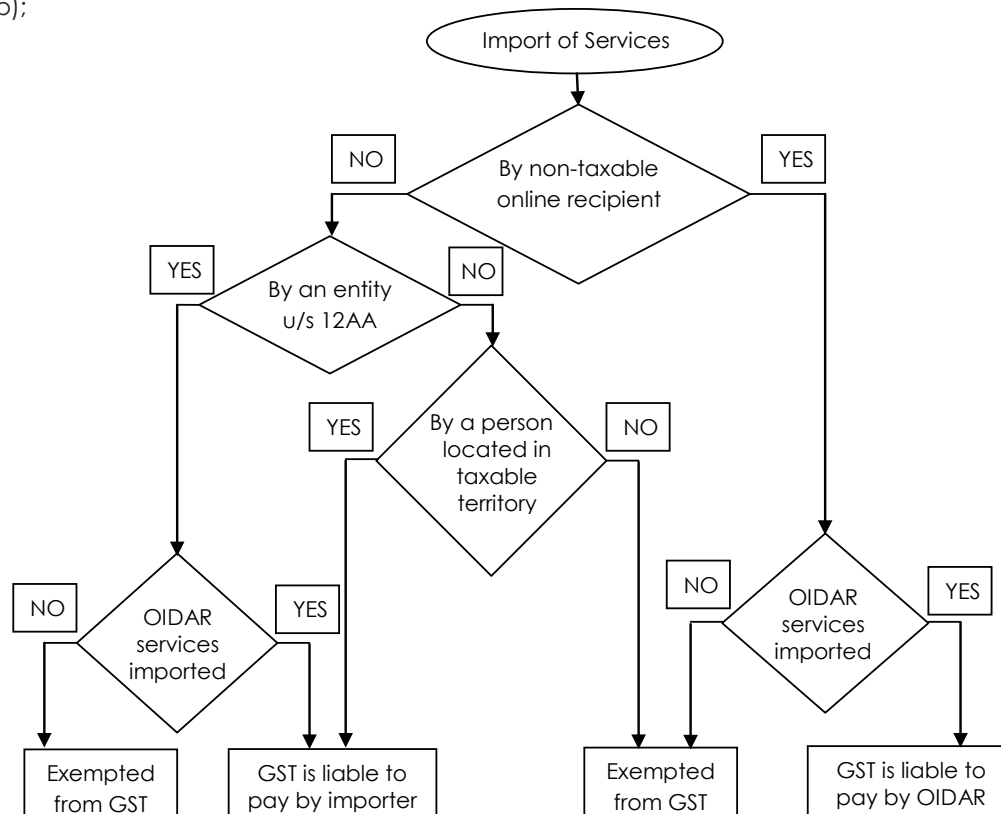
- (i) online information and database access or retrieval services received by persons specified in entry (a) or entry (b); or
- (ii) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry.

it means item no. (i) and (ii) are taxable.

Summary:

Provided that the exemption shall not apply to –

- (i) online information and database access or retrieval services received by persons specified in entry (a) or entry (b);





Or

Provided that the exemption shall not apply to –

- (ii) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry.

However, if the following goods are imported into India by vessel are falling are exempted from payment of IGST:-

- (a) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
- (b) defence or military equipments;
- (c) newspaper or magazines registered with the Registrar of Newspapers;
- (d) railway equipments or materials;
- (e) agricultural produce;
- (f) milk, salt and food grain including flours, pulses and rice; and
- (g) organic manure.

Person liable to pay GST has been prescribed in relation to service of transportation of goods by a vessel – IMPORTER:

The person liable for paying GST in relation to services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India is the importer (as defined u/s 2(26) of the Customs Act, 1962).

Thus, the importer will be liable to pay tax (under Reverse Charge), and accordingly now, he can take ITC on the basis of challan against payment of GST.

Where the value of taxable service provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India is not available with the person liable for paying integrated tax, the same shall be deemed to be 10% of the CIF value (sum of cost, insurance and freight) of imported goods." [Vide IGST Tax (Rate) Notification No 8/2017 dated 28-Jun-2017 read with Corrigendum dated 30-Jun-2017].

Accordingly tax liability under GST Regime w.e.f 01 Jul 2017:

- GST on Ocean Freight is @ 5% under Reverse Charge Mechanism (RCM).
- If freight is not known then GST would be 5% on 10% of CIF value of goods. Hence tax applicability would be 0.5% on CIF value of goods.
- GST on Air Freight is @ 0%
- GST on all Destination Charges (i.e Domestic Transportation till Consignee/Buyer's place) in India is @18%.

Place of supply of goods in case of cross border transactions:

Place of provision of a service of transportation of goods, other than by way of mail or courier Sec. 13(9) of IGST:

Place of supply of Service = Destination of such Goods

Example : 202

M/s Ram Ltd. of Chennai being importer furnished the following information:

(i) CIF price of imported goods from Indonesia: USD1,00,000.

(ii) Submitted the Bill of entry on 15.07.2017.

(iii) Rate of exchange is ₹ 65 per USD.

Note: the exact amount of freight paid by the foreign exporter to the foreign shipping line is not known. Your are required to answer:

(a) Value of taxable supply

(b) Who is liable to pay GST

(c) Total tax liability



Answer:		
Particulars	Value in ₹	Remarks
CIF value of import	65,00,000	(1,00,000 USD x ₹ 65)
(a) Value of taxable supply of service (i.e. ocean freight)	6,50,000	₹ 65,00,000 x 10%
(b) Importer (Ram Ltd.) is liable to pay GST @5% on the taxable value of supply of service		
(c) GST liability = ₹ 32,500 (₹ 6,50,000 x 5%)		

2. Services received by the Reserve Bank of India from outside India in relation to management of foreign exchange reserves exempted from GST:

Specialized financial services received by RBI from outside India, in the course of management of foreign exchange reserves are exempted from GST.

Examples : 203

- **External asset management,**
- **Custodial services,**
- **Securities lending services etc.**

Example : 204

Validate the following statement:

Indian Bank, Mound Road Branch in Chennai imported external asset management services is exempt from GST.

Answer:

The given statement is invalid. It is taxable supply of service and hence IGST will be levied.

3. Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India exempted from GST

(Notification No. 9/2017-Integrated Tax (Rate) Dated 28th June 2017):

Example : 205

Service provided by Indian tour operator to a Sri Lankan for a tour conducted in Bhutan. Is it taxable supply?

Answer:

It is exempted supply of service and hence GST will not be levied.

Exemption from payment of GST on advance received on account of supply of goods

As per Notification No. 66/2017 – Central Tax, dated 15.11.2017, the Central Government, on the recommendations of the Council, exempts all taxpayers from payment of GST on advances received in case of supply of goods. Previously, the persons whose aggregate turnover in the preceding financial year did not exceed one crore and fifty lakh rupees or the person whose aggregate turnover in the year in which such person has obtained registration is likely to be less than one crore and fifty lakh rupees and who did not opt for the composition levy, are exempted from payment of GST on advances received for supply of goods (Notification No. 40/2017 – Central Tax, dated 13.10.2017). This exemption would apply in case of change in rate of tax also and the place of supply of goods will be the earlier of the following:

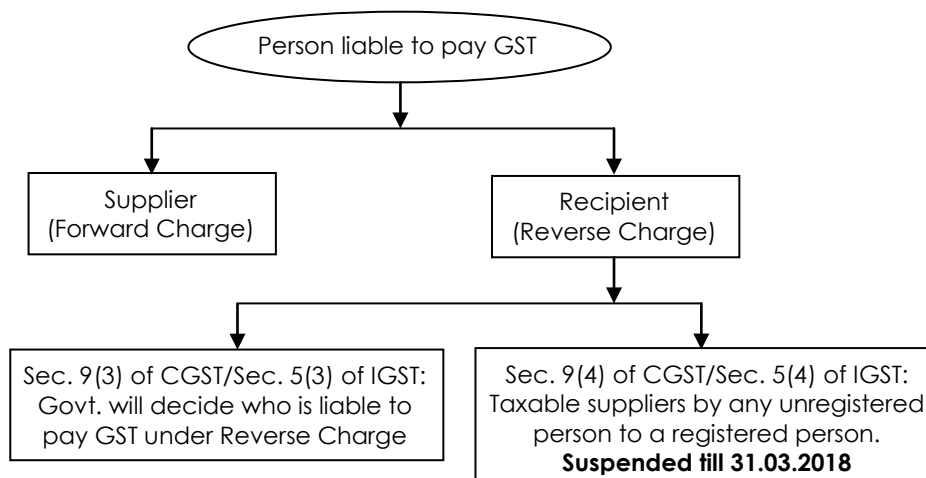
- the date of issue of invoice by the supplier or the last date on which he is required to issue the invoice with respect to the supply or
- the date on which the supplier receives the payment with respect to the supply;

Notification No. 66/2017 – Central Tax, dated 15.11.2017,

In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act) and in supercession of notification No. 40/2017-Central Tax, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section vide number G.S.R.1254(E), dated the 13th October, 2017, except as respects things done or omitted to be done before such supercession, the Central Government, on the recommendations of the Council, hereby notifies the registered person who did not opt for the composition levy under section 10 of the said Act as the class of persons who shall pay the central tax on the outward supply of goods at the time of supply as specified in clause (a) of sub-section (2) of section 12 of the said Act including in the situations attracting the provisions of section 14 of the said Act, and shall accordingly furnish the details and returns as mentioned in Chapter IX of the said Act and the rules made thereunder and the period prescribed for the payment of tax by such class of registered persons shall be such as specified in the said Act.]

2.7 PERSON LIABLE TO PAY GST

Generally, the supplier of goods or services is liable to pay GST. However, in specified cases like imports and other notified supplies, the liability may be cast on the recipient under the reverse charge mechanism. Reverse charge means the liability to pay tax is on the recipient of supply of goods or services instead of the supplier of such goods or services in respect of notified categories of supply.



GST Council, in its 22nd Meeting dt. 6 Oct. 2017, has recommended that the reverse charge mechanism (RCM) under Section 9(4) of the CGST Act, 2017/ Section 5(4) of the IGST Act, 2017 shall remain deferred/ suspended till 31.03.2018 and will be reviewed by a committee of experts.

Sec. 9(3) of CGST Act/Sec. 5(3) of IGST Act: Govt. will decide who is liable to pay GST under Reverse Charge.

The following goods on which GST shall be levied under Reverse Charge have been notified (vide Notification No. 04/2017 dt. 28th July 2017):



S.No.	Description of supply of goods	Supplier of goods	Recipient of Goods
1	Cashew nuts not shelled or peeled.	Agriculturist	Any registered person. Recipient of goods is liable to pay GST.
2	Bidi wrapper leaves (tendu)	Agriculturist	Any registered person. Recipient of goods is liable to pay GST.
3	Tobacco leaves	Agriculturist	Any registered person. Recipient of goods is liable to pay GST.
4	Supply of lottery	State Government, Union Territory or any local authority	Lottery distributor or selling agent. Distributor or selling agent is liable to pay GST.
5	Silk yarn	Any person who manufactures silk yarn from raw silk or silkworm cocoons for supply of silk yarn.	Any registered person. Recipient of goods is liable to pay GST.
6	Used vehicles, seized and confiscated goods, old and used goods, waste and scrap. Notification No. 36 /2017-Central Tax (Rate) Dated 13.10.2017 Notification No. 37/2017- Integrated Tax (Rate) Dated 13.10.2017	Central Government, State Government, Union territory or a local authority.	Any registered person. Recipient of goods is liable to pay GST.

Sec. 9(3) of CGST Act/Sec. 5(3) of IGST Act: Govt. will decide who is liable to pay GST under Reverse Charge.

w.e.f. 1st July 2017: As per Notification No. 13/2017 Central Tax (Rate) Dt. 28th June 2017 and Notification No. 10/2017- Integrated Tax (Rate) Dt. 28th June 2017 the following 9 services (are identical under CGST & IGST) on which GST shall be levied under Reverse Charge have been notified.

S. No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
1	GTA Services	Goods Transport Agency (GTA)	Any factory, society, co-operative society, registered person, body corporate, partnership firm, casual taxable person; located in the taxable territory.	Recipient
2	Legal Services by advocate	An individual advocate, including a senior advocate or a firm of advocates	Any business entity located in the taxable territory	Recipient

S. No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
3	Services supplied by an arbitral tribunal to a business entity	An arbitral tribunal	Any business entity located in the taxable territory	Recipient
4	Services provided by way of sponsorship to any body corporate or partnership firm	Any person	Any body corporate or partnership firm located in the taxable territory.	Recipient



5	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding: - (1) Renting of immovable property, and (2) Services specified below: - (i) Services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers.	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.	Recipient
6	Services supplied by a director of a company or a body corporate to the said company or the body corporate	A director of a company or a body corporate	The company or a body corporate located in the taxable territory	Recipient
7	Services supplied by an insurance agent to any person carrying on insurance business	An insurance agent	Any person carrying on insurance business, located in the taxable territory	Recipient
8	Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company.	A recovery agent	A banking company or a financial institution or a non-banking financial company, located in the taxable territory	Recipient
9	Supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer or the like	Author or music composer, photographer, artist, or the like	Publisher, music company, producer or the like, located in the taxable territory	Recipient
Notification No. 10/2017- Integrated Tax (Rate) Dt. 28th June 2017, the following 2 services under IGST on which GST shall be levied under Reverse Charge have been notified:				



S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
10	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient. Non-taxable online recipient means: As per Section 2(16) of the Integrated Goods and Services Tax (IGST) Act, 2017, - any Government, - local authority, - governmental authority, - an individual or - any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient.	Recipient
11	Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India	A person located in non-taxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962(52 of 1962), located in the taxable territory.	Importer
Sec.9(5) of CGST Act/Sec.5(5) if IGST Act: Govt. will decide who is liable to pay GST under Reverse Charge. Notification No. 17/2017-Central Tax (Rate) Dt. 28th June 2017 and Notification No. 14/2017-Integrated Tax (Rate) Dt. 28th June 2017 the following 2 services (are identical under CGST & IGST) on which GST shall be levied under Reverse Charge have been notified:				
12	services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle;	Driver	Any person. However, the tax on intra-State or inter-State supplies shall be paid by the Electronic Commerce Operator (ECO).	ECO
13	services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under clause (v) of section 20 of the Integrated Goods and Services Tax Act, 2017 read with sub-section (1) of section 22 of the said Central Goods and Services Tax Act.	Unregistered person Supplying services through Electronic Commerce Operator (ECO).	Any person. However, the tax on intra-State or inter-State supplies shall be paid by the Electronic Commerce Operator (ECO).	ECO

**Note:**

- (a) The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.
- (b) "Body Corporate" has the same meaning as assigned to it in clause (11) of section 2 of the Companies Act, 2013.
- (c) the business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services for the purpose of this notification.
- (d) "radio taxi" means a taxi including a radio cab, by whatever name called, which is in two way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS);
- (e) "maxicab", "motorcab" and "motor cycle" shall have the same meanings as assigned to them respectively in clauses (22), (25) and (26) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988).

Transport of passengers by motor cab or renting of motor cab (vide Notification No. 31/2017, Central Tax (Rate), Dt. 13-10-2017:

- (1) GST of 5% without ITC and 12% with full ITC available to transport of passengers by motor cab/renting of motor cab shall be extended to any motor vehicle (i.e., contract carriage/stage carriage).
- (2) ITC of input services shall be allowed in same line of business @ 5%.

Important points:

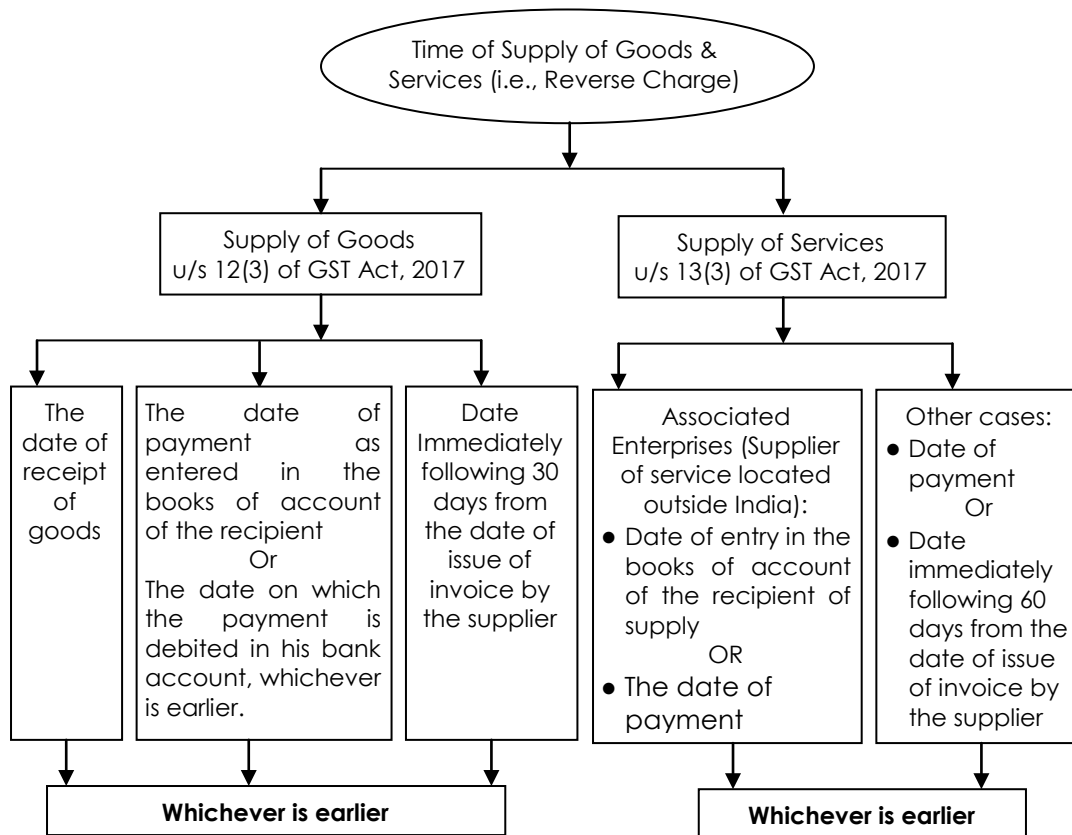
- (A) Registration: A person who is required to pay tax under reverse charge has to compulsorily register under GST and the threshold limit of ₹ 20 lakhs (₹ 10 lakhs for special category states except J & K) is not applicable to him.
- (B) ITC: A supplier cannot take ITC of GST paid on goods or services used to make supplies on which the recipient is liable to pay tax.

Compliances in respect of supplies under reverse charge mechanism:

1. As per section 31 of the CGST Act, 2017 read with Rule 46 of the CGST Rules, 2017, every tax invoice has to mention whether the tax in respect of supply in the invoice is payable on reverse charge. Similarly, this also needs to be mentioned in receipt voucher as well as refund voucher, if tax is payable on reverse charge.
2. Maintenance of accounts by registered persons: Every registered person is required to keep and maintain records of all supplies attracting payment of tax on reverse charge
3. Any amount payable under reverse charge shall be paid by debiting the electronic cash ledger. In other words, reverse charge liability cannot be discharged by using input tax credit. However, after discharging reverse charge liability, credit of the same can be taken by the recipient, if he is otherwise eligible.
4. Invoice level information in respect of all supplies attracting reverse charge, rate wise, are to be furnished separately in the table 4B of GSTR-1.
5. Advance paid for reverse charge supplies is also leviable to GST. The person making advance payment has to pay tax on reverse charge basis.

Time of supply in case of reverse charge:

The time of supply is the point when the supply is liable to GST. One of the factor relevant for determining time of supply is the person who is liable to pay tax. In reverse charge, the recipient is liable to pay GST. Thus, time of supply for supplies under reverse charge is different from the supplies which are under forward charge.



Note: If time of supply cannot be determined with the help of above provisions then the time of supply shall be the date on which entry in the books of the recipient of goods & services is made.

Example : 206

Mr. X being a farmer cultivated cashew nuts not shelled or peeled in the State of Kerala. These goods are sold to M/s Raj Industries for ₹ 2,50,000 a registered person in the State of Kerala. Applicable rate of GST 5%. M/s Raj Industries has input tax credit CGST ₹ 5,250 and SGST ₹ 5,250.

You are required to answer the following:

- Who is liable to pay GST.
- Net liability of GST.

Answer:

(a) GST is liable to pay by recipient. In the given case M/s Raj Industries is liable to pay GST.

(b) Net liability of GST:

Particulars	CGST (₹)	SGST (₹)	Remarks
Output tax	6,250	6,250	ITC is not allowed to utilize by recipient while paying GST under RCM.
Less: Input Tax Credit (ITC)	NA	NA	
CGST			
SGST			
Net tax liability of M/s Raj Industries	6,250	6,250	

**Example : 207**

Mr. X being an agent of cashew nuts (peeled) in the State of Kerala registered under GST. These goods are sold to M/s Raj Industries for ₹ 2,50,000 a registered person in the State of Kerala. Applicable rate of GST 5%. Mr. X has input tax credit CGST ₹ 5,250 and SGST ₹ 7,250.

You are required to answer the following:

(a) Who is liable to pay GST.

(b) Net liability of GST.

Answer:

(a) GST is liable to pay by supplier of goods. In the given case Mr. X is liable to pay GST.

(b) Net liability of GST:

Particulars	CGST (₹)	SGST (₹)	Remarks
Output tax	6,250	6,250	Excess credit of SGST is not allowed to adjust against CGST and viz a versa
Less: Input Tax Credit (ITC) CGST SGST	(5,250)	(7,250)	
Net tax liability of Mr. X	1,000	Nil	
Excess credit c/f	Nil	2,000	

Example : 208

Mr. X being a farmer cultivated Bidi wrapper leaves (tendu) in the State of Telangana. These goods are sold to M/s Sri Vijaya Industries for ₹ 2,12,500 a registered person in the State of Kerala. Applicable rate of GST 5%.

You are required to answer the following:

(a) Who is liable to pay GST.

(b) Net liability of GST.

Answer:

(a) GST is liable to pay by recipient of goods. In the given case M/s Sri Vijaya Industries.

(b) Net liability of M/s Sri Vijaya Industries:

Particulars	IGST (₹)	Remarks
Output tax	10,625	ITC is not allowed to utilize by recipient while paying GST under RCM.
Less: Input Tax Credit (ITC)	NA	
Net tax liability of M/s Sri Vijaya Industries	10,625	

Example : 209

Mr. Raj being a agriculturist cultivated tobacco leaves in the State of West Bengal and also registered under GST. These goods are sold to M/s RR Industries for ₹ 5,75,000 a registered person in the State of Andhra Pradesh. Applicable rate of GST 5%. M/s RR Industries has input tax credit CGST ₹ 3,250 and SGST ₹ 3,250.

You are required to answer the following:

(a) Who is liable to pay GST.

(b) Net liability of GST.

Answer:

(a) GST is liable to pay by recipient of goods. In the given case M/s RR Industries is liable to pay IGST.

(b) Net liability of M/s RR Industries:



Particulars	IGST (₹)	Remarks
Output tax	28,750	ITC is not allowed to utilize by recipient while paying GST under RCM.
Less: Input Tax Credit (ITC)	NA	
Net tax liability of M/s RR Industries	28,750	

Supply of lottery (i.e. Supply of Goods):

Supply of lottery has been treated as supply of goods under the Central Goods and Services Tax (CGST) Act, 2017.

It has been decided that supply of lottery shall attract GST rates as under:

Nature of transaction	Rate of GST
Lottery run by State Governments	12% of face value of lottery ticket sold.
Lottery authorized by State Governments	28% of face value of lottery ticket sold.

Example : 210

M/s Martin Pvt. Ltd. is a distributor or selling agent of lottery tickets, authorized by the State of Kerala. Who is liable to pay GST and also find GST liability from the following:

Particulars	Maha Lakshmi (Printed) (Lottery run by State Govt.)	Bhaghya Lakshmi (Online) (Lottery authorized by State Govt.)
No. of tickets proposed	2,50,000	3,00,000
Face value of ticket	₹10 each	₹ 500 each
Guaranteed prize payout	@ 60%	@ 90%
No. of tickets sold	2,00,000	2,35,000

Answer:

(a) M/s Martin Pvt. Ltd. is liable to pay GST.

(b) GST liability of M/s Martin Pvt. Ltd. is as follows:

Particulars	Maha Lakshmi (Printed) (Lottery run by State Govt.) (₹)	Bhaghya Lakshmi (Online) (Lottery authorized by State Govt.) (₹)
Aggregate face value of lottery ticket sold (2,50,000 x ₹ 10); (2,35,000 x ₹ 500)	25,00,000	11,75,00,000
	6% CGST	6% SGST
GST liability	1,50,000	1,50,000
		14% CGST
		14% SGST
		1,64,50,000
		1,64,50,000

Note: In case of Maha Lakshmi (printed) State Govt. sold to agent 2,50,000 tickets.

Example : 211

M/s Dinesh Industries (registered person under GST) manufacturer cum seller of silk yarn in Coimbatore. In the month of Oct 2017 supplied 2000 kgs of silk yarn at ₹ 250 per kg. to M/s Annapoorna Pvt. Ltd. located in Chennai. Applicable GST rate @5%.

You are required to answer

(a) Who is liable to pay GST.

(b) Net liability of GST.



Answer:

(a) GST is liable to pay by recipient of goods. In the given case M/s Annapoorna Pvt. Ltd. is liable to pay GST.

(b) Net liability of GST:

Particulars	2.5% CGST (₹)	2.5% SGST (₹)
Output tax	12,500	12,500
Less: Input Tax Credit (ITC)	NA	NA
Net tax liability of M/s Annapoorna Pvt. Ltd.	12,500	12,500

Example : 212

The customs authority confiscated the gold from Mr. TYN, at the time of import from Dubai. Subsequently sold these goods through auction to M/s C Ltd. of Chennai for ₹ 22,25,000. Applicable rate of GST 18%. You are required to answer the following:

(a) person liable to pay GST.

(b) GST liability.

Answer:

(a) the person liable to pay GST is M/s C Ltd.

(b) GST liability is ₹ 4,00,500/-.

Sec. 9(3) of CGST/Sec. 5(3) of IGST:Govt. will decide who is liable to pay GST under Reverse Charge.

w.e.f. 1st July 2017: As per Notification No. 13/2017 Central Tax (Rate) Dt. 28th June 2017 and Notification No. 10/2017- Integrated Tax (Rate) Dt. 28th June 2017 the following 9 services (are identical under CGST & IGST) on which GST shall be levied under Reverse Charge have been notified.

S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
1	GTA Services	Goods Transport Agency (GTA)	Any factory, society, co-operative society, registered person, body corporate, partnership firm, casual taxable person; located in the taxable territory.	Recipient

Already covered under exemption

2	Legal Services by advocate	An individual advocate, including a senior advocate or a firm of advocates	Any business entity located in the taxable territory	Recipient

Example : 213

Senior Advocate supplied services of ₹1,50,000/- to business entity for Legal services. Business entity has ITC of ₹ 7,000. Senior Advocate has registered office in Chennai. Business entity is located in Madurai.

Find the following:

a) Who is liable to pay GST?

b) Net GST liability.

Note:

(i) all services rendered in the month of Oct 2017.

(ii) Turnover of business entity in the previous year ₹ 43 lakhs.

(iii) Applicable rate of GST @18%

**Answer:****(a) Business entity being recipient of service is liable to pay GST.****(b) Net GST liability of the business entity:****CGST 9% on ₹ 1,50,000 = ₹ 13,500/-****SGST 9% on ₹ 1,50,000 = ₹ 13,500/-****Note: recipient is not allowed to utilize ITC against his GST liability. However, after payment of GST under RCM, the same can be availed as ITC against his outward supplies.****Example : 214****With reference to the provisions of GST law (w.e.f. 1-7-2017), briefly explain as to who is the person responsible to pay GST in the following:**

- i) Legal services are provided by Senior Advocates to business entities.**
- ii) Representation services are provided by Senior Advocates to any business entity.**
- iii) Were Contracts for representation service provided by the Senior Advocates to any business entity has been entered into through another advocate or firm of advocates.**

Answer:

Service provider	Service recipient	Nature of service	Taxability	Person responsible to pay GST
(i) & (ii) Senior Advocate	Business Entity (whose turnover exceeds ₹ 20 Lakhs in P.Y.)	Representation services	Taxable supply of service	Recipient of service, which is the business entity, who is litigant, applicant or petitioner.

(iii) Recipient of service that is the business entity, who is the litigant, applicant or petitioner, is liable to pay GST.**Note: Previous year turnover more than ₹ 20 lakhs (in case of special category States is ₹ 10 lakhs).**

S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
3	Services supplied by an arbitral tribunal to a business entity	An arbitral tribunal	Any business entity located in the taxable territory	Recipient

Example : 215**Mr. X and Mr. Y paid fee to an arbitrator to appoint a panel of three arbitrators for settlement of their personal dispute as per the Arbitration and Conciliation Act, 1996.****Fee received by the arbitrator on appointment of Arbitral Tribunal is exempt from GST and fee received by the three arbitrators for the services provided to the tribunal shall also be exempt.****However, Arbitral Tribunal services to a business entity are taxable supply of service is liable to tax in the hands of recipient (namely business entity), provided previous year turnover of the entity is more than ₹ 20 lakhs (in case of special category states more than ₹ 10 lakhs).**

S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
4	Services provided by way of sponsorship to any body corporate or partnership firm.	Any person	Any body corporate or partnership firm located in the taxable territory.	Recipient.

Note: If the above conditions are not satisfied then the GST is payable by the supplier of service (i.e. Forward Charge)

Entry No. 53: Services by way of sponsorship of sporting events organized,-

- (a) by a national sports federation,
- (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
- (c) by Central Civil Services Cultural and Sports Board;
- (d) as part of national games, by Indian Olympic Association; or
- (e) under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme;

are exempted from GST.

Example : 216

GT Jewellers Ltd. paid ₹ 50 lakhs for sponsorship of Miss India beauty pageant in Mumbai to a Stylish & Co., a partnership firm. It is taxable supply, if so who is liable to pay GST.

Answer:

Yes. It is taxable supply of service. GST is liable to pay recipient of supply of service namely GT Jewellers Ltd. under RCM.

5. Government or Local Authority to Business Entity

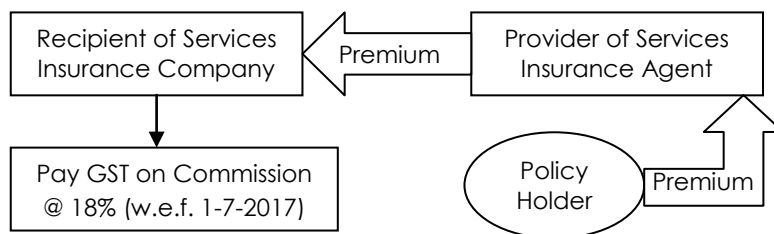
Already covered under exemptions.

6. A director of a company or a body corporate to company or a body corporate

Already covered under Scope of Supply.

S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
7	Services supplied by an insurance agent to any person carrying on insurance business.	An insurance agent	Any person carrying on insurance business, located in the taxable territory	Recipient

Insurance Agent Services:



Case Study : 3

Department contention: In the said case, department demanded the GST liability under reverse charge on brokerage/ commission paid to agents for finalising deals with reinsurer treating it as insurance agent's service.



Assessee view: The Appellant has pleaded that such agents would not come in the category of Insurance agents as defined in section 2(10) of the Insurance Act, 1938 as they were not soliciting or procuring insurance business, instead they were only engaged to help out in finalising deals with reinsurers. Thus, services received from agents merely helping in reinsurance deals would be considered as services received from insurance intermediaries and not from insurance agents; hence reverse charge provisions would not apply on services provided by them.

Decide the case with help of decided case law if any.

Answer:

Oriental Insurance Company Ltd. v. Commissioner of Central Excise & Commissioner of Service Tax (2016) 67 376(New Delhi-CESTAT):

Reverse charge would not be applicable on the commission paid to agents helping merely in finalising deals with "reinsurers".

Affirming the contentions of appellant, Honorable CESTAT-New Delhi decided the case in favour of the assessee and ruled out that services received from agents merely helping in reinsurance deals would be considered as services received from insurance intermediaries and not from insurance agents; hence reverse charge provisions would not apply on services provided by them.

S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
8	Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company.	A recovery agent	A banking company or a financial institution or a non- banking financial company, located in the taxable territory.	Recipient

Example : 217

M/s Shakshi Associates a recovery agent (located in Chennai) empanelled by State Bank of India, Local Head Office, Nungambakkam, Chennai. The following service supplied M/s Shakshi Associates in the month of Nov 2017 are as follows:

- (1) Fee of ₹ 2,25,825 for supply of services in relation to recovery of dues from the defaulting Borrowers at the place of business/occupation and if such Borrowers is/are unavailable at the place of business then at his/her residence.**
- (2) Supply of services with regard to demand for recovery or taking possession of the security from defaulting Borrowers, for which separate fee charge from the bank ₹ 55,175/-**

Find the following:

- (a) Is it supply of service.**
- (b) If so, who is liable to pay GST.**
- (c) Find the GST liability**

Note: Assume applicable rate of GST for recovery agent services @18%.

Answer:

- (a) Yes. It is taxable supply of service**
- (b) State Bank of India being recipient of service is liable to pay GST under RCM.**
- (c) GST liability = ₹ 50,580 [i.e ₹ 2,25,825 + 55,175) x 18%]**



S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
9	Supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer or the like	Author or music composer, photographers, artist or the like	Publisher, music company, producer or the like, located in the taxable territory	Recipient

Example : 218

Mr. TYN has written a book on Indirect Taxes which is published by M/s Virat Law Publications of New Delhi.

You are required to find the following:

(a) who is liable to pay GST?

(b) Rework, if publisher is located in New York, then who is liable to pay GST?

Answer:

(a) M/s Virat Law Publications of New Delhi being recipient of service is liable to pay GST under RCM.

(b) If M/s Virat Law Publications located in New York then it is treated as export of service provided payment received in convertible foreign currency.

Otherwise, tax will be payable by the author.

Example : 219

Mr. A.R. Rehaman being a music director (registered person under GST). He made following supplies:

(a) Indigenous handmade musical instruments for ₹ 2,00,000.

(b) Composted hello tune and transferred permanently for ₹ 30,00,000.

(c) Pianos for ₹ 1,50,000

(d) Percussion musical instruments (like drums, xylophones) for ₹ 5,00,000.

Find the GST liability. Applicable rate GST 28%. All transactions took place within the state of Tamil Nadu.

Answer:

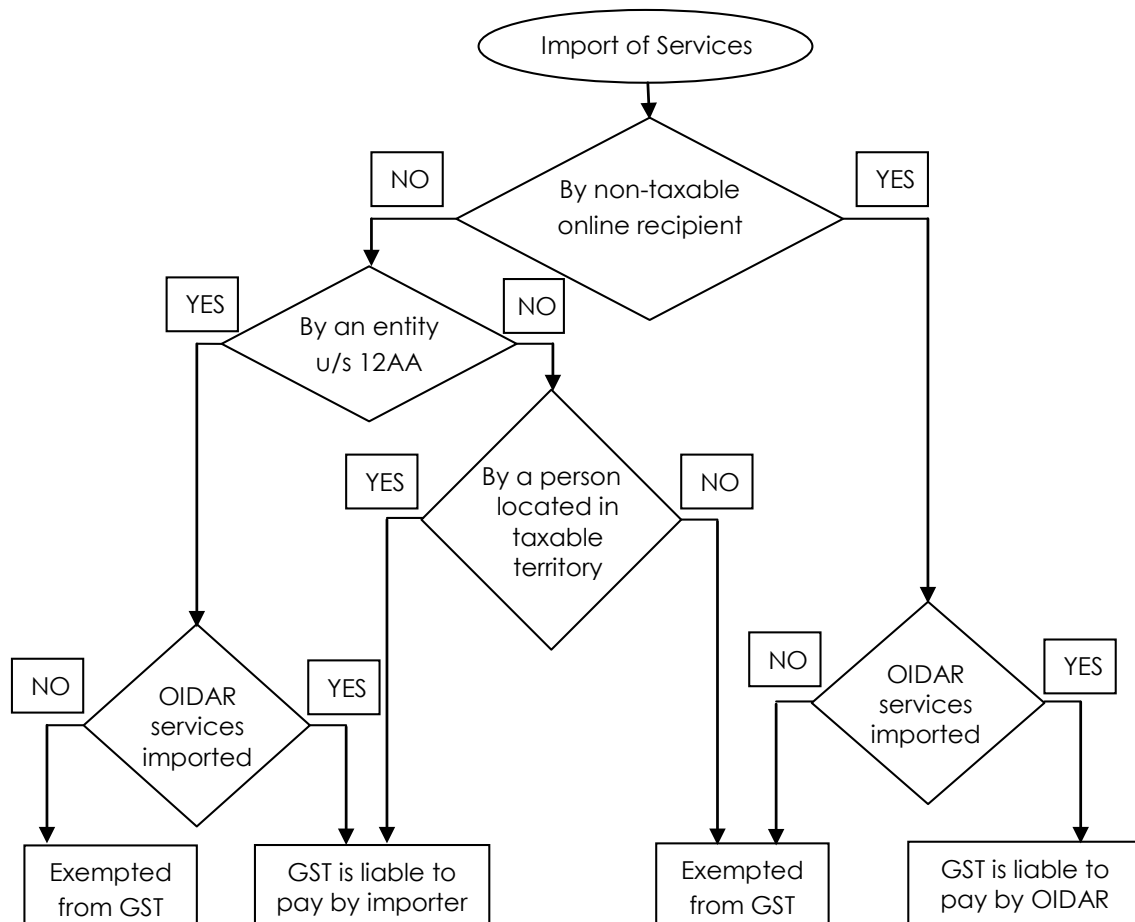
Particulars	Value in ₹	Remarks
Indigenous handmade musical instruments	Nil	Exempted supply of goods.
Composted hello tune and transferred permanently (As per Schedule II it is supply of service)	Nil	Exempted supply of service
Sale of Pianos	1,50,000	Taxable supply of goods
Sale of Drums, xylophones	5,00,000	-do-
Total taxable supply of goods	6,50,000	
CGST 14%	91,000	(6,50,000 x 14%)
SGST 14%	91,000	

Notification No. 10/2017- Integrated Tax (Rate) Dt. 28th June 2017, the following 2 services under IGST on which GST shall be levied under Reverse Charge have been notified:



S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
10	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient. Non-taxable online recipient means: As per Section 2(16) of the Integrated Goods and Services Tax (IGST) Act, 2017, - any Government, - local authority, - governmental authority, - an individual or - any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient.	Recipient

Example : 220



TDS under Income Tax vs GST

CBDT has clarified through Circular No. 23/2017 Dated 19th July 2017 that if GST on services has been indicated separately in the invoice, then no tax would be deducted on GST component.

In the light of the fact that even under the new GST regime, the rationale of excluding the tax component from the purview of TDS remains valid, the Board hereby clarifies that wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XV II-B of the Act on the amount paid or payable without including such 'GST on services' component.

Example : 221

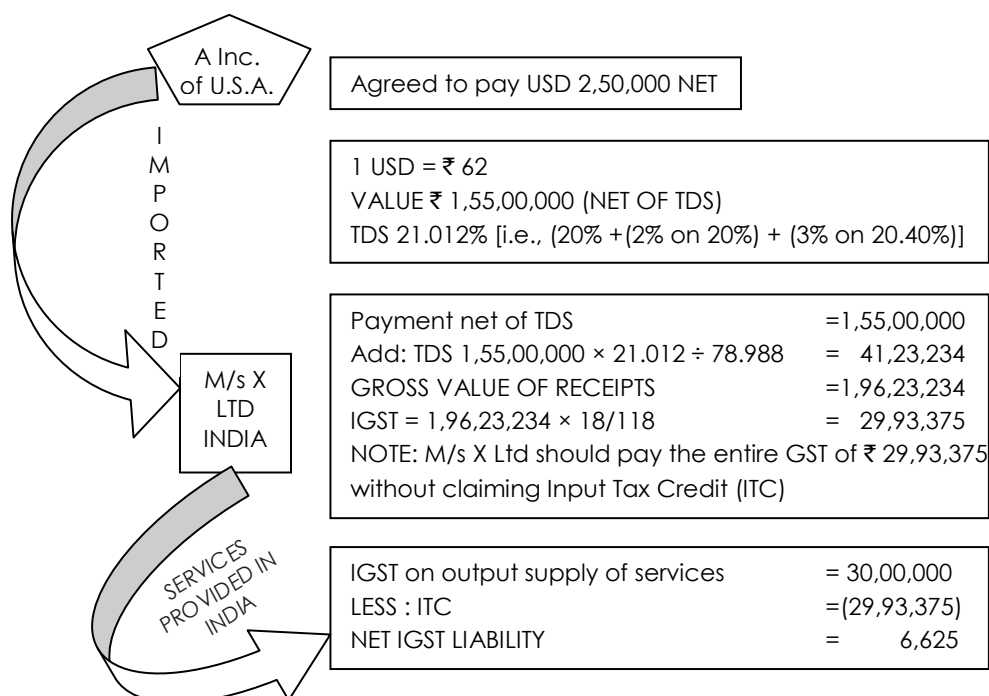
CMA Ram received ₹ 2,05,200 (after TDS @10%) from client on 1st Nov 2017 for taxable services rendered in the month of July 2017. Find the GST liability. Applicable rate of CGST 9% and SGST 9%.

Answer:

Payment received net of TDS u/s 194J	= 2,05,200
Add: TDS u/s 194J	= 19,000
Gross value of Bill (i.e. inclusive of GST)	= 2,24,200
CGST (2,24,200 x 9/118)	= 17,100
SGST (2,24,200 x 9/109)	= 17,100

Assume taxable value of supply	X
Add: CGST & SGST	0.18x
Value of Bill	1.18x
Less: TDS @10% on X (u/s Sec 194J of the Income Tax Act, 1961)	-0.1X
Net Paid	1.08X
X (i.e. 2,05,200/1.08) [i.e. taxable value of supply]	1,90,000
TDS u/s 194J 10% on 1,90,000	19,000

Case Study : 4





Note: Assume applicable rate of IGST 18% and applicable rate of TDS 20% under Income Tax Act, 1961.

Notification No. 10/2017- Integrated Tax (Rate) Dt. 28th June 2017, the following 2 services under IGST on which GST shall be levied under Reverse Charge have been notified:

S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
11	Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India	A person located in nontaxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962(52 of 1962), located in the taxable territory.	Importer

Case Study : 5

Department contention:

Assessee being an importer of goods from Inodnesia is liable to pay GST on Ocean Freight. Since, place of supply of service is destination of goods as per Sec. 13(9) of IGST Act, 2017.

Assessee view:

Since, goods imported into India, paid customs duty on such ocean freight which is inclusive of Cost, Insurance and Freight (CIF value). Therefore, question of levying of GST would not arise at all.

Decide the case with the help of decided case if any.

Answer:

Facts of the Case: Import of goods into India completed when goods are landed on land mass of India (as per the Garden Silk Mills Ltd. of the Hon'ble Supreme Court of India). Ocean freight on import of goods into India is subject to customs duty. As per the Department contention Ocean Freight is subject to GST again.

Grounds on Appeal:

In the case of United Shippers Ltd. 2015 (37) STR 1043 (Tri-Mumbai) has held that when the value of transportation charges have been added in CIF value on which customs duty is paid. GST again cannot be recovered on the same value.

The department's appeal against the order of Tribunal to the Hon'ble Supreme Court of India has been dismissed as reported in 2015(39) STR J369(S.C.). It means the judgment of Hon'ble Tribunal-Mumbai has been confirmed as whole good.

The ratio of this judgment is equally applicable to Goods and Services Tax Law also.

Therefore, payment of GST on Ocean Freight does not arise.

Sec. 9(5) of CGST/Sec. 5(5) of IGST: Govt. will decide who is liable to pay GST under Reverse Charge.

Notification No. 17/2017-Central Tax (Rate) Dt. 28th June 2017 and Notification No. 14/2017-Integrated Tax (Rate) Dt. 28th June 2017 : The following 2 services (are identical under CGST & IGST) on which GST shall be levied under Reverse Charge have been notified:

S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
12	services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle;	Driver	Any person. However, the tax on intra-State or inter-State supplies shall be paid by the Electronic Commerce Operator (ECO).	ECO [Sec. 9(5) of CGST Act, 2017]

Example : 222

Uber operating radio taxi services in India. In the month of Nov 2017, the following services are rendered by it.

(a) Free services provided to new customers who travelled for the first time. However, payment made to taxi drivers ₹ 10,00,000.

(b) Hire charges collected from customers ₹ 12,25,500. Payment made to taxi drivers ₹ 11,00,000.

Uber appointed X Pvt. Ltd., as their representative in India.

You are required to find

a) Who is liable to pay GST?

b) Taxable value of supply.

c) Net GST liability

Answer:

(a) X Pvt. Ltd., being recipient of service is liable to pay GST.

(b) & (c) Taxable value of supply:

Particulars	Value in ₹	Remarks
Free services provided to new customers. However, payment made to taxi drivers	10,00,000	Reverse charge applicable
Hire charges	12,25,500	Gross value is subject to GST.
Gross value of Bills	22,25,500	
CGST 2.5%	52,988	(22,25,500 x 2.5/105)
SGST 2.5%	52,988	(22,25,500 x 2.5/105)
Taxable value of supply	21,19,524	

Sec. 9(5) of CGST/Sec. 5(5) of IGST: Govt. will decide who is liable to pay GST under Reverse Charge.

Notification No. 17/2017-Central Tax (Rate) Dt. 28th June 2017 and Notification No. 14/2017-Integrated Tax (Rate) Dt. 28th June 2017 the following 2 services (are identical under CGST & IGST) on which GST shall be levied under Reverse Charge have been notified:

S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
13	services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under clause (v) of section 20 of the Integrated Goods and Services Tax Act, 2017 read with sub-section (1) of section 22 of the said Central Goods and Services Tax Act.	Unregistered person supplying services through Electronic Commerce Operator (ECO)	Any person. However, the tax on intra-State or inter-State supplies shall be paid by the Electronic Commerce Operator (ECO).	ECO [Sec. 9(5) of CGST Act, 2017]

Electronic Commerce Operator:

Electronic Commerce Operator has been defined in Sec. 2(45) of the CGST Act, 2017 to mean any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.



As per section 22(1) of the CGST Act, 2017, person whose aggregate turnover in the previous financial year has exceeds ₹ 20 lakhs (₹ 10 lakhs for specified States) shall be liable to obtain registration compulsorily.

Thus, if the aggregate turnover in the previous financial year of any hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes not exceeds ₹ 20 lakhs (or not exceeds ₹ 10 lakhs for special category States) and such person exclusively makes supply of accommodation service through Electronic Commerce Operator (ECO), the liability to pay GST will be on the Electronic Commerce Operator (ECO).

On the other hand, if the person exclusively makes supply of accommodation service through Electronic Commerce Operator (ECO) and his aggregate turnover exceeds ₹20 lakhs (or exceeds ₹10 lakhs in case of special category States), the liability to pay GST will be on the person providing the service and not on the Electronic Commerce Operator (ECO).

Example : 223

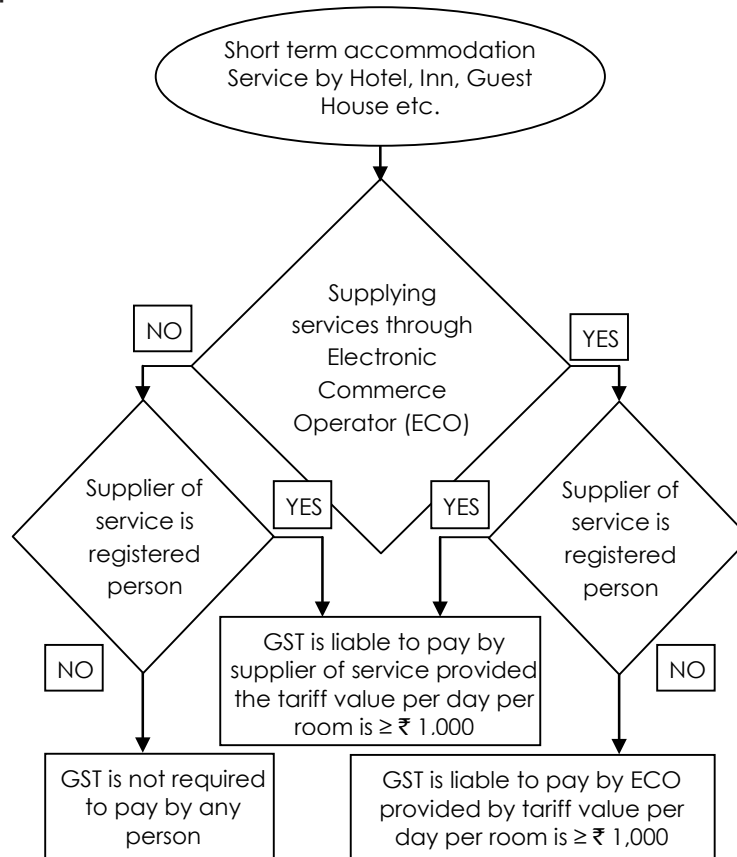
Whether a person supplying goods or services through e-commerce operator would be entitled to threshold exemption?

Answer:

No. Section 24(ix) of the CGST Act, 2017 lays down that the threshold exemption is not available to such persons and they would be liable to be registered irrespective of the value of supply made by them. This requirement is, however, applicable only if the supply is made through such electronic commerce operator who is required to collect tax at source under section 52 of the CGST Act, 2017.

However, where the e-commerce operators are liable to pay tax on behalf of the suppliers under a notification issued under section 9 (5) of the CGST Act, 2017, the suppliers of such services are entitled for threshold exemption.

Summary of the above provision:



Example : 224

Raman Hotels supplying only accommodation services in Chennai. Turnover of Raman Hotels is less than 20 Lakhs. Raman Hotels listed hotel on online platform namely Makemytrip.

The following categories of rooms get booked by the Makemytrip company who pay to Raman Hotels after deducting their commission.

(a) Declared Tariff per room (category 1), Non AC Room ₹ 950 per Night.

(b) Declared Tariff per room (category 2), AC Room ₹ 1,800 per Night.

(c) Declared Tariff per room (category 3), AC Room ₹ 7,000 per Night, where additional bed ₹ 1,800 per Night.

(d) Declared Tariff per room (category 4), AC Room ₹ 10,000 per Night, but amount charged is ₹ 7000.

You are required to answer:

(a) who is liable to pay GST and (b) Net GST liability

Answer:

Particulars	Value in ₹	GST ₹	Remarks
(a) Declared tariff ₹ 950	Nil		Since, declared tariff less than ₹ 1,000. It is exempted supply of service.
(b) Declared tariff ₹ 1,800	1,800	216	Taxable supply. GST @12% is applicable
(c) Declared tariff ₹ 7,000	8,800	1,584	Taxable supply. Since, declared tariff not exceeds ₹ 7,500, applicable rate is 18%. However, GST will be charged on transaction value.
(d) Declared tariff value ₹10,000	7,000	1,960	Taxable supply. Since, declared tariff exceeds ₹7,500, applicable rate is 28%. However, GST will be charged on transaction value.
Total		3,760	

Case Study : 6

Mr. A, a taxable service provider, provided taxable supply of services to Mr. B. The contract of service entered into between them stipulated that Mr. A will bear all the taxes, duties and other liabilities in connection with discharge of his obligations. While the service was being provided, an amendment in the law shifted the liability to pay GST in case of such taxable supply of services from service provider to service receiver retrospectively, i.e. reverse charge provisions were made applicable.

You are required to answer the following questions with the help of the decided case law(s), if any:

Can Mr. B, who is the person liable to pay GST under reverse charge, shift the burden of such GST on Mr. A by deducting the same from the payment made against the bills raised by Mr. A?

Can Mr. B ask the Revenue to recover GST from Mr. A since the contract of service stipulates that Mr. A will bear all the taxes, duties and other liabilities in connection with discharge of his obligations?

Answer:

Yes. As per the *Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran* 2012 (260) S.T.R. 289 (S.C.), Mr. B can shift the burden of GST on Mr. A by deducting the same from the payment made against the bills raised by Mr. A.

No. As per the *Delhi Transport Corporation v. Commissioner Service Tax* 2015 (038) STR 673 (Del.), Mr. B cannot ask the Revenue to recover GST from Mr. A since the contract of service stipulates that Mr. A will bear all the taxes, duties and other liabilities in connection with discharge of his obligations.

Case Study : 7

Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran 2012 (260) S.T.R. 289 (S.C.):

Point of dispute: Whether the service tax liability created under law can be shifted by a clause entered in the contract?



Decision: Yes. Assessee can contract to shift their liability.

Regarding transferring of service tax liability by way of contract was correct. It means service provider will bear all the taxes, and service receiver can shift the burden of service tax payable by him to service provider by deducting the same from the bills raised by service provider.

Case Study : 8

Delhi Transport Corporation v. Commissioner Service Tax 2015 (038) STR 673 (Del.)

Facts of the Case: The appellants entered into contracts with seven various agencies for display of advertisements; inter alia, on bus-queue shelters and time-keeping booths. The terms of the contract clearly stated that it would be the responsibility of the contractors/advertisers to pay directly to the concerned authority the tax/levy imposed by such authority in addition to the license fee.

Department issued show cause notice asking the appellant (service provider) to pay service tax along with interest and penalties on the service of display of advertisements rendered by them.

Appellant's Contentions: The appellant argued that they were under a bona fide belief that the liability to remit service tax stood transferred to the recipient as per the agreements; this caused the failure to file returns and remit service tax. They relied upon *Rashtriya Ispat Nigam Limited v. Dewan Chand Ram Saran* 2012 (26) STR 289 (SC) to urge that having entered into the contracts in the nature mentioned above, it was a legitimate expectation that the service tax liability would be borne by the contractors/advertisers and, thus, there was no justification for the appellant being held in default or burdened with penalties.

Decision: The High Court held that undoubtedly, the service tax burden could be transferred by contractual arrangement to the other party. However, on account of such contractual arrangement, the assessee cannot ask the Revenue to recover the tax dues from a third party (the other party) or wait for discharge of the liability by the assessee till it has recovered the amount from its contractors (the other party).

Therefore, the appellant was an assessee, and statutorily bound to not only get itself registered but also submit the requisite returns as per the prescription of law and rules framed thereunder.

2.8 SUPPLY OF GOODS OR SERVICES OR BOTH TO OR BY SPECIAL ECONOMIC ZONE

"Special Economic Zone" shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 [Section 2(19) of the IGST Act]. As per section 2(za) of the Special Economic Zones Act, 2005, "Special Economic Zone" means each Special Economic Zone notified under the proviso to sub section (4) of section 3 and sub section (1) of section 4 (including Free Trade and Warehousing Zone) and includes an existing Special Economic Zone;

"Special Economic Zone developer" shall have the same meaning as assigned to it in clause (g) of section 2 of the Special Economic Zones Act, 2005 and includes an Authority as defined in clause (d) and a Co-Developer as defined in clause (f) of section 2 of the said Act [Section 2(20) of the IGST Act].; As per section 2(g) of the Special Economic Zones Act, 2005, "Developer" means a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub section (10) of section 3 and includes an Authority and a Co Developer;

As per section 7(5) of the IGST Act, supply of goods or services or both to or by a Special Economic Zone developer or a Special Economic Zone unit, shall be treated to be a supply of goods or services or both in the course of inter-state trade or commerce.

In case where the location of the supplier and the place of supply of goods or services are in the same state or same union territory, then the said supply of goods or services shall not be treated as intra-state supply, it will be treated as inter-state supply.

Supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit, is a "zero rated supply". Credit of input tax may be availed for making zero-rated supplies.

Study Note - 3

TIME, VALUE AND PLACE OF SUPPLY UNDER GST



This Study Note includes

- 3.1 Time of Supply
- 3.2 Place of Supply
- 3.3 Value of Supply
- 3.4 Change in Rate of Tax in respect of Supply of Goods or Services

3.1 TIME OF SUPPLY

It means the date on which the charging event has occurred. As a result the rate of CGST/SGST or IGST or UTGST will be decided in accordance with the time of supply. Based on time of supply we will also determine the due date of payment of GST.

Due date of payment of GST:

S.No.	Nature of assessee	Due Date	Relevant provision
1	Composition scheme	18th of the month following the quarter	Sec.39(2)
2	Tax Deducted at Source (TDS)	10th of the following month	Sec. 39(3)
3	Non-resident taxable person	20 days after the end of the calendar month or 7 days after last date of validity period of registration.	Sec. 39(5)
4	Tax Collected at Source (TCS)	10th of the following month	Sec. 56(2)
5	Other than above	20th of the following month	Sec. 39(1)
6	Assessee turnover not exceeds ₹ 1.50 crore in the P.Y.	20th of the following month from the end of relevant quarter.	Commencing from Oct-Dec in the financial year 2017-18.

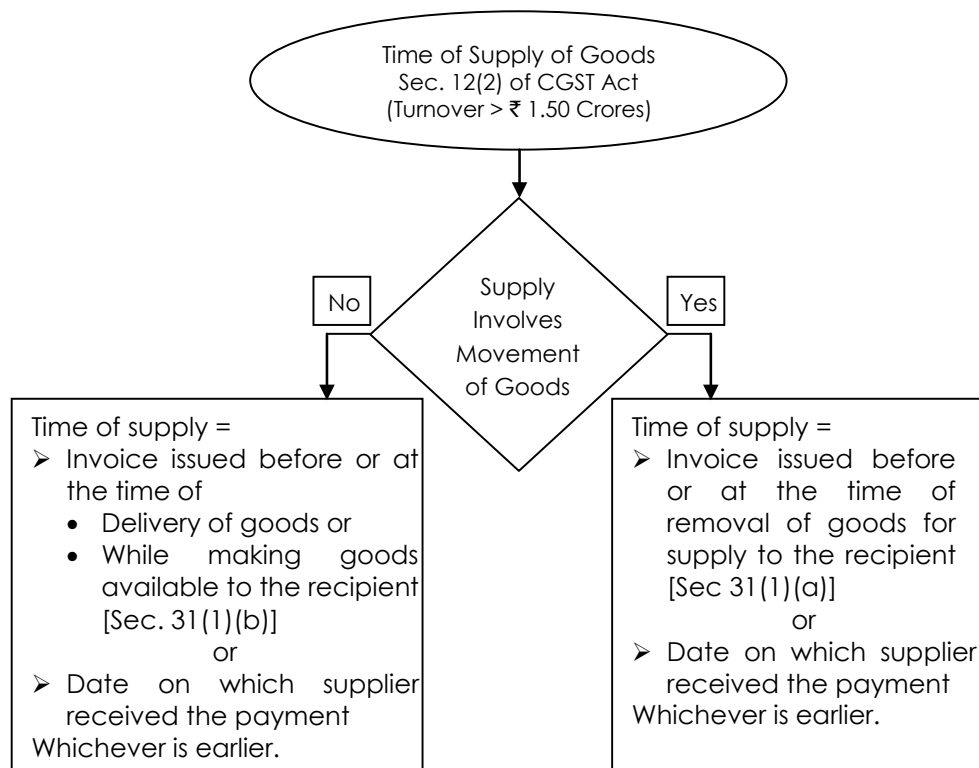
Section 12 and 13 of CGST Act, 2017:

Time of Supply of Goods		Time of Supply of Services	
Section 12(1)	The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section.	Section 13(1):	The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.
Section 12(2)	Time of Supply of Goods under Forward Charge.	Section 13(2)	Time of Supply of Services under Forward Charge.
Section 12(3)	Time of Supply of Goods under Reverse Charge.	Section 13(3)	Time of Supply of Services under Reverse Charge.
Section 12(4)	Time of Supply in case of Supply of Vouchers.	Section 13(4)	Time of Supply in case of Supply of Vouchers.
Section 12(5)	Residuary Clause. [where the time of supply cannot be determined under sub-section (2) to sub-section (4) of Section 12]	Section 13(5)	Residuary Clause. [where the time of supply cannot be determined under sub-section (2) to sub-section (4) of section 13]



Section 12(6)	The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.	Section 13(6)	The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

(A) Time of Supply of Goods Sec. 12(2) of CGST Act, 2017



Example 1:

P of Chennai supplies goods to B of Bengaluru. P has to send the goods for delivery from Chennai to Bengaluru. P sends the goods to B on 30th Oct 2017. Turnover of P in the Previous Year was ₹ 2 crore. Find the time of supply in the following different scenarios:

Removal of Goods	Date of Issue of Invoice	Last Date for Issue of Tax Invoice	Date on which payment is entered in the books of account	Date on which payment is credited in the Bank Account	Time of Supply	Criteria for determining Time of Supply
30th Oct	30th Oct	30th Oct	31st Oct	1st Nov	30th Oct	Date of issue of Invoice
30th Oct	2nd Nov	30th Oct	31st Oct	1st Nov	30th Oct	Last Date for issue of Invoice
30th Oct	28th Oct	30th Oct	27th Oct	26th Oct	26th Oct	Date on which payment is credited in the Bank Account

Example : 2

Mr. Ram sold goods to Mr. Shyam worth ₹ 5,00,000. The invoice was issued on 15th November. The payment was received on 30th November. The goods were supplied on 20th November.

Find the time of supply of goods?

P.Y. turnover of Mr. Ram was ₹172 lakhs.

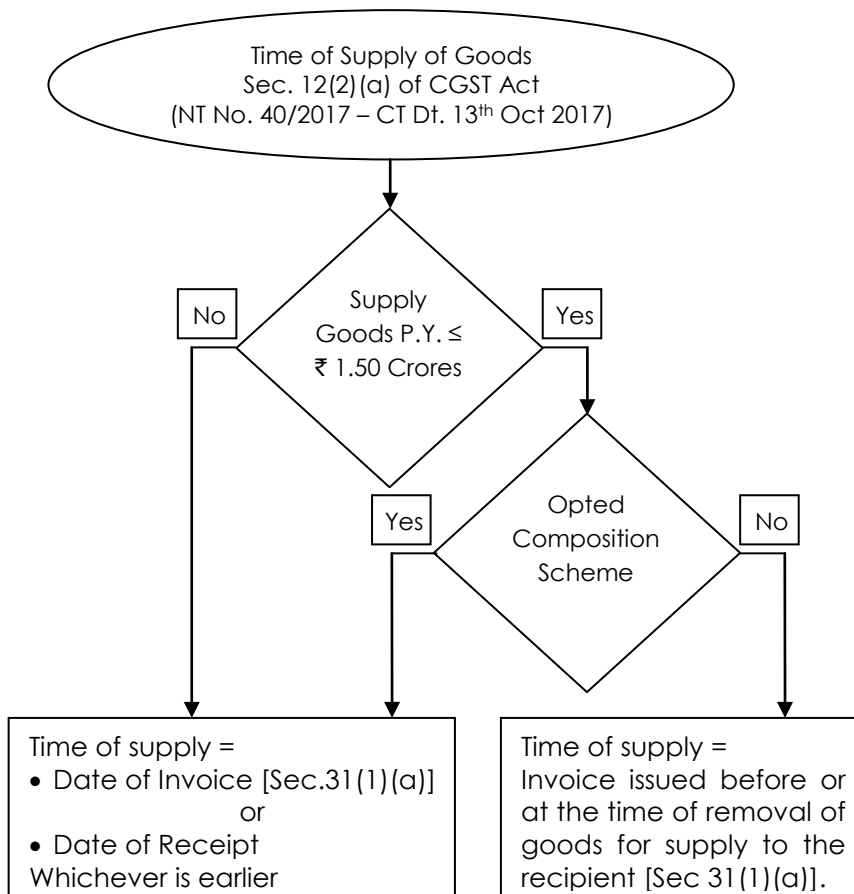
Answer:

Particulars	Whichever is earlier
Date of issue of invoice	15th November
Last date on which invoice should have been issued	20th November
Date of receipt of payment	30th November
Therefore, time of supply of goods = 15th November.	
Date of invoice or payment whichever is earlier.	

No GST on Advance Payments received for Supply of Goods by Small Taxpayers having aggregate annual turnover of upto ₹ 1.5 crores:

Taxable persons whose aggregate turnover in the preceding year did not exceed ₹ 1.5 Crore or registered persons whose aggregate turnover in the year in which such person has obtained registration is likely to be less than ₹ 1.50 crore and who did not opt for the composition levy under section 10 of the said Act.

The liability to pay taxes by such persons shall be on invoice basis. This means GST liability on advance received is waived of through Notification No. 40/2017 – Central Tax Dt 13th Oct 2017 for such taxpayers as mentioned above.



**Example : 3**

Mr. Ram sold goods to Mr. Ravi worth ₹ 5,00,000. The invoice was issued on 15th November. The payment was received on 31st October. The goods were supplied on 20th November.

Find the time of supply of goods.

P.Y. turnover of Mr. Ram was ₹ 72 lakhs.

Answer:

Particulars		
Date of issue of invoice	15th November	Date of invoice is the criteria
Last date on which invoice should have been issued	20th November	
Date of receipt of payment	31st October	Advance is not a time of supply
Therefore, time of supply of goods = 15th November.		

The phrase “the date on which supplier receives the payment” or “the date of receipt of payment” means:

- the date on which payment is entered in his books of accounts
or
- the date on which the payment is credited to his bank account,
whichever is earlier.

The supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment:

Example 4:

X & Co., receives an advance of ₹ 2,500/- on 29.07.17 for goods worth ₹ 10,000/- to be supplied in the month of September 2017.

Find the following:

- Value of supply of goods in the month of July 2017
- Due date of tax liability for the month of July 2017.

Note: P.Y. turnover ₹ 1.80 crore.

Answer:

- Advance ₹ 2,500/- is treated as deemed supply.

Therefore, X & Co., has made a supply of ₹ 2500/- on 29.07.17.

- Tax liability on ₹ 2500/- is to be discharged by 20.08.17.

An amount upto ₹ 1000/- in excess of the amount indicated on the tax invoice.

Time of supply =

- The date of issue of invoice.
Or
- Date of receipt of payment.

At the option of the supplier.

**Example : 5**

If a supplier of goods has received an amount of ₹ 1500/- against an invoice of ₹ 1,100/- on 25.07.17 and the date of invoice of next supply to the said recipient is 14.08.17.

Find the following in respect of excess amount over and above invoice value:

- (a) Time of Supply of goods
- (b) Due date of payment of tax.

Answer:

- (a) Since, excess amount received over and above invoice value not exceeds ₹ 1,000, supplier has an option to treat the time of supply w.r.t ₹ 400/- either as 25.07.17 or 14.08.17.
- (b) Due date of payment of tax
 - If Time of Supply = 25.07.2017, then due date is 20.8.2017
 - If Time of Supply = 14.08.2017, then due date is 20.9.2017

Example : 6

M/s X Ltd., being a manufacturer, sold goods to M/s Y Ltd., wholesaler, and issued invoice for the sale on 01-08-2017.

Find the time of supply of goods in each of the following independent cases:

- (i) M/s X Ltd., removes the goods for delivery to M/s Y Ltd., on 16th August 2017.
- (ii) M/s. Y Ltd., collects the goods from premises of M/s X Ltd., on 10th August 2017.
- (iii) M/s Y Ltd., made full payment on 26th July 2017.
- (iv) M/s Y Ltd., credited the payment in bank account of M/s X Ltd., on 28th July 2017 for 3/4th of goods, M/s X Ltd., recorded the same as receipts in his books on 3rd August 2017. The goods were dispatched on 5th August 2017 from the warehouse.

Answer:

- (i) 1st August 2017 is the time of supply of goods.
i.e. Earlier of the following:
 - Date of Invoice - 1st August 2017
 - or
 - Date on which invoice is required to be issued - 16th August 2017.
- (ii) 1st August 2017 is the time of supply of goods.
i.e. Earlier of the following:
 - Date of Invoice - 1st August 2017
 - or
 - Date on which goods is delivered - 10th August 2017.
- (iii) 26th July 2017 is the time of supply of goods
i.e. Earlier of the following: -
 - Date of Invoice - 1st August 2017
 - or
 - Date of Payment - 26th July 2017.

Note: assume P.Y. turnover exceeds ₹ 1.50 crore.

- (iv) The time of supply of goods for 3/4th of the goods will be 28th July 2017 as the payment has been made prior to the date of invoice and the time of supply of goods will be 1st August 2017 for remaining 1/4th goods.

Note: assume P.Y. turnover exceeds ₹ 1.50 crore.



Continuous supply of goods

Time of supply =

- Time when each statement is issued.

OR

- Time when each payment is received.

Whichever is earlier.

Note: Sec 31(4) of CGST Act, 2017, the Invoice shall be issued before or at the time of such statement is issued or, as the case may be each such payment is received.

Example : 7

M/s AB Oil Corporation entered into a contract with Mr. B to supply of oil throughout the year. M/s AB Oil Corporation issues monthly statement for the oil supplied to Mr. B.

Determine the time of supply of goods in following independent cases:

- (i) Mr. B made payment for the month of July on 31st July 2017 and M/s AB Oil Corporation issued statement for the month of July on 8th August 2017.*
- (ii) M/s AB Oil Corporation issued statement for the month of August on 5th September 2017, the payment of which not received till 30th September 2017.*

Answer:

- (i) 31st July 2017 will be the time of supply.**

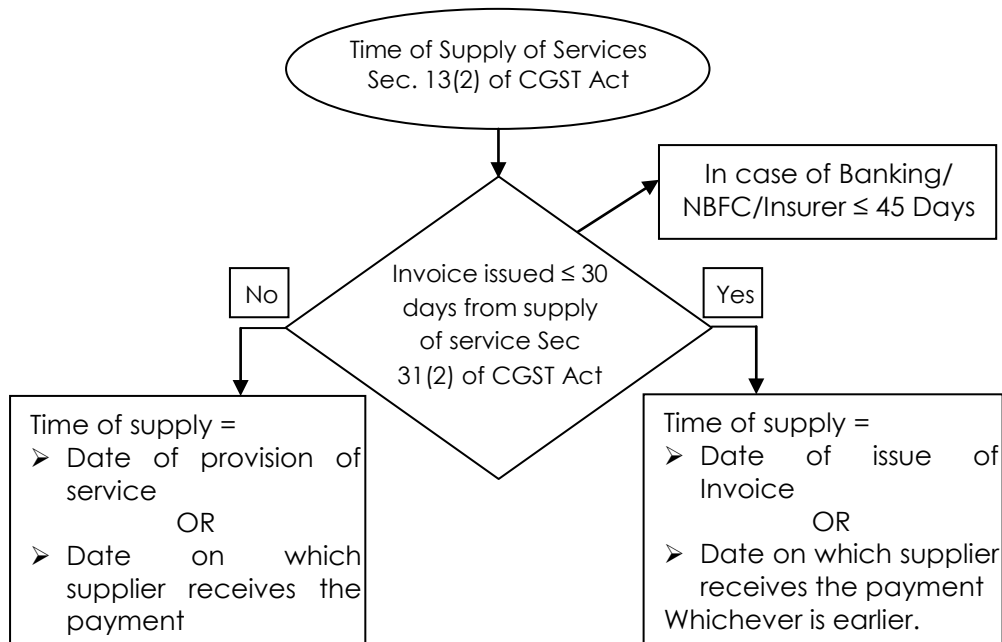
Earliest of the following:

- **Date of Invoice: 8th August 2017**
- **Last date on which invoice has to be issued:**
Date of payment (31.07.2017) or
statement (08.08.2017),
whichever is earlier i.e. 31st July 2017.

- (ii) 5th September 2017 will be the time of supply.**

Earliest of the following:

- **Date of Invoice: 5th September 2017.**
- **Last date on which invoice has to be issued:**
Date of payment (not known) or
statement (05.09.2017),
whichever is earlier i.e. 5th September 2017.

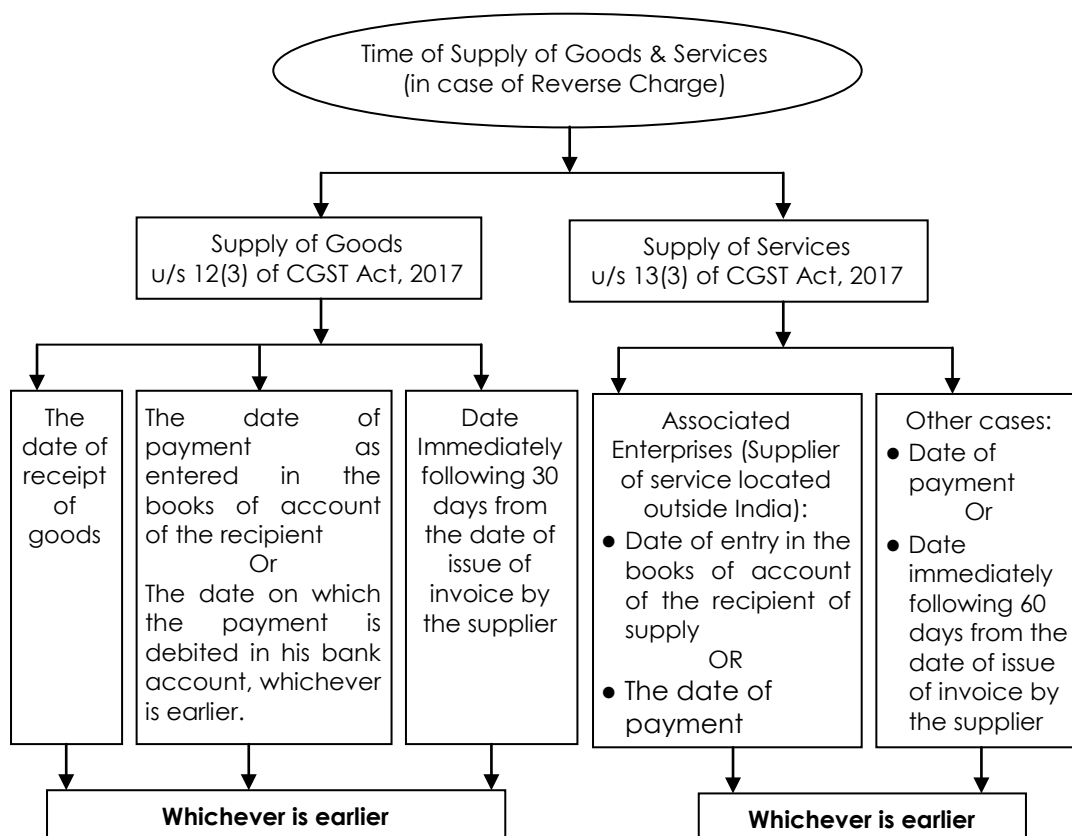
(B) Time of Supply of Services [Sec. 13(2) of CGST Act]:**Example : 8**

ABC & Co., a Cost Accountants firm issued invoice for services rendered to Mr. Ram on 5th August 2017. Determine the time of supply in following independent cases:

- (i) The provisions of services were completed on 1st July 2017.**
- (ii) The provisions of services were completed on 15th July 2017.**
- (iii) Mr. Ram made the payment on 3rd July 2017, where provisions of services were remaining to be completed.**
- (iv) Mr. Ram made the payment on 15th August 2017, where provisions of services were remaining to be completed.**

Answer:

- (i) 1st July 2017 will be the time of supply of services as invoice is not issued within the time frame of 30 days.**
- (ii) 5th August 2017 will be the time of supply of services as invoice is issued within the time frame.**
- (iii) 3rd July 2017 will be the time of supply of services as payment received before invoice date.**
- (iv) 5th August 2017 will be the time of supply of services as invoice is issued before the completion of provisions of services.**

**(C) Time of Supply of Goods & Services (in case of Reverse Charge)**

If time of supply cannot be determined with the help of above provisions then the time of supply shall be the date on which entry in the books of the recipient of goods & services is made.

Example : 9

Mr. A, a registered person received goods from Mr. B, an unregistered dealer. Mr. B issues invoice on 1st July 2017.

Find the time of supply of goods in following independent cases:

- (i) Mr. A received goods on 15th July 2017, payment of which is not made yet.**
- (ii) Mr. A received goods on 3rd August 2017 & made payment for the same on 4th August 2017.**
- (iii) Mr. A made payment on 8th July and received goods on the same date.**
- (iv) Mr. A received goods on 10th July 2017 & made payment for the same on 9th July 2017.**

Answer:

(i) Time of supply of goods	= 15-07-2017
Earliest of the following:	
Receipt of Goods	= 15-07-2017
Date of Payment	= not paid
Date immediately following 30 days from the date of invoice	= 31-07-2017
(ii) Time of supply of goods	= 31-07-2017
Earliest of the following:	
Receipt of Goods	= 03-08-2017
Date of Payment	= 04-08-2017
Date immediately following 30 days from the date of invoice	= 31-07-2017



(iii) Time of supply of goods	= 08-07-2017
Earliest of the following:	
Receipt of Goods	= 08-07-2017
Date of Payment	= 08-07-2017
Date immediately following 30 days from the date of invoice	= 31-07-2017
(iv) Time of supply of goods	= 09-07-2017
Earliest of the following:	
Receipt of Goods	= 10-07-2017
Date of Payment	= 09-07-2017
Date immediately following 30 days from the date of invoice	= 31-07-2017

Example : 10

C Ltd., a registered firm received services from a Raman & Co., an Advocate firm., an unregistered person. The firm issued invoice to C Ltd. on 1st July 2017. Determine the time of supply of services in the following independent cases:

- (i) C Ltd. made the payments to the firm on 15th August 2017.
- (ii) C Ltd. made the payments to the firm on 11th September 2017.

Note: C Ltd. turnover in the preceding financial year was ₹ 2 crore

Answer:

- (i) Time of supply of service = 15-08-2017

Note: as payment made earlier than the date immediately following 60 days from date of issue of invoice.

- (ii) Time of supply of service = 30-08-2017

Note: as payment made after the date immediately following 60 days from date of issue of invoice.

Example : 11

X Ltd. & Y Ltd. (London) is associated enterprises. X Ltd., a registered firm received the services of Y Ltd., a unregistered firm. Determine the time of supply in following cases:

- (i) X Ltd. recorded the liability in the books on 15th July 2017 and payment will be made in the next month.
- (ii) X Ltd. made advance payment to Y Ltd. on 10th July and recorded liability in the books on 15th Aug 2017.

Answer:

- (i) Time of supply = 15-07-2017

Note: as the date of entry in the books is prior to the date of payment.

- (ii) Time of supply = 10-07-2017

Note: as the payment is made earlier to the date of entry in the books.

Goods sent for approval:

Time of supply =

- Time when it becomes known that supply is taken place.

OR

- Six months from the date of removal.

Whichever is earlier



Time of Supply of Vouchers for Goods & Services [Section 12(4) & 13(4) of CGST Act, 2017]:

If the supplies is identifiable at that point:

- Time of supply = Date of issue of voucher.

If the supplies is not identifiable at that point:

- Time of supply = The date of redemption of voucher.

Example : 12

Reliable Industries a readymade garment manufacturer issued the voucher on 10-07-2017 to their prospective customer for enabling them to buy readymade garments manufactured by them from their shop. Customer purchased readymade garments on 20th Aug 2017.

Find the time of supply of goods?

Answer:

Time of supply of goods = 10-07-2017

Note: time of supply will be the issuance of the voucher. Since, the voucher is identifiable with the goods.

Example : 13

Shopper's Stop Store a large retailer who sells various types of products like readymade garment, jewellery, cosmetics, fabrics, shoes etc., issued the voucher on 10-07-2017 to their prospective customer for enabling them to buy any product from their shop. Customer purchased readymade garments on 20th Aug 2017.

Find the time of supply of goods?

Answer:

Time of supply of goods = 20-08-2017

Note: time of supply will be the date of encashment of voucher (i.e. Redemption of voucher), since, the voucher is not identifiable with any specific product.

Time of supply of goods or services (Residual provisions) [Section 12(5) and Section 13(5) of the CGST Act, 2017]:

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

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

Time of supply of goods or services related to an addition in the value of supply by way of interest, late fees or penalty [Section 12(6) and Section 13(6) of the CGST Act, 2017]:

Example : 14

Mr. X being a supplier receives consideration in the month of September 2017, instead of due date of July 2017, and for such delay he is eligible to receive an interest amount of ₹ 1000/- and the said amount is received on 15.12.2017.

Find the time of supply for the interest portion and due date of payment.

Answer:

The time of supply = 15.12.17

i.e. the date on which it is received by the supplier and

Due date of tax liability = 20.01.18.



GST is destination based tax i.e consumption tax, which means tax will be levied where goods and services are consumed and will accrue to that state. So, the state where they are consumed will have the right to collect GST.

This, in turn, makes the concept of place of supply crucial under GST as all the provisions of GST revolves around it.

The reasons why an accurate determination of place of Supply is important for business are listed below :

- Wrong classification of supply between interstate or intra-state and vice-versa may lead to hardship to the taxpayer as per section 19 of IGST Act and section 70 of CGST Act.
- Where wrong taxes have been paid on the basis of the wrong classification, refund will have to be claimed by the taxpayer
- The taxpayer will have to pay the correct tax along with interest for delay on the basis of revised/correct classification
- Also, correct determination of place of supply will help us in knowing the incidence of tax. As if place of supply is determined as a place outside India, then tax will not have to be paid on that transaction

3.2 PLACE OF SUPPLY IN GST

Place of Supply of Goods in GST:

While determining the levy of taxes based on Place of Supply, two things are considered namely:

1. **Location of Supplier:** It is the registered place of business of the supplier.
2. **Place of Supply:** It is the registered place of business of the recipient

Example : 15

X Ltd., is a supplier of craft products, having the registered office in Chennai, Tamil Nadu. It supplies goods to schools in Madurai, Tamil Nadu. Since the location of supplier as well as the place of supply is in the same State i.e Tamil Nadu, it will be counted as 'Intra-state Supply of Goods' and hence SGST & CGST will be levied.

Example : 16

X Ltd., located in Mumbai, Maharashtra receives order from M/s Y Ltd. located in Ahmedabad, Gujarat for supply of one machine.

Find the place of supply and applicable GST?

Answer:

1. **Location of Supplier:** Mumbai (Maharashtra).
2. **Place of Supply:** Ahmedabad (Gujarat)

Since, the movement of goods terminate at Ahmedabad.

Applicable GST = IGST

Place of supply of Goods:

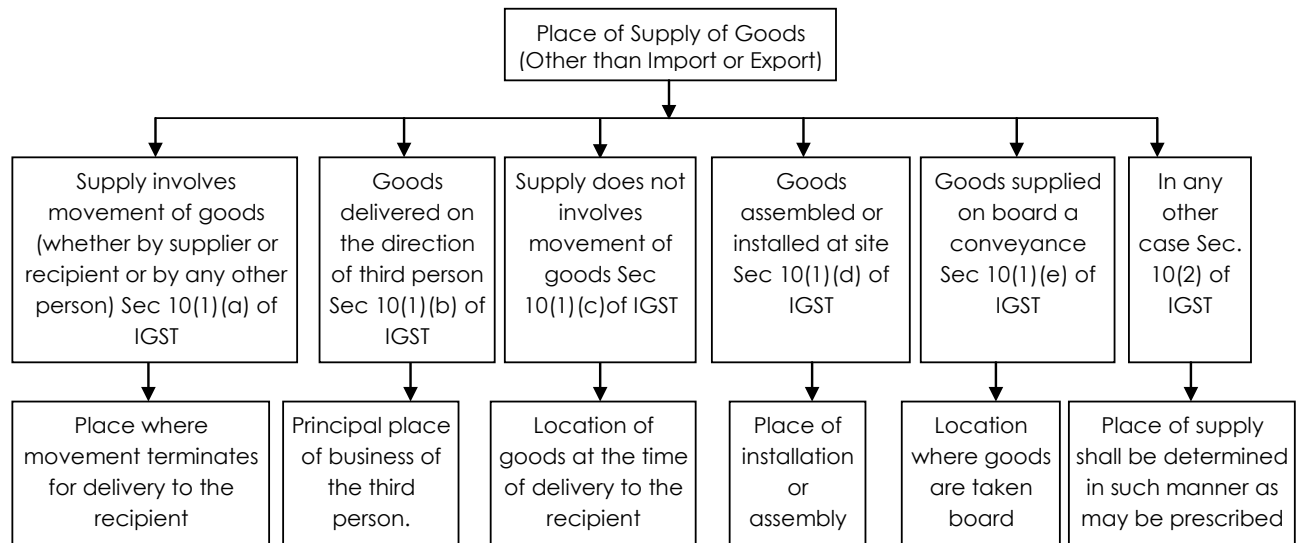
Place of supply of goods under GST defines whether the transaction will be counted as intra-state or inter-state, and accordingly levy of SGST, CGST & IGST will be determined.

Following topics under it are as follows:

1. Movement of Goods
2. No movement of Goods
3. Goods are assembled or installed at Site

4. Goods supplied on a vessel/ conveyance
5. Place of Supply of goods cannot be determined
6. Imports and exports

As per section 10 of the CGST Act, 2017 place of supply of goods other than supply of goods imported into, or exported from India, shall be as under:

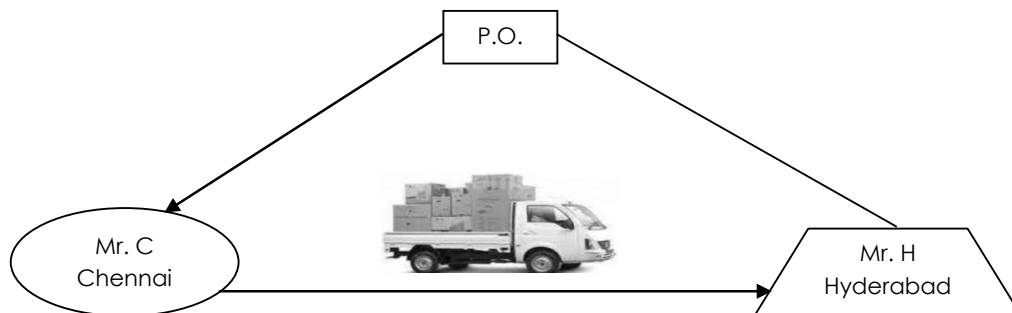


Supply involves movement of goods [Section 10(1)(a) of the IGST Act, 2017]:

Nature of supply	Place of supply of goods
Supply involves movement of goods whether by supplier or recipient or by any other person.	Location of the goods at the time at which the movement of goods terminates for delivery to the recipient.

Example : 17

Mr. C of Chennai received purchase order from Mr. H of Hyderabad for want of commercial goods. Now supply involves movement of goods by supplier from Chennai to Hyderabad in a truck by road.



Place of supply of goods = Hyderabad.

IGST will be levied.

Declared outward supply of goods in Table 5 of GSTR - 1, supplier should indicate place of supply where location of supplier and recipient are different.

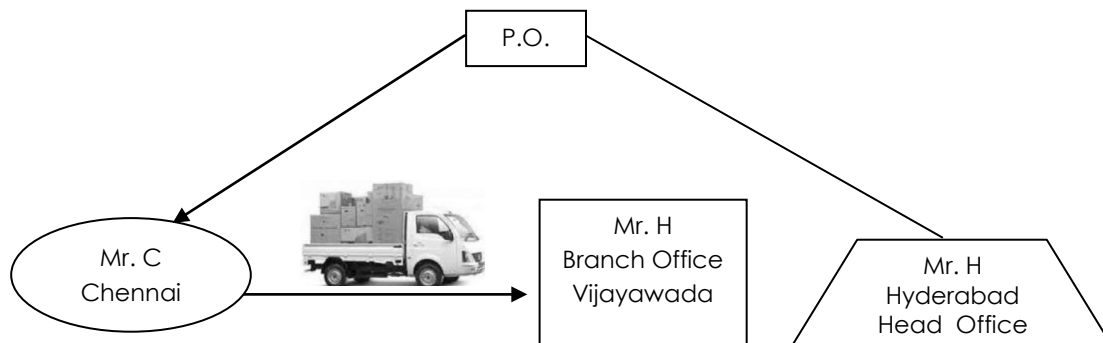
The supplier delivers goods to a recipient or any other person on the direction of a third person by way of transfer of documents of title to the goods or otherwise [Section 10(1)(b) of the IGST Act 2017]:

Nature of supply	Place of supply of goods
Goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods by way of transfer of documents of title to the goods or otherwise.	It shall be deemed that the said third person has received the goods and the Place of Supply of such goods shall be the principal place of business of such person.

Example : 18

Mr. C of Chennai received purchase order from Mr. H of Hyderabad for want of commercial goods. Now supply involves movement of goods by supplier from Chennai to Hyderabad by road in a truck.

Upon the direction of Mr. H of Hyderabad these goods are redirect to Branch office of Mr. H located in Vijayawada, (in Andhra Pradesh) by way of transfer of documents of title to the goods (i.e. Lorry Receipt or LR copy).



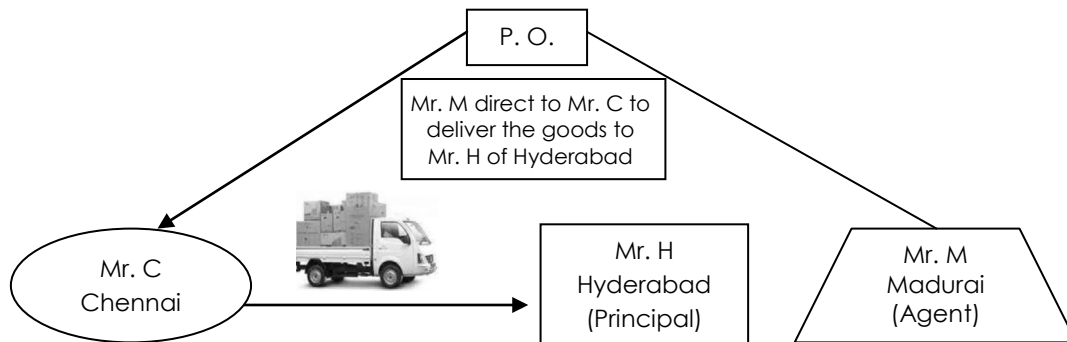
Place of supply goods = Hyderabad.

IGST will be levied.

It shall be deemed that the said third person has received the goods and the Place of Supply of such goods shall be the principal place of business of such person.

Example : 19

Supplier delivers goods to a Principal on the direction of an Agent.



Place of supply goods = Madurai.

CGST & SGST will be levied

It shall be deemed that the said third person has received the goods and the Place of Supply of such goods shall be the principal place of business of such person as per Sec 10(1)(b) of IGST Act, 2017, even if Mr. M acts as agent of Mr. H (namely Principal)

**Supply does not involve movement of goods [Section 10(1)(c) of the IGST Act, 2017]:**

Nature of supply	Place of supply of goods
Where the supply does not involve movement of goods, whether by the supplier or the recipient.	Location of such goods at the time of the delivery to the recipient (This place of supply is irrespective of the location of the buyer and seller)

Example : 20

A and B both located in Kerala. B comes to shop of A. A delivered goods to B. What is the place of supply of goods. Which levy will attract?

Answer:

Place of supply goods = Kerala.

CGST & SGST will be levied

Location of such goods at the time of the delivery to the recipient.

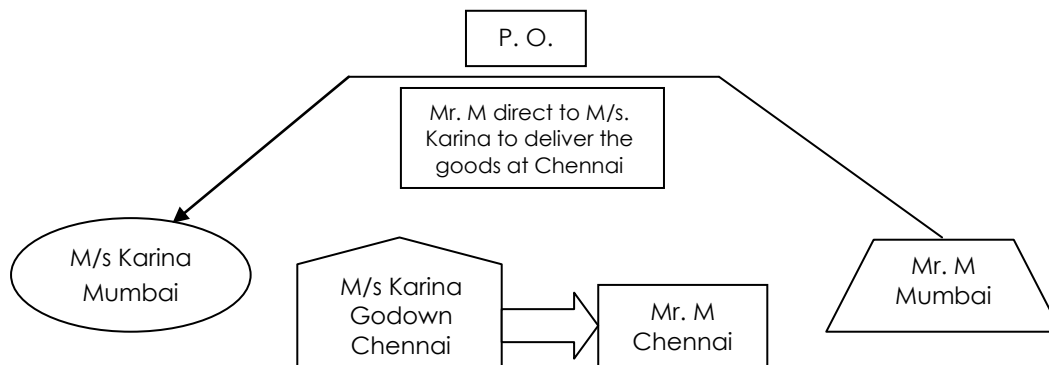
This is irrespective of the location of the buyer and seller.

Example : 21

M/s Karina Ltd. incorporated in Mumbai and own a godown in Chennai. Mr. M of Mumbai approached M/s Karina Ltd. of Mumbai for purchase of goods lying in godown at Chennai. Mr M further informs that he does not want delivery of goods in Mumbai. M/s Karina Ltd. issues invoice for sale of goods in Mumbai.

Find the place of supply of goods and levy of tax?

Answer:



Place of supply goods = Chennai

IGST will be levied

Location of such goods at the time of the delivery to the recipient where supply does not involve movement of goods.

This place of supply is irrespective of the location of the buyer and seller.

**Example : 22**

M/s X Ltd. has place of business in Chennai, being an NBFC given an asset under financial lease to M/s ABC Ltd. of Chennai. The said asset so far used by M/s ABC Ltd. in their factory located at Hyderabad. At the end of lease period the said asset acquired by M/s ABC Ltd. at a nominal amount. Find the place of supply of goods and levy of GST.

Answer:

Place of supply of goods = Hyderabad.

IGST will be levied.

Since, there is no movement of goods from one place to another, provisions of Sec. 10(1)(c) of IGST Act will be applicable.

Goods are assembled or installed at Site [Sec 10(1)(d) of IGST Act, 2017]:

Nature of supply	Place of supply of goods
Where the goods are assembled or installed at site.	Place of such installation or assembly

Example : 23

Mr. D located in New Delhi, place order on Mr. Delhi of New Delhi for installation of Air-condition machine in his factory located in Chennai. Mr. D procures the Indoor and out-door units, set of plugs, electrical cables, distribution boards and other items from different States in India and arranges for delivery in Chennai. The said machine assembled by Mr. Delhi in Chennai. Find the Place of supply of goods and levy tax?

Answer:

Place of supply of goods = Chennai

Mr. Delhi is liable to pay IGST.

Goods supplied on a vessel/conveyance [Section 10(1)(e) of IGST Act, 2017]:

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

Example : 24

Chennai express train going from Chennai to Cochin, M/s X Ltd. located in Cochin has supplied the food which are given to passengers during night time. The food packets are loaded at Chennai Central Station, Chennai. Find the place of supply of goods and levy of GST.

Answer:

Place of supply of goods = Chennai [Refer above for the provision]

M/s X Ltd. is liable to pay IGST.

Example : 25

Mr. C of Chennai supplied goods to M/s Spice Jet Airlines of Chennai flying between Delhi-Mumbai. The goods are loaded in the aircraft in Delhi. Find the place of supply of goods and levy of tax.

Answer:

Place of supply of goods = Delhi

Mr. C of Chennai is liable to pay IGST.

**Place of Supply of goods cannot be determined [Section 10(2) of the IGST Act, 2017]:**

Nature of supply	Place of supply of goods
Any thing not covered under sub-section (a) to (e) of Section 10(1) of the IGST Act, 2017	Determined in such manner as may be prescribed (i.e. as recommended by GST Council)

Place of supply of goods imported into or exported from India [Sec. 11 of the IGST Act, 2017]

Nature of supply	Place of supply of goods
Import into India	Location of the importer
Export from India	Location of outside India

Conclusion: IGST – Levy**IGST – Levy on supply of good:**

Supply of goods in the course of inter-State trade or commerce means any supply where:

- the location of the supplier and
- the place of supply are in different States

Deemed Inter State Supply:

- A supply of goods and/or services in the course of import
- An export of goods and/or services

Place of Supply in case of Services**The Place of Supply of Services where location of supplier and recipient is in India [Sec. 12 of IGST Act, 2017]:**

To know the Place of Supply for Services the following two concepts are very important (Section 12(1) of the IGST Act, 2017):

- Location of the recipient of services.
- Location of the supplier of services

Location of the recipient of services:

Sec 2(14) of IGST Act, the definition of location of recipient of service divided into 4 sub clauses:

Recipient of service	Location of the recipient of service
(a) Services received at place of business where registration is obtained.	Location of such place of business
(b) Services received at fixed establishment	Location of such fixed establishment
(c) Services received at more than one establishment	The location of establishment most directly concerned with the receipt of the supply
(d) Services received at other than above.	The location of the usual place of residence of the recipient.

Location of the supplier of service:

Sec 2(15) of IGST Act, the definition of location of supplier of service divided into 4 sub clauses:

Supplier of service	Location of the supplier of service
(a) Supply is made from a place of business where registration is obtained.	Location of such place of business

(b) Supply is made from a fixed establishment	Location of such fixed establishment
(c) Supply is made from more than one establishment	The location of establishment most directly concerned with the provision of the supply
(d) Services received at other than above.	The location of the usual place of residence of the supplier.

Example : 26

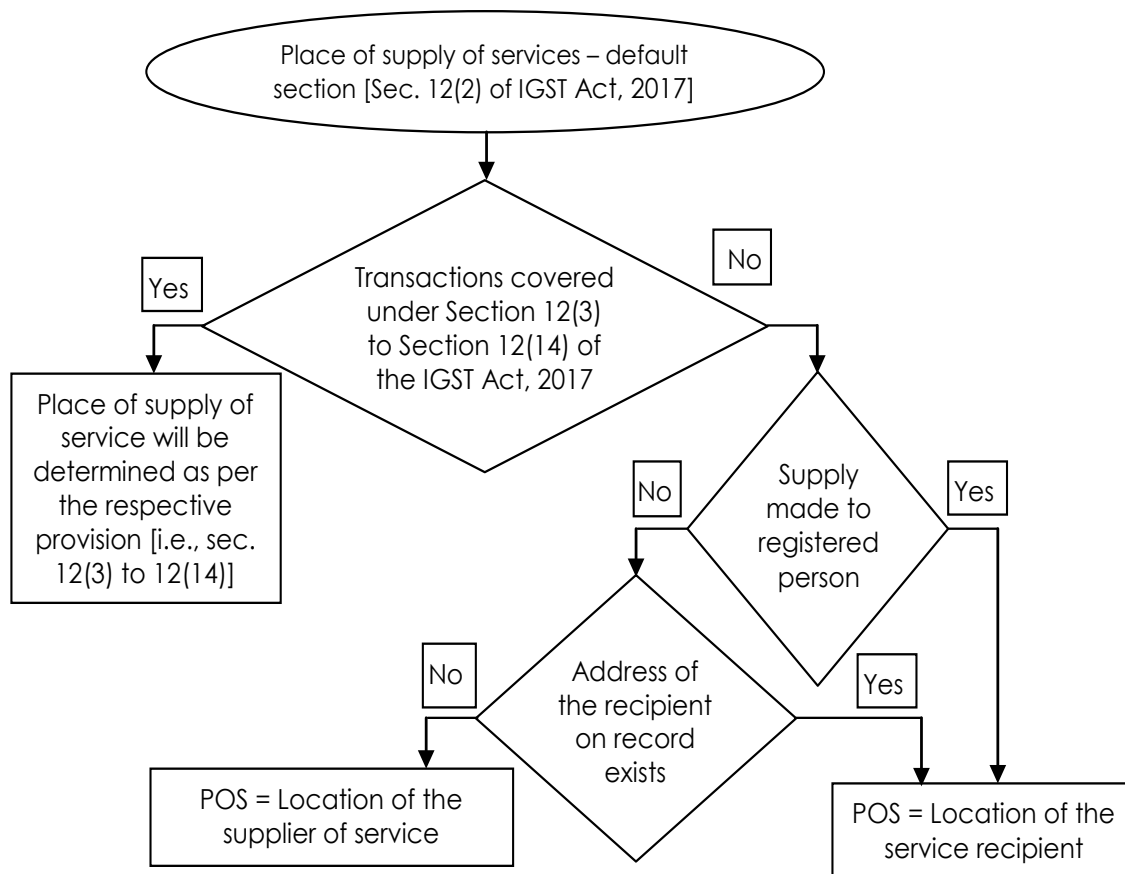
M/s X Ltd. has entered into agreement with M/s Y Ltd. to maintain air conditioners. M/s. X Ltd. has air conditioners located in Telangana, Andhra Pradesh and Tamil Nadu. M/s Y Ltd. has appointed sub-contractors for the purpose of providing the services of maintenance of air conditioners installed in Telangana, Andhra Pradesh and Tamil Nadu. The maintenance and repair work undertaken by the sub-contractor. Who is the supplier of service in the given case?

Answer:

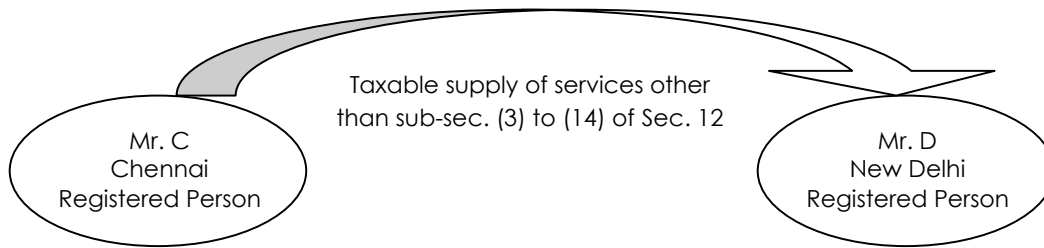
Supplier of service is M/s Y Ltd., even though the services are actually provided by the sub-contractors on behalf of M/s Y Ltd.

Place of supply of services – Default Section.

It means, Section 12(2) is applicable only when Section 12(3) to Section 12(14) is not applicable.

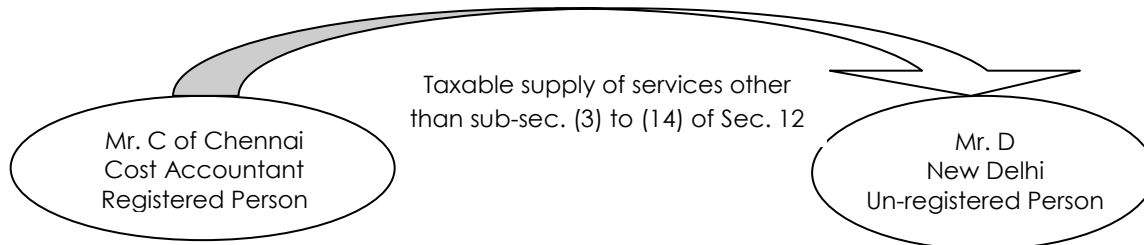


Here POS = Place of supply.

**Supply of service to a registered person [Sec. 12(2)(a) of IGST Act]:**

Place of supply of service = Location of recipient of service (i.e., New Delhi).

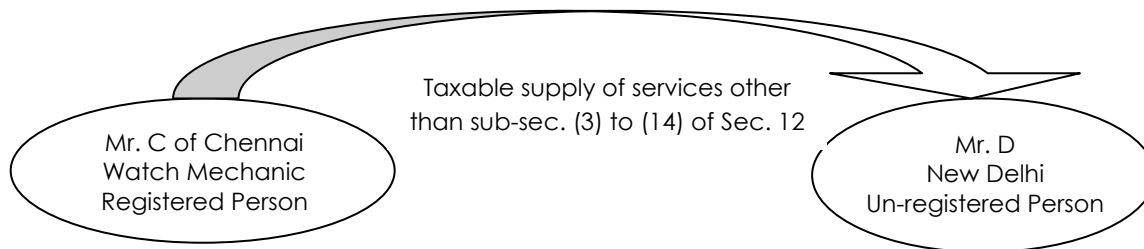
Levy of Tax = IGST will be levied.

Supply of service to a unregistered person [Sec. 12(2)(b)(i) of IGST Act (where the address on records exists)]:

Place of supply of service = Location of the recipient where the address on records exists.

IGST will be levied.

Address on records means the address of the recipient as available in the records of the supplier.

Supply of service to a unregistered person [Sec. 12(2)(b)(ii) of IGST Act (where the address on records NOT exists)]:

Place of supply of service = Chennai

CGST & SGST will be levied.

Place of supply of services directly in relation to an immovable property [Sec. 12(3)(a) of IGST Act, 2017]:

S. No.	Nature of service		Place of supply of service
1	Architects	Any services ancillary to these services [Sec. 12(3)(d)]	Immovable property located or intended to be located in India: • Location of Immovable property Outside India: • Location of the recipient.
2	Interior decorator		
3	Surveyors		
4	Engineers and other related exports or estate agents		
5	Any service provided by way of grant of rights to use immovable property		
6	for carrying out or co-ordination of construction work		

**Example : 27**

Mr. X located in Chennai engaged the services of Mr. Y an Architect in Chennai. Mr. X requests him to make design of residential complex to be constructed in Cochin, Kerala. Mr. Y provided drawing and design services in relation to immovable property located at Cochin.

Find the place of supply of service and levy of tax.

Answer:

Place of supply of service = location of intended to be located the property (i.e. Cochin)

IGST is liable to be paid by Mr. Y.

Place of supply of services by way of lodging accommodation by a [Sec. 12(3)(b) of IGST Act, 2017]:

S. No.	Nature of service		Place of supply of service
1	Hotel	any services ancillary to these services [Sec. 12(3)(d)]	Property located or intended to be located in India: • Location of Immovable property or boat or vessel. Outside India: • Location of the recipient.
2	Inn		
3	Guest house		
4	Home stay		
5	Club or campsite by whatever name called and including a house boat or any other vessel		

Example : 28

Mr. Rohit registered person in Jaipur. He went to Kolkata and stays in Taj hotel at Kolkata. He also availed beauty treatment services at hotel.

Find the place of supply of service and tax liability in the hands of Taj hotel.

Answer:

Place of supply of service = Kolkata. Place of supply of service is same for accommodation service by hotel as well as Beauty treatment as it is an ancillary service to the accommodation.

Place of supply of services by way of accommodation in any immovable property for organizing [Sec. 12(3)(c) of IGST Act, 2017]:

S. No.	Nature of service		Place of supply of service
1	Any marriage or reception or matters related thereto,	any services ancillary to these services [Sec. 12(3)(d)]	Property located or intended to be located in India: • Location of immovable property. Outside India: • Location of the recipient.
2	Official, social, cultural, religious or business function including services provided in relation to such function at such property		

Explanation to [Sec 12(3)(a) to (d) of IGST Act]:

If the immovable property or boat or vessel is located in more than one State or Union Territory, the supply of service shall be treated as made in each of the respective States or Union Territories in proportion to value of services separately collected or determined in terms of the contract or agreement.

If there is no such contract or agreement, the value of service between two States or Union Territories shall be determined on reasonable basis as may be provided.

**Place of supply of services in relation to [Sec. 12(4) of IGST Act, 2017]:**

S. No.	Nature of service	Place of supply of service
1	Restaurant	Location where the services are actually performed.
2	Catering services	
3	Personal grooming	
4	Fitness services	
5	Beauty treatment services	
6	Health services including cosmetic and plastic surgery	

23rd GST Council Meet**GST Rate Changes w.e.f. 15th November 2017:**

- Restaurants within hotels (room tariff <7,500) @5% without ITC
- Restaurants within hotels (room tariff >7,500) still 18% with ITC
- Outdoor catering 18% with ITC

Example : 29

Mr. Navab, a person staying at Dubai, trained for the purpose of grooming of horses in Chennai. Find the place of supply of service.

Answer:

Place of supply of service = Chennai

As the horses are groomed in Chennai.

Example : 30

M/s Cut Ltd., provider of hair cutting saloon services, located in Mumbai. Mr. Pritam came from Jharkhand to Mumbai after appointment for haircut. The services are provided in Mumbai. Find the place of supply of service and tax liability in the hands of M/s Cut Ltd.

Answer:

Place of supply of service = Mumbai

M/s Cut Ltd. is liable to pay CGST and SGST.

Place of supply of services in relation to training and performance appraisal [Sec. 12(5) of IGST Act, 2017]:

S. No.	Nature of service	Place of supply of service
1	Services in relation to training and performance appraisal.	Provided to a registered person: • Location of recipient of Service Provided to a un-registered person: • Location where the services are actually performed.

**Example : 31**

Mr. A located at Kolkata provides training at Kolkata to employees of M/s Infosys Ltd., which is registered at Mumbai.

Find the place of supply of service and GST liability in the following two cases:

Case 1: Infosys is registered person under GST

Case 2: Infosys is not registered person under GST

Answer:

Case 1: If Infosys Ltd. is a registered person

POS will be Mumbai.

Mr. A. is liable to pay IGST.

Case 2: If Infosys Ltd is not a registered then POS will be Kolkata.

Mr. A. liable to pay CGST and SGST.

Example : 32

Guideline Academy registered person provides commercial training and coaching services to budding CMA's at Chennai. Many students (who are unregistered persons) from Telangana, Andhra Pradesh, Tamil Nadu, Karnata and Kerala came and stay in Chennai for the purpose of undergoing training in the Guideline Academy. Find the Place of supply of service.

Answer:

Place of supply of service = Chennai

As the training is performed in Chennai.

Guideline Academy is liable to pay CGST and SGST.

Example : 33

X Ltd. being a registered person located in Hyderabad hires Mr. Y who is located in Chennai for appraisal performance of senior employees of their company. Mr. Y visits Hyderabad to evaluate the performance of the senior employees.

(a) Find the Place of supply of service.

(b) What would be the place of supply of service if some of the selected employees and relevant papers are sent to Chennai for evaluation where X Ltd. is un-registered person.

Answer:

(a) POS = Hyderabad (i.e. Location of recipient of Service, since, provided to a registered person)

Mr. Y is liable to pay IGST.

(b) POS = Chennai (i.e. Location where the services are actually performed, since, provided to un-registered person)

Mr. Y is liable to pay CGST and SGST.

**Example : 34**

Mr. Remo (located in Mumbai) a well-known Choreographer, being a judge appraise the performance of the participants in Dance + auditions. He gone to Bengaluru for appraise the performance of dance show competition of various participants.

Find the place of supply of service.

Answer:

POS = Bengaluru

(i.e. where the appraisal of performance has been made, since, recipients are un-registered persons)

Place of supply of services provided by way of admission to a [Sec. 12(6) of IGST Act, 2017]:

S. No.	Nature of service		Place of supply of service
1	Cultural	Services ancillary thereto	Where the event is actually held or where the park or such other place is located.
2	Artistic		
3	Sporting		
4	Scientific		
5	Educational		
6	Entertainment event or Amusement part or any other place.		

Example : 35

Board of Control for Cricket in India (BCCI) located at Mumbai, sold tickets on-line for IPL match, is going to conduct at Chepauk Stadium, Chennai. However, finally match conduct at Mumbai. Find the place of supply of service of admission to sporting event?

Answer:

POS = Mumbai

BCCI is liable to pay CGST and SGST.

Place of supply of services provided by way of organization of a [Sec. 12(7) of IGST Act, 2017]:

S. No.	Nature of service		Place of supply of service
1	Cultural	Services ancillary thereto or assigning of sponsorship to such events.	Provided to a registered person: • Location of recipient of Service Provided to an un-registered person: • Location where the event is actually held and • if the event is held outside India, the place of supply shall be the location of the recipient.
2	Artistic		
3	Sporting		
4	Scientific		
5	Educational		
6	Entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events		

Explanation to [Sec 12(7)(a)&(b) of IGST Act]:

Where the event is held in more than one State or Union Territory and a consolidated amount is charged for supply of services relating to such event, the place of supply of services shall be taken as being in each of the respective States or Union Territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

**Example : 36**

Mr. X, an event organiser, located in Chennai received an order from M/s Taxman publications, Mumbai to conduct a book fair at Chennai. Find the Place of supply of service and GST in the following two cases:

Case 1: Taxman publications is a registered person.

Case 2: Taxman publications is a un-registered person.

Answer:

Case 1: Mumbai (i.e. location of recipient of service)

Mr. X of Chennai is liable to pay IGST.

Case 2: Chennai (i.e. location where the event is actually held)

Mr. X of Chennai is liable to pay CGST & SGST.

Example : 37

Mr. Kapil Sharma, a Jalandhar based comedian hosted a comedy show at Singapore on birth day occasion of Mumbai based actor's son.

Answer:

POS = Mumbai (i.e. location of service recipient).

GST = IGST is liable to be paid by Mr. Anil Sharma.

Example : 38

Mr. D of Delhi being an event organizer, hosted an exhibition at Mumbai to exhibit the products of exhibitor namely, Chennai Silks, Chennai, is a registered person.

Answer:

POS = Chennai (i.e. location of service recipient)

IGST is liable to be paid by Mr. D of Dehli

Example : 39

Mr. C of Chennai being an event organizer hosted an exhibition at Dhaka to exhibit the products of exhibitor (namely Chennai Silks) located Chennai.

Answer:

POS = Chennai (i.e. location of service recipient)

GST = CGST and SGST is not liable to pay by Mr. C

Note: Services by an organiser to any person in respect of a business exhibition held outside India is exempted from GST (Entry No. 52).

Example : 40

M/s Kalyan Pvt. Ltd. is an event management company is located in Chennai. Mr. Raj located in Jaipur hires the services of M/s Kalyan Pvt. Ltd., for organizing marriage function of his son in Taj Coromandel, Chennai. Mr. Raj is not a registered person. Find the place of supply of service and GST liability?

Answer:

POS = Chennai

(i.e. where the event is actually held).

M/s Kalyan Pvt. Ltd. of Chennai is liable to pay CSGT & SGST.

**Example : 41**

The Royce Group being an event organizer located at New Delhi organized Miss India 2017 beauty pageant in India in the following Cities for M/s ASK Miss India, who is a registered person located in Mumbai:

City	No. of Days	Fee in ₹
New Delhi	12	12 crores
Chennai	18	18 crores
Mumbai	20	20 crores
Total	50	50 crores

Find the place of supply of service if contract specifies clear details.

Find the place of supply of service if contract specifies lump sum amount of ₹ 48 crores.

Answer:

The place of supply of service if contract specifies clear details:

City	No. of Days	₹ in crore	Location of supplier of service	Place of supply of service = where the respective event is held.	GST
New Delhi	12	12	New Delhi	New Delhi	CGST & SGST
Chennai	18	18	New Delhi	Chennai	IGST
Mumbai	20	20	New Delhi	Mumbai	IGST
Total	50	50			

The place of supply of service if contract specifies lump sum amount:

City	No. of Days	₹ in crore	Location of supplier of service	Place of supply of service = where the respective event is held.	GST
New Delhi	12	11.52	New Delhi	New Delhi	CGST & SGST
Chennai	18	17.28	New Delhi	Chennai	IGST
Mumbai	20	19.20	New Delhi	Mumbai	IGST
Total	50	48.00			

Place of supply of services by way of transportation of goods including by mail or courier [Sec. 12(8) of IGST Act, 2017]:

S. No.	Nature of service	Place of supply of service
1	Services by way of Transportation of goods including by mail or courier	Provided to a registered person: • Location of recipient of Service. Provided to a un-registered person: • Location at which such goods are handed over for their transportation.

Amendment:

New proviso inserted in Sec. 12 (8) Integrated Goods and Service Amendment Act ,2018 which provides that if the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.

Sec 2(52) of CGST Act, Goods means:

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

**Example : 42**

M/s Navatha, a transporter registered under GST, located in Vijayawada. M/s C Ltd. of Chennai registered under GST, received services from M/s Navatha, for transport of goods from its warehouse in Vijayawada to Guntur. M/s Navatha, delivered goods at Guntur.

Find the place of supply of service and GST.

Whether your answer will be different, if M/s C Ltd. of Chennai is not a registered person under GST?

Answer:

If the recipient is registered person:

POS = Chennai (i.e. location of recipient).

M/s Navatha of Vijayawada is liable to pay IGST.

If the recipient is not a registered person:

POS = Vijayawada (i.e. Location at which such goods are handed over for their transportation).

M/s Navatha of Vijayawada is liable to pay CGST & SGST.

Example : 43

M/s DHL Courier is registered under GST and located in Mumbai, provided transportation of documents like Cheques, promisory notes, pay orders (which cannot be considered as goods) belonging to Mr. C of Chennai, from Mumbai to Chennai.

Find the place of supply of services in the following independent cases:

(a) Mr. C of Chennai is a registered person under GST.

(b) Mr. C of Chennai is a un-registered person under GST, however his address is available in the books of M/s DHL Courier.

(c) Mr. C of Chennai is a un-registered person under GST, however his address is not available in the books of M/s DHL Courier.

Answer:

Place of supply of services is as per Sec 12(2) of IGST Act but not under Sec 12(8) of IGST Act.

(a) POS = Chennai (i.e. location of recipient of service)

(b) POS = Chennai (i.e. location of recipient of service)

(c) POS = Mumbai (i.e. location of supplier of service)

Note: Cheques, promisory notes, pay orders cannot be considered as goods.

Place of supply of passenger transportation service to [Sec 12(9) of IGST Act]:

S. No.	Nature of service	Place of supply of service
1	Passenger transportation service. Including: Rail, Mono Rail, Metro Rail, Road, Air, Vessel, boat, Cycle rickshaw, Bullock cart, Camel etc.	Provided to a registered person: • Location of recipient of Service. Provided to a un-registered person: • Place where the passenger embarks on the continuous journey.

S. No.	Nature of service	Place of supply of service [refer to Sec 12(2) of IGST]
2	Right to passage is given for future use and point of embarkation is not known at the time of issue of such right	Provided to a registered person: • Location of recipient of Service. Provided to a un-registered person: • Location of recipient when address on record is available. • Location of supplier in other cases

Sec 2(3) of IGST Act, 2017 defines Continuous journey:

Means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single



supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued.

Explanation: For the purpose of this clause, the term 'stopover' means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time.

Example : 44

Mr. Ram working in Ramsay Company having office in Bengaluru is registered under GST. Mr. Ram purchased the ticket from Hyderabad for transportation of passenger by Air from Hyderabad to Chennai. Mr. Ram discloses the name of the organization and its registration number and the place where the organization is registered. Supplier of service is located at Hyderabad.

Find the following

(a) Place of supply of service and GST liability.

(b) Whether your answer will be different if Mr. Ram is not disclosed the name of the organization and its registration number?

Answer:

(a) POS = Bengaluru (i.e. location of recipient of service)

GST = IGST is liable to be paid by Air Travel Operator

(b) POS = Hyderabad (i.e. Place where the passenger embarks on the continuous journey)

GST = CGST & SGST is liable to be paid by Air Travel Operator.

Example : 45

Agni Air registered under GST and located in Mumbai operates flight from Delhi-Dubai-London-Dubai-Delhi. Mr. TYN who is unregistered person, purchase air ticket for Delhi-London. Two tickets are issued to him showing Delhi-Dubai with a halt at Dubai for 5 hours and Dubai-London.

Find the Place of supply of service and GST liability.

Answer:

POS = Delhi (i.e. place of embark)

GST = Jet Air is liable to pay IGST for the entire value of air fair.

Note: since, it is continuous journey, place of embarking of passenger who is unregistered person is relevant.

Example : 46

Jet Airways registered under GST and located in Mumbai operates flight from Mumbai-Delhi-Mumbai. Mr. TYN who is unregistered person, purchase air ticket for Mumbai-Delhi-Mumbai. Only one ticket is issued to him showing both the route.

Find the place of supply of service and GST liability.

Answer:

POS = Mumbai (i.e. Mumbai-Delhi, place of embark is relevant)

GST = Jet Airways is liable to pay CGST & SGST.

POS = Delhi (i.e. Delhi-Mumbai, place of embark is relevant)

GST = Jet Airways is liable to pay IGST.

Note:

(i) As per explanation, Mumbai-Delhi and Delhi-Mumbai journey will be considered two separate journeys.

(ii) If there is stopover during the journey, the journey will not be considered as continuous journey.

**Place of Supply of service on board a conveyance [Sec 12(10) of IGST Act]:**

S. No.	Nature of service	Place of supply of service
1	Vessel	Location of the first scheduled point of departure of that conveyance for the journey.
2	Aircraft	
3	Train	
4	Motor vehicle	

Example : 47

A movie on demand is provided as onboard entertainment during the Delhi-Chennai leg of a Dubai-Delhi-Chennai flight.

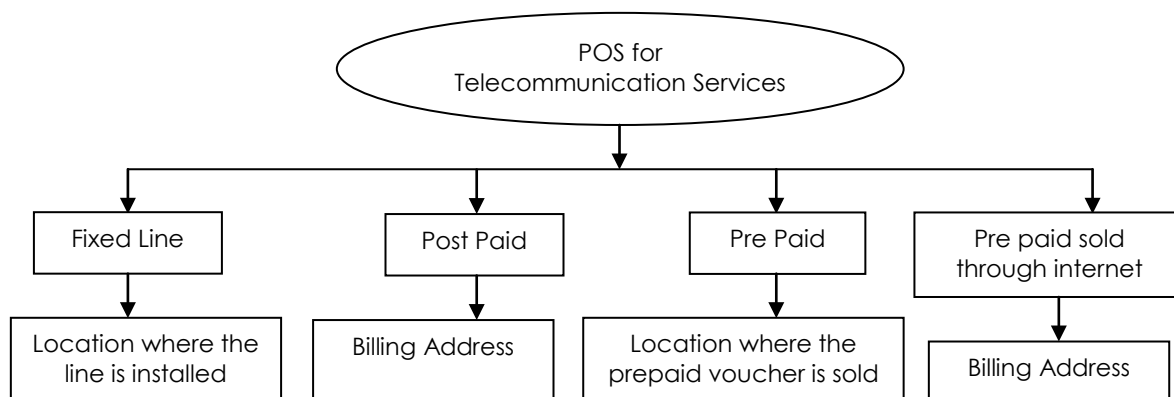
Find the place of supply of service.

Answer:

POS = Dubai (outside the taxable territory, hence not liable to GST).

Place of supply of telecommunication services [Sec 12(11) of IGST Act]:

S. No.	Nature of service
1	including • data transfer, broadcasting, • cable and • direct to home television services.



Where the address of the recipient as per the records of the supplier of services is not available, the place of supply shall be location of the supplier of service.

Example : 48

M/s Air Call registered under GST and located in Chennai. M/s Air Call have appointed Mr. C as a selling agent for supplying pre-payment voucher to the subscriber. Find the Place of supply of service and GST liability?

Answer:

POS = Chennai (i.e. Address of the selling agent on the record of M/s Air Call).

GST = CGST & SGST is liable to be paid by M/s Air Call.

**Place of supply of banking and NBFC service including stock broking services [Sec 12(12) of IGST Act]:**

S. No.	Nature of service	Place of supply of service
1	Banking and NBFC service including stock broking services	- Location of recipient of service on the records of the supplier of service. Otherwise: - Location of supplier of service.

Example : 49

Mr. Harsha being a registered stock broker at BSE, located in Mumbai. He has clients in Chennai, Kolkata, Bengaluru. He purchase and sells shares of clients located in Chennai, Kolkata, Bengaluru. Find the place of supply of service and GST liability.

Answer:

POS = Chennai, Kolkata & Bengaluru.

GST = IGST is liable to be paid by Mr. Harsha.

Example : 50

M/s X Ltd. has factory in Cochin, Chennai, Vijayawada and Hyderabad and office in Bengaluru. M/s X Ltd. obtains insurance for the assets located in Cochin, Chennai, Vijayawada, Hyderabad and Bengaluru from insurance company located at Dehli. Premium receipt issued by the insurance company to the Bengaluru office.

Find the place of supply of service and GST liability.

Answer:

POS = Bengaluru

GST = IGST is liable to be paid by the insurance company.

Place of supply of insurance services [Sec 12(13) of IGST Act]:

S. No.	Nature of service	Place of supply of service
1	Insurance services	To a registered person - Location of recipient of Service. To a person other than registered person - Location of the recipient of services on the records of the supplier of service.

Place of supply of advertisement services to specified persons [Sec 12(14) of IGST Act, 2017]

S. No.	Nature of service	Place of supply of service
1	Advertisement services to - Central Government - State Government - Statutory Body - Local Authority	Located in each of such states and the value of such supplies specific to each state shall be in proportion to amount attributable to service provided by way of dissemination in the respective states.

Example : 51

The Government has hired 200 hoardings in Lakshadweep and 175 hoardings in Chennai for providing advertisement of Gas subsidy and contract contains the consideration for these hoardings separately. Hoarding services supplied by M/s X Ltd. located in Hyderabad.

Find the place of supply of service and GST

Answer:

POS = Lakshadweep & Chennai

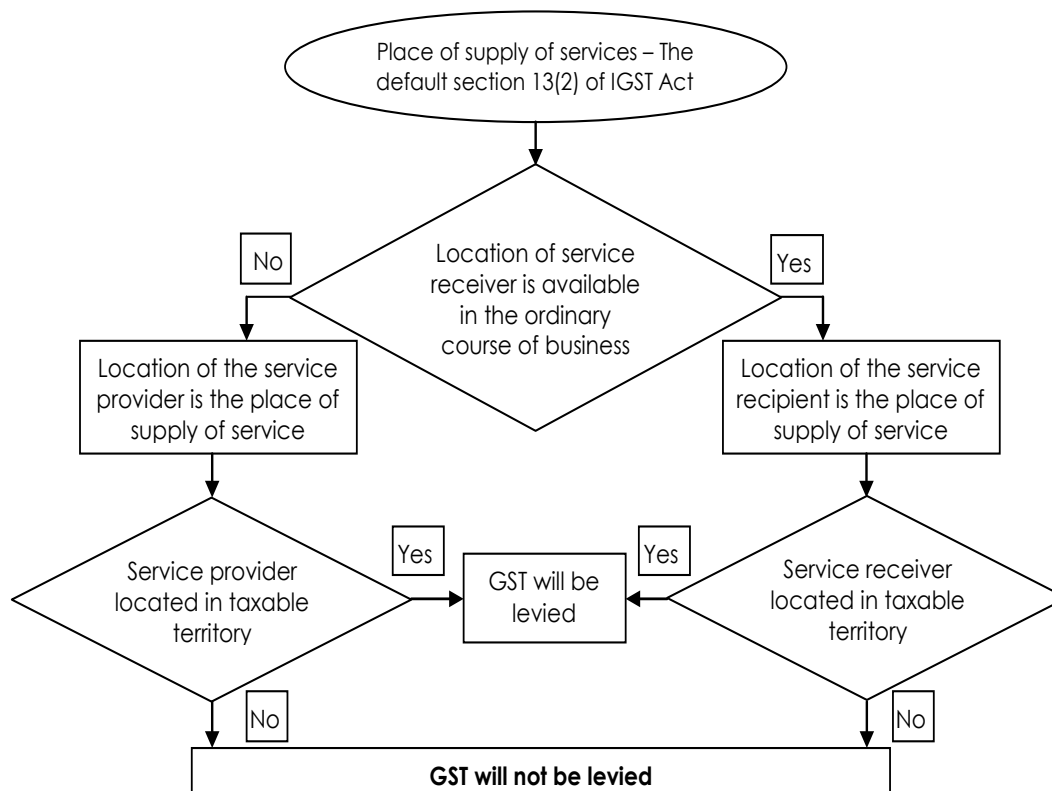
GST = IGST is liable to be paid by M/s X Ltd.

Place of supply of service where location of Supplier of Service or Location of Recipient of Service is outside India [Sec. 13 (1) of the IGST Act, 2017]

Services are grouped into

- Default Section 13(2): It is applicable only when sub-sec (3) to (13) of Sec 13 are not applicable.
- Specific Section 13(3) to 13(13)

Default Section 13(2):



Place of supply services on Goods [Sec. 13(3)(a) of IGST Act]:

S. No.	Nature of service	Place of supply of service
1	"in respect of goods that are made physically available, by the receiver to the service provider in order to provide the service"	location where the services are actually performed.
2	services provided by way of electronic means in relation to tangible goods,	the actual location of goods.

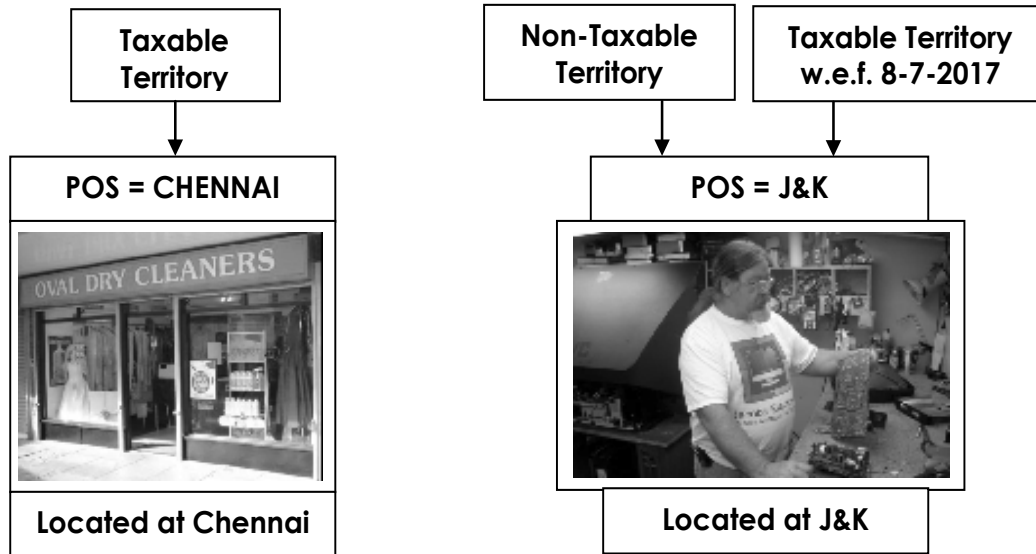
Sec 13(3)(a) of IGST Act, 2017 is not applicable:

If the following two conditions are satisfied then Sec 13(2) of IGST Act, 2017 is applicable:

- If goods are to be temporarily imported into India for repairs only as against repairs and are exported after repairs
- without being put to any other use in India, than that which is required for such repairs.

Amendment:

Amendment vide THE INTEGRATED GOODS AND SERVICES TAX (AMENDMENT) ACT, 2018 of Sec 13 (3)(a) of IGST Act, 2017 which shall be applicable in case of any treatment or process (which may not come within the four corners of the definition of job work) done on goods temporarily imported into India and then exported without putting them to any other use in India. Hence in the instant case the place of Supply is to be Outside India.



Spice Jet company in India gets its aircraft repaired at Chennai Airport, by engineers deputed by Airbus, France an overseas firm who travel from France to Chennai for the purpose.

- The place of supply of this service is in the taxable territory (i.e., Chennai).
- This service is taxable in the hands of Spice Jet (i.e., Reverse charge)



**Example : 52**

ABC Fabricators has its factory located in Gujarat. It has temporarily imported certain goods from its customer located in China and re-exported them to China after carrying out the necessary repairs without putting them to any use in Gujarat.

Examine what would be the place of supply of service in the given case.

Will your answer be different if the repaired goods are re-exported after being put to use in Gujarat for some time?

Answer:

In the given case, since goods have been temporarily imported by ABC Fabricators and have been re-exported after the repairs without being put to any use in Gujarat (taxable territory), place of supply of repair services carried out by ABC Fabricators will be determined by Sec 13(2) of IGST Act, 2017. Consequently, the place of supply of service will be the location of service receiver, viz. China (non-taxable territory).

However, if repaired goods are re-exported after being put to use, the place of supply of service will be determined according to Sec 13(3)(a) of IGST Act, 2017, if the use to which such goods are put to is not required for such repair.

Therefore in such a case, the place of supply of service will be the location where the service is actually performed, which in the given case is Gujarat.

However, if the use is of such nature, which is necessary for carrying out the repairs, the place of supply of service will again be determined as per Sec 13(2) of IGST Act, 2017.

Place of supply services on Goods [Sec. 13(3)(b) of IGST Act]:

S. No.	Nature of service	Place of supply of service
1	Services supplied to an Individual, represented either as the service receiver or a person acting on behalf of the receiver, which require physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.	location where the services are actually performed.

Example : 53

A famous actress went to London, and avail cosmetic or plastic surgery services for her nose. Find the place of supply or service. Whether GST is liable to be paid?

Answer:

POS = London (Non-taxable territory)

GST is not liable to be paid.

Place of supply of services supplied directly in relation to an immovable property [Sec 13(4) of IGST Act]

Nature of Service	Place of Supply of Service
- Lease or a right to use, occupation enjoyment or provision of hotel accommodation by a hotel, guest house, club - Construction service - Architects - Interior decorators - Renting of immovable property - Real estate agents, - Auctioneers, engineers and similar experts or professional people, relating to land, buildings or civil engineering works etc.	Where immovable property is located or intended to be located

**Example : 54**

Mrs. Neelam Goel, an Interior Designer based in Delhi provides her service to an Indian Hotel Chain (which has business establishment in Mumbai) for its newly acquired property in London. Find the place of supply of service and the person liable to pay GST if any.

Answer:

As per section 12(3)(a) of IGST Act, 2017, Location of service recipient is the place of supply of service.

PoS = Mumbai. Taxable territory. Hence, attract IGST in the hands of Mrs. Neelam Goel.

Place of supply of services supplied by way of admission to or organization of [Sec 13(5) of IGST Act]:

Nature of Service	Place of Supply of Service
• Cultural • Artistic • Sporting • Scientific • Educational • Entertainment event • Celebration • Conference • Fair • Exhibition • Similar events and • Services ancillary to such admission or organisation	Where event is actually held.

Example : 55

Mr. Kapil Sharma, a Jalandhar based comedian hosted a comedy show at Singapore with help of event organizer located in Dubai.

POS = Singapore.

Example : 56

Mr. Kapil Sharma, a Jalandhar based comedian hosted a comedy show at Singapore on birth day occasion of a Mumbai based actor, an un-registered person. Find the GST liability if any.

POS = Mumbai (i.e., location of the recipient of service [Sec. 12(7) of IGST Act, 2017])

GST = IGST is liable to be paid by Mr. Kapil Sharma.

Example : 57

Mr. D of Delhi being an event organizer hosted an exhibition at Mumbai to exhibit the products of exhibitor (namely M/s S Silks Ltd. of Singapore).

PoS = Mumbai

GST = IGST is liable to be paid by Mr. D of Delhi.

Example : 58

Mr. D of Dhaka being an event organizer hosted an exhibition in Mumbai to exhibit the products of exhibitor (namely M/s S Silks Ltd. of Shimla).

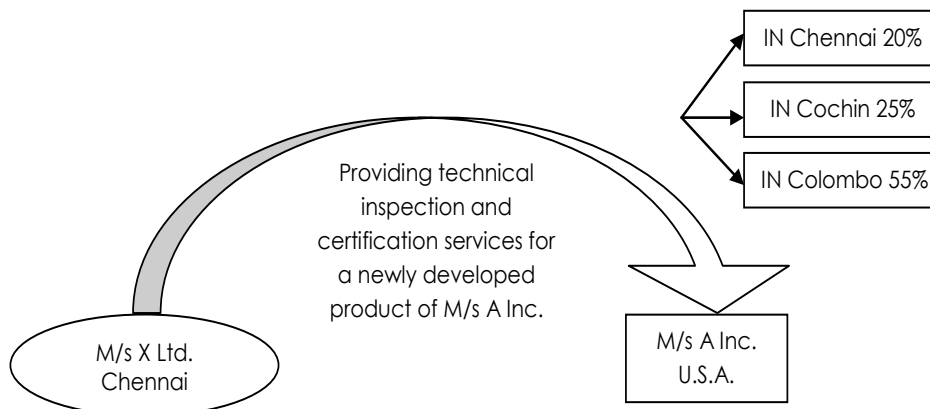
Answer:

PPS = Mumbai

GST = IGST is liable to pay by M/s S Silks Ltd. of Shimla (RCM)

Services referred u/s 13(3) or (4) or (5) is supplied at more than one location [Sec. 13(6) of IGST Act]:

Where any service stated in sub-sec 3, 4, or 5 of Sec 13 is provided at more than one location, including a location of taxable territory, its place of supply shall be the location in the taxable territory.

**Sec 13(3) or (4) or (5) Services performed in more than one State [Sec. 13(7) of IGST Act]:**

In case of Sec 13(3) or (4) or (5) services performed in more than one State or Union Territory, the place of supply of such services shall be taken as deemed in each of the State or Union Territories in proportion to the value of services so provided.

The value of services is required to be determined in terms of the agreement or any reasonable means.

Example 59:

Mr. Harsha a event organiser located in Malaysia undertaken to organize comedy shows of Mr. Bhrami of Hyderabad and Mr. Vadivelu of Chennai in India. The comedy shows are hosted in Telangana, Andhra Pradesh, Tamil Nadu and Pondicherry.

Gross value of contract is ₹ 60 crores.

State	No. of Days	Recipient of Service
Telangana	20	Mr Bhrami
Andhra Pradesh	15	Mr. Bham
Tamil Nadu	14	Mr. Vadivelu
Pondicherry	01	Mr. Vadivelu
Total	50	

Find the place of supply of services, value of service and person liable to pay tax.

Answer:

Place of Supply of service	Value ₹ in crores	Who is liable to pay GST	Nature of GST
Telangana	24	Mr. Harsha being a non-resident	IGST
Andhra Pradesh	18	Mr. Harsha being a non-resident	IGST
Tamil Nadu	16.80	Mr. Harsha being a non-resident	IGST
Pondicherry	1.20	Mr. Harsha being a non-resident	IGST
Total	60		



Specified Services [Sec. 13(8) of IGST Act]

Place of supply of services = Location of the service provider

Specified services includes:

- (a) Services provided by a banking company, or financial company, or a NBFC to account holders
- (b) Intermediary services
- (c) Services consisting of hiring of means of transport, other than, -
 - (i) aircrafts, and
 - (ii) vessels except yachts
 upto a period of one month

Services provided by a banking company or financial company or a NBFC to account holders:

Example : 60

Mr. S has a permanent residence at Chennai. He has a savings bank account with Chennai Mound Road Branch of State Bank of India. On Aug 1, 2015, Mr. S opened a safe deposit locker with the Chennai Mound Road Branch of State Bank of India. Mr. S went to Singapore for official work in Sep, 2015 and has been residing there since then. Mr. S contends that since he is a non-resident during the year 2017-18 in terms of the Income-tax Act, GST cannot be levied on the locker fee charged by State Bank of India for the year 2017-18.

Examine the correctness of the contention of Mr. S.

Answer:

POS = Chennai

GST = CGST and SGST is liable to be paid by State Bank of India Chennai Mount Road Branch. So, the contention of Mr. S is not correct.

Intermediary services

Includes the following:

- Travel agent (any mode of travel)
- Tour operator
- Commission agent for a service (including an agent for buying or selling of goods)
- Recovery agent etc.,

Remittances from abroad, GST will be levied.

Intermediary:

As per Section 2(13) of the Integrated Goods and Services Tax Act, 2017 intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both securities on his own account.

Example : 61

Freight Forward Services:

Freight Forwarder, also known as forwarding agent or Non-Vessel Operation common Carrier or NVOCC.

A person or company that organizes shipments for individuals, organizations or businesses to get goods from the manufacturer or producer to a final point of distribution.



S.No.	Service provider	Nature of Service	Place of supply of service	Remarks
1.	Freight forwarder acts as an agent of airline/carrier/ocean liner	Transportation of goods outside India	Intermediary service. Section 13(8)(c) of the IGST Act, 2017.	Location of service provider is the place of supply of service.
2.	Freight forwarders act as a principal. The invoice is raised by the freight forwarder on the exporter. He is bearing all the risks and liability for transportation.	Transportation of goods outside India	Transportation of goods Section 13(9) of the IGST Act, 2017.	Destination of the goods is the place of supply of service.

Example : 62

Write a brief note on the applicability of GST in the following cases:

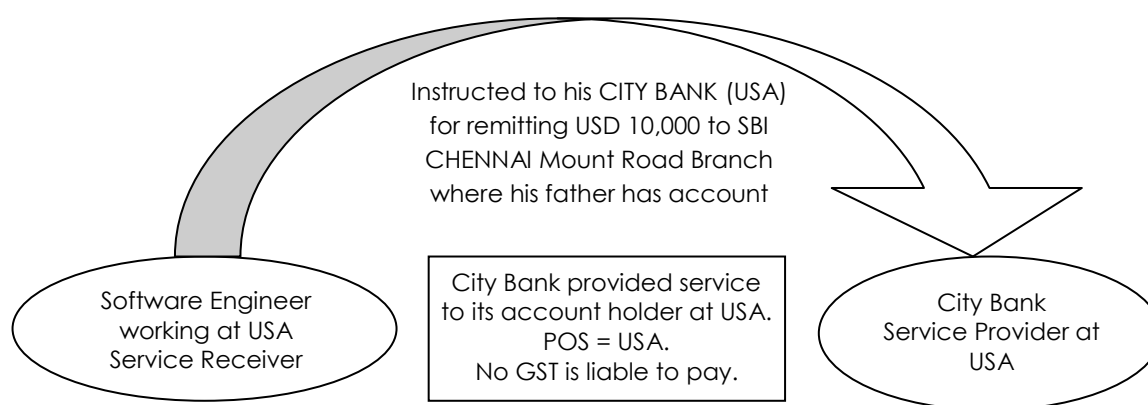
- (i) Whether the representation service provided by State Bank of India Chennai to a foreign MTSO (Money Transfer Service Operator) in relation to money transfer to a beneficiary in India falls in the category of intermediary service.
- (ii) Whether GST is leviable on the services provided as mentioned in (i) above by an intermediary / agent located in India (in taxable territory) to MTSO's located outside in India.

Answer:

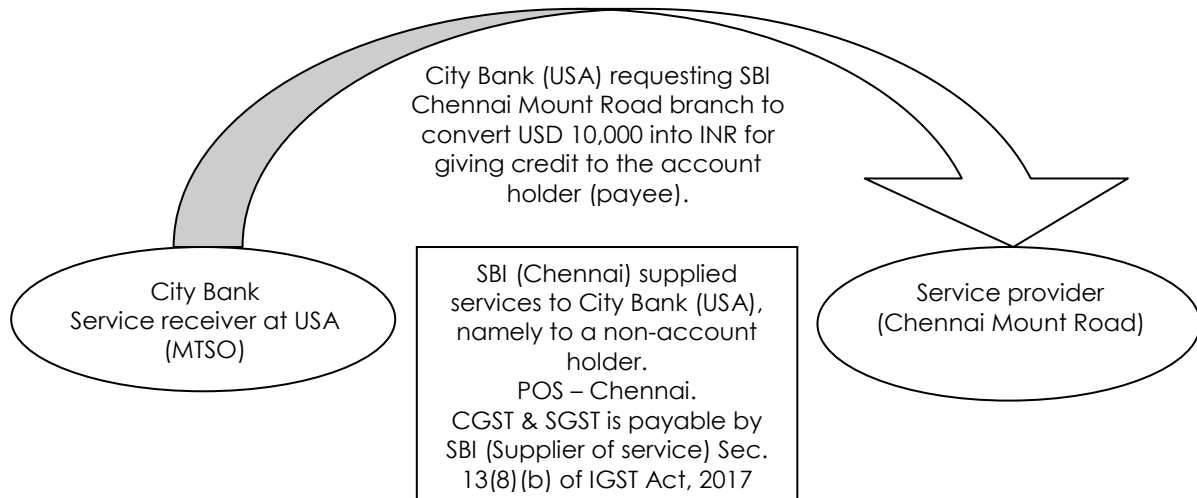
- (i) Yes, the given service falls under intermediary service under section 13(8)(b) of the IGST Act, 2017.
- (ii) Place of supply of service is location of the supplier of service (i.e. taxable territory namely Chennai) and hence, GST is liable to be paid by intermediary/agent.

Example : 62(a)

MTSO (namely City Bank USA) provided services to account holder:

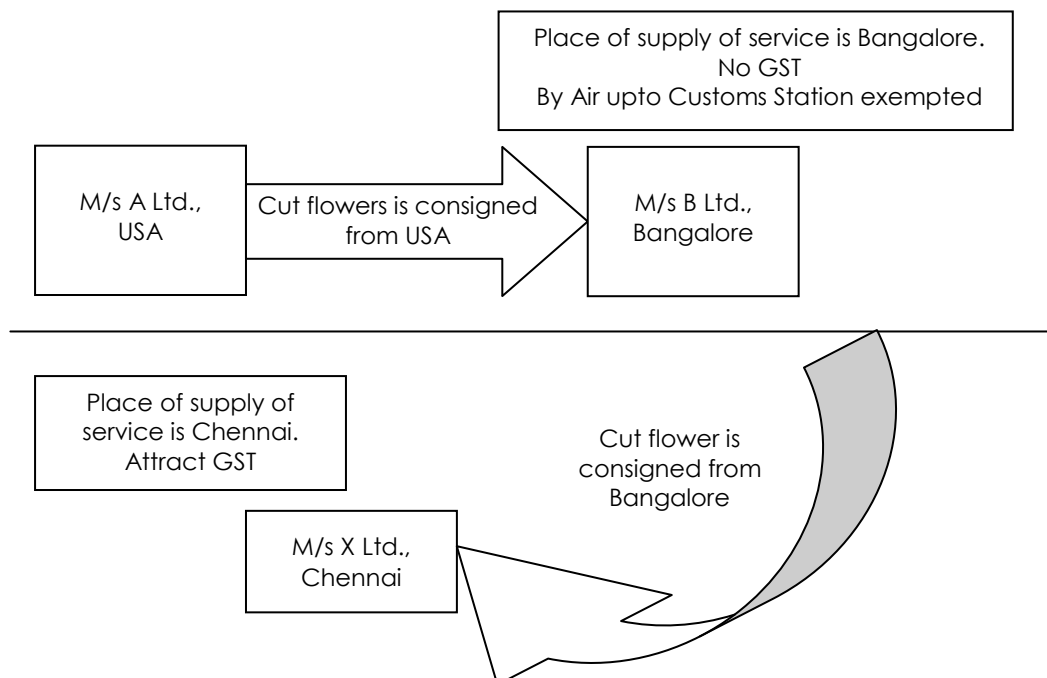
**Example : 62(b)**

State Bank of India Mount Road Branch Chennai provided services to MTSO (namely City Bank USA) by crediting beneficiary account in India by acting as intermediary:



Place of provision of a service of transportation of goods other than by way of mail or courier [Sec. 13(9) of IGST Act]

Place of supply of Service = Destination of such Goods



In case of transshipment of goods:

**Example : 63**

A vessel Bhishma, sailing from U.S.A to Australia via,, India carries various types of capital goods namely 'A, B, C & D'. 'A & B' are destined to Mumbai Port. On account of submission of bill of transshipment product 'A' transshipped to Chennai port as ultimate destination in India and product 'B' transhipped to Srilanka.

Find the place of supply of service and person liable to pay GST.

Answer:

Place of supply of services is destination of goods and person liable to pay GST is the importer.

In the given case

Place of supply = Chennai (i.e. product 'A' ultimate destination in India)

Person liable to pay GST is importer on the ocean freight.

Passenger Transportation Services [Sec 13(10) of IGST Act]:

The place of supply of service = where the passenger embarks on the conveyance for a continuous journey.



Passengers Embarks from New Delhi.

Place of supply is New Delhi. Hence, Taxable

Services Provided on Board Conveyances [Sec. 13(11) of IGST Act]:

Any service provided on board a conveyance (air craft, vessel, rail, or roadways bus) will be covered here.

POS = The first scheduled point of departure of that conveyance for the journey.

PLACE OF SUPPLY IN CASE OF ONLINE INFORMATION DATABASE ACCESS AND RETRIEVAL (OIDAR) SERVICES**Online information and database access or retrieval services [Sec 13(12) of IGST Act]:**

POS = Location of the recipient of service

Recipient of service deemed to be located in the taxable territory, if any two of the following conditions are satisfied:

- the location of address presented by the recipient of services through internet is in the taxable territory;
- the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;
- the billing address of the recipient of services is in the taxable territory;
- the internet protocol address of the device used by the recipient of services is in the taxable territory;
- the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;
- 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.

OIDAR services includes:

Online information and database access or retrieval [OIDAR] services means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology and includes electronic services:



OIDAR Services includes	OIDAR Services excludes
(i) advertising on the internet; (ii) providing cloud services; (iii) provision of e-books, movie, music, software and other intangibles via telecommunication networks or internet; (iv) providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network; (v) online supplies of digital content (movies, television shows, music, etc.); (vi) digital data storage; and (vii) online gaming.	(i) Supplies of goods, where the order and processing is done electronically (ii) Supplies of physical books, newsletters, newspapers or journals (iii) Services of lawyers and financial consultants who advise clients through email (iv) Booking services or tickets to entertainment events, hotel accommodation or car hire (v) Educational or professional courses, where the content is delivered by a teacher over the internet or an electronic network (in other words, using a remote link) (vi) Offline physical repair services of computer equipment (vii) Advertising services in newspapers, on posters and on television

Examples of services whether or not OIDAR services:

Nature of service	Whether Provision of service mediated by information technology over the internet or an electronic network	Whether it is Automated and impossible to ensure in absence information technology	OIDAR service
Pdf document manually emailed by provider. Example : 64 Guideline Academy sent soft of work book solutions.	Yes	No	No
Pdf document automatically emailed by provider's system Example : 65 Airtel receipt for post paid connections, acknowledgements for submission of documents through MCA website and so on.	Yes	Yes	Yes
Pdf document automatically downloaded from site Example : 66 downloading software like anti-virus software, software to block banner adverts showing and so on.	Yes	Yes	Yes
Stock photographs available for automatic download Example : 67 desktop themes, screen savers	Yes	Yes	Yes
Online course consisting of pre-recorded videos and downloadable pdfs. Example : 68 on account of pressing buy button pre-recorded video classes automatically available on screen.	Yes	Yes	Yes



Online course consisting of pre-recorded videos and downloadable pdfs plus support from a live tutor. Example : 69 recorded classes are available for those students who miss live classes.	Yes	No	No
Individually commissioned content sent in digital form Example : 70 photographs, reports, medical results.	Yes	No	No

Summary:

Type of service	Nature of service (Cross-border)	Taxable/Exempted	Liable to pay tax
B2C	OIDAR service	Taxable	Forward charge
B2C	Other than OIDAR service	Exempt	Exempted supply
B2B	OIDAR service	Taxable	Reverse charge
B2B	Other than OIDAR service	Taxable	Reverse charge

Power to notify supply of a services or circumstances [Sec 13(13) of IGST Act]:

In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

Practical problems:**Example : 71**

Determine the place of supply of service as well as their taxability in each of the following cases with brief reasons:

- (a) X Ltd. of Delhi, agrees to provide 'technical inspection and certification service' in respect of a newly developed product of an overseas firm (for a newly launched motorbike which has to meet emission standards in different states or countries). The overseas firm has provided its newly developed product X Ltd. for the purpose of testing. The testing is carried out in Delhi (15%), Assam (35%) and Sweden (50%).
- (b) A movie on demand is provided as on board entertainment during the Kolkata-Delhi leg of a Bangkok-Kolkata-Delhi Flight.

Answer:

- (a) As per Section 13(6) of IGST Act, 2017, Place of supply of service will be the place in the taxable territory (i.e. Delhi and Assam).

X Ltd. is liable to pay CGST and SGST for the part of Delhi

X Ltd. is liable to pay IGST for the part of Assam.

X Ltd. is also liable to pay CGST and SGST as well as IGST for the services rendered in Sweden in ratio 3:7.

It means tax will be payable on the entire value.

- (b) As per section 13(11) of the IGST Act, 2017, PoS is Bangkok which is non taxable territory, not subject to GST.



Example : 72

Swamy Ltd. of Chennai acquires the business of SA Ltd. at Johansberg, South Africa. Swamy Ltd. entered into a contract with M/s Krish & Krish Architects, Chennai to do the interiors of the building of new business at South Africa. The Central Tax department issued a notice demanding GST based on the Place of supply of service provisions. Discuss briefly the applicability of the Place of supply of service to M/s Krish & Krish as the work to be done is outside the taxable territory.

Answer:

Place of supply of services supplied directly in relation to an Immovable Property as per Sec 13(4) of IGST is where immovable property is located or intended to be located.

However, location of supplier and location of recipient is in India we should refer section 12(3)(a) of IGST Act, 2017, accordingly place of supply of service is where immovable property located or intended to be located in India. If location of Immovable property is outside India then place of supply is location of the recipient.

In the given case place of supply of service is Chennai. Location of supplier of service is in Chennai. CGST and SGST will be levied.

Example : 73

With reference to the GST provisions briefly explain:

- (i) time of supply under reverse charge with respect to payment date.
- (ii) Place of supply of service of hiring of all means of transport (except vessel and air craft) upto a period of one month, where location of supplier or location of recipient is from outside India.

Answer:

- (i) The phrase “the date on which payment received by the recipient” or “the date of payment” means
 - the date on which payment is entered in his books of accounts
 - or
 - the date on which the payment is debited to his bank account,whichever is earlier.

- (ii) Specified Services Sec. 13(8) (c) of the IGST Act, 2017:

Place of Supply of Services = Location of the Service Provider

Example : 74

With reference to the position of Goods and Service Tax law as applicable on or after 01.07.2017, what would be the place of supply of service in the following independent cases?

- (i) MN Trade Links of New Delhi are appointed as commission agent by a foreign company for sale of its goods to Indian customers. In lieu of their services, MN Trade Links receive a fixed percentage of commission from the concerned foreign company.
- (ii) OP Fabricators of Mumbai has temporarily imported certain goods from its customer located in Hongkong for repairs. The said goods have been re-exported to Hongkong after carrying out the necessary repairs without being put to any use in Mumbai.
- (iii) UV Airlines, an airlines located in New Delhi, has hired aircrafts from a foreign Airlines for a period of 15 days.

Answer:

- (i) Place of supply of service = New Delhi (i.e. location of supplier of service section 13(8)(b) of the IGST Act, 2017). GST will be levied.
- (ii) Place of supply of service = Hongkong (i.e. location of recipient of service as per Section 13(2) of the IGST Act, 2017). No GST will be levied.
- (iii) Place of supply of service = New Delhi (i.e. location of recipient of service as per Section 13(2) of the IGST Act, 2017). IGST will be levied.

**Example : 75**

Determine the place of supply of service in each of the following independent cases and state whether GST is payable in each of these cases:

- (a) Mr. A travelled on a Bagdogra-Dibrugarh-Singapore-Dibrugarh-Bagdogra flight where a single ticket with no stopover has been issued by Parkinson Airlines located in Dubai.
- (b) Mr. B, a well-known comedian from Delhi, organises a stage-show in Japan. For organising the stage-show, he takes the services from a Mumbai based event organiser.

Answer:

- a. Place of supply of services = Bagdogra of West Bengal (As per Section 13(10) of the IGST). However, it is specifically exempted from GST under Entry No. 15 of the Notification No. 12/2017 of the Central Tax (Rate) dt. 28.06.2017).
- b. Place of supply of service = Delhi (i.e. location of recipient of service). GST is payable by supplier of service (Section 13(2) of the IGST).

Example : 76

M/s. X Ltd. of Chennai, engaged in various businesses has provided the following services, whose values are listed below. Compute its GST liability:

- (1) Service of interior decoration in respect of immovable property located in Jammu: ₹ 5 lakh;
- (2) Service of renting of commercial buildings in Delhi: ₹ 15 lakh;
- (3) Architectural services to an Indian Hotel Chain which has business establishment in Mumbai for its newly acquired property in Sydney: ₹ 25 lakhs;
- (4) Services provided as an Indian agent undertaking marketing in India of goods of a foreign seller: ₹ 51 lakhs;
- (5) Services provided as travel agent undertaking marketing in India of services of a foreign seller: ₹ 1 lakhs.

Applicable rate of GST 18%.

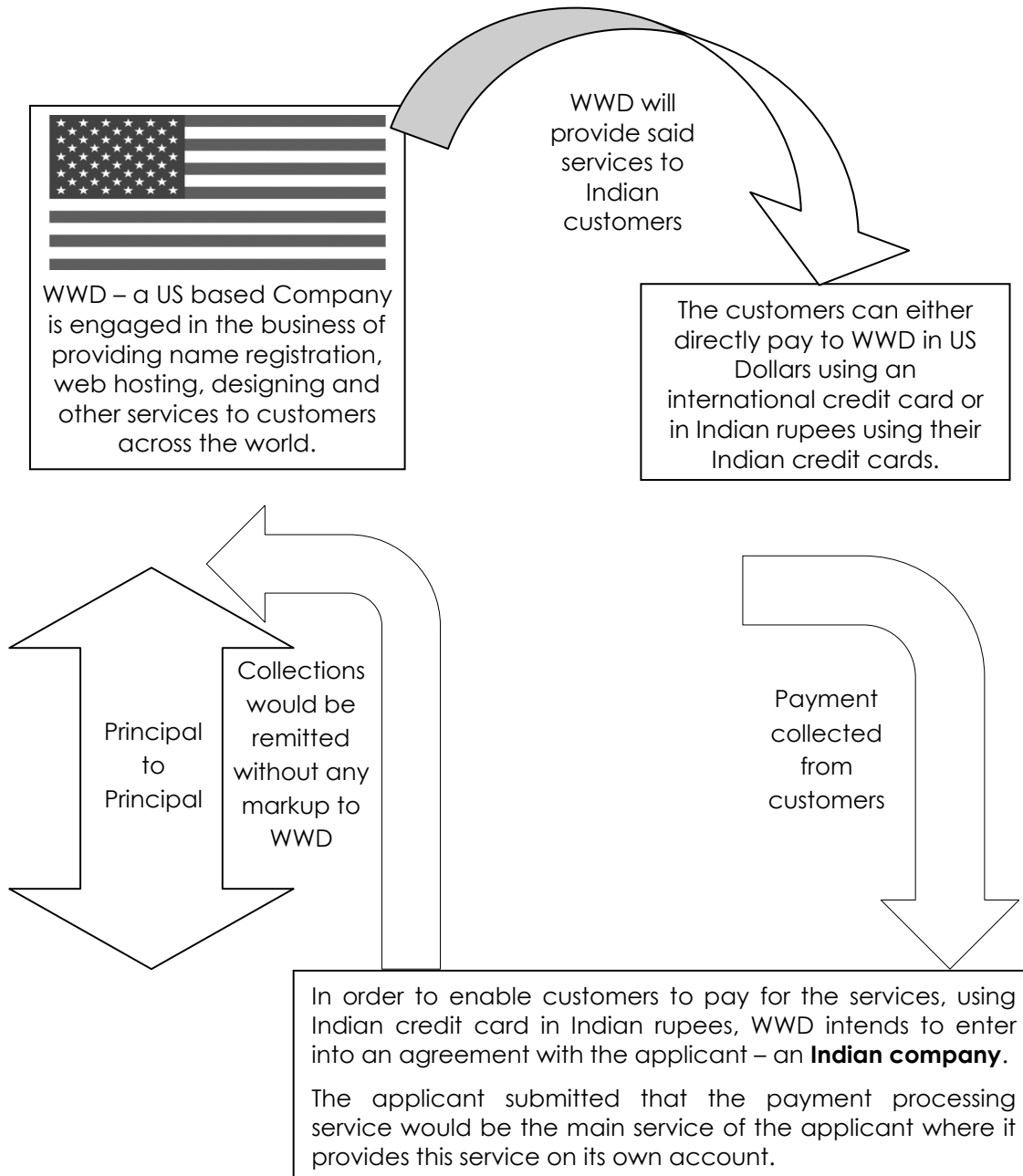
Answer:

Particulars	Value ₹ (in lakhs)	Working note
Interior decoration services	5	PoS = J & K (Sec 12(3)(a) of IGST) taxable territory. IGST will be levied
Renting of commercial buildings	15	PoS = Delhi (Sec 12(3)(b) of IGST) Taxable territory IGST will be levied
Architectural services	25	PoS = Mumbai (Sec 12(3)(a) of IGST). Taxable territory IGST will be levied
Marketing of Goods	51	PoS = Chennai (sec 13(8) of IGST) Taxable territory CGST & SGST will be levied.
Travel agent	1	PoS = Chennai (sec 13(8) of IGST) Taxable territory CGST & SGST will be levied.
Taxable supply of services	97	
Particulars	CGST	SGST
GST liability	4.68	4.68
		8.10

Case law : 1

Universal Services India (P) Ltd., In re 2016 (42) STR 585 (AAR)

Facts of the case:



Point of dispute for which Advance Ruling is sought:

- (i) Whether the place of provision of payment processing service proposed to be provided by the applicant, is outside India in terms of Section 13(2) of the IGST Act, 2017?
- (ii) Whether services proposed to be provided by applicant would qualify as 'export of service'?

**Ruling of Authority for Advance Ruling:**

The definition of "intermediary" as envisaged under rule 2(f) of PoPS (now as per Section 2(13) of the IGST Act, 2017) does not include a person who provides the main service on his own account. In the present case, applicant provides main service, i.e., "business support services" to WWD on his own account. Therefore, applicant is not an "intermediary" and thus, the service provided by it is not intermediary service.

Thus, AAR ruled that the place of provision of payment processing service to be provided by the applicant, is outside India in terms of Section 13(2) of the IGST Act, 2017.

Further, while deciding the questions as to whether services provided by applicant qualify as export of service, AAR observed that all conditions mentioned under Rule 6A of STR, 1994 (now as per Section 2(6) of the IGST Act, 2017) are satisfied, and hence the said service will qualify as export of taxable service.

Section 2(6) of the IGST Act, 2017, Export of service:

Means the supply of any service when:-

- (i) the supplier of service is located outside India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8 of the IGST Act, 2017.

CLARIFICATION ON CERTAIN ISSUES UNDER GST – REGARDING PLACE OF SUPPLY

Whether services of short-term accommodation, conferencing, banqueting etc. provided to a Special Economic Zone (SEZ) developer or a SEZ unit should be treated as an inter-State supply (under section 7(5)(b) of the IGST Act, 2017) or an intra-State supply (under section 12(3)(c) of the IGST Act, 2017)?

The above mentioned issue is clarified vide Circular No. 48/22/2018-GST dt 14.06.2018-

As per section 7(5) (b) of the Integrated Goods and Services Tax Act, 2017 (IGST Act in short), the supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce. Whereas, as per section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply is in the same State/ Union territory, it would be treated as an intra-State supply.

In the instant case, section 7(5)(b) of the IGST Act is a specific provision relating to supplies of goods or services or both made to a SEZ developer or a SEZ unit, which states that such supplies shall be treated as inter-State supplies. Hence, services of short term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.

3.3 VALUE OF SUPPLY UNDER GST

Value of Supply in common terms is nothing but the amount paid by the recipient of supply to the supplier as consideration for supply (also known as transaction value). It means Value of supply is the figure upon which tax is levied and collected.

It is important to know to ascertain correct value of supply for correct levy of GST.

Valuation rules determine value of goods or services or both on which tax under GST has to be charged. Valuation rules have been prescribed under CGST Rules, 2017 for the purpose of determination of fair market value of goods or services or both supplied by the registered person. It means valuation rules are helpful to determine the value of supply where value not determined under Sec. 15(1) as mentioned under Sec. 15(4) of CGST Act, 2017.

Example : 77

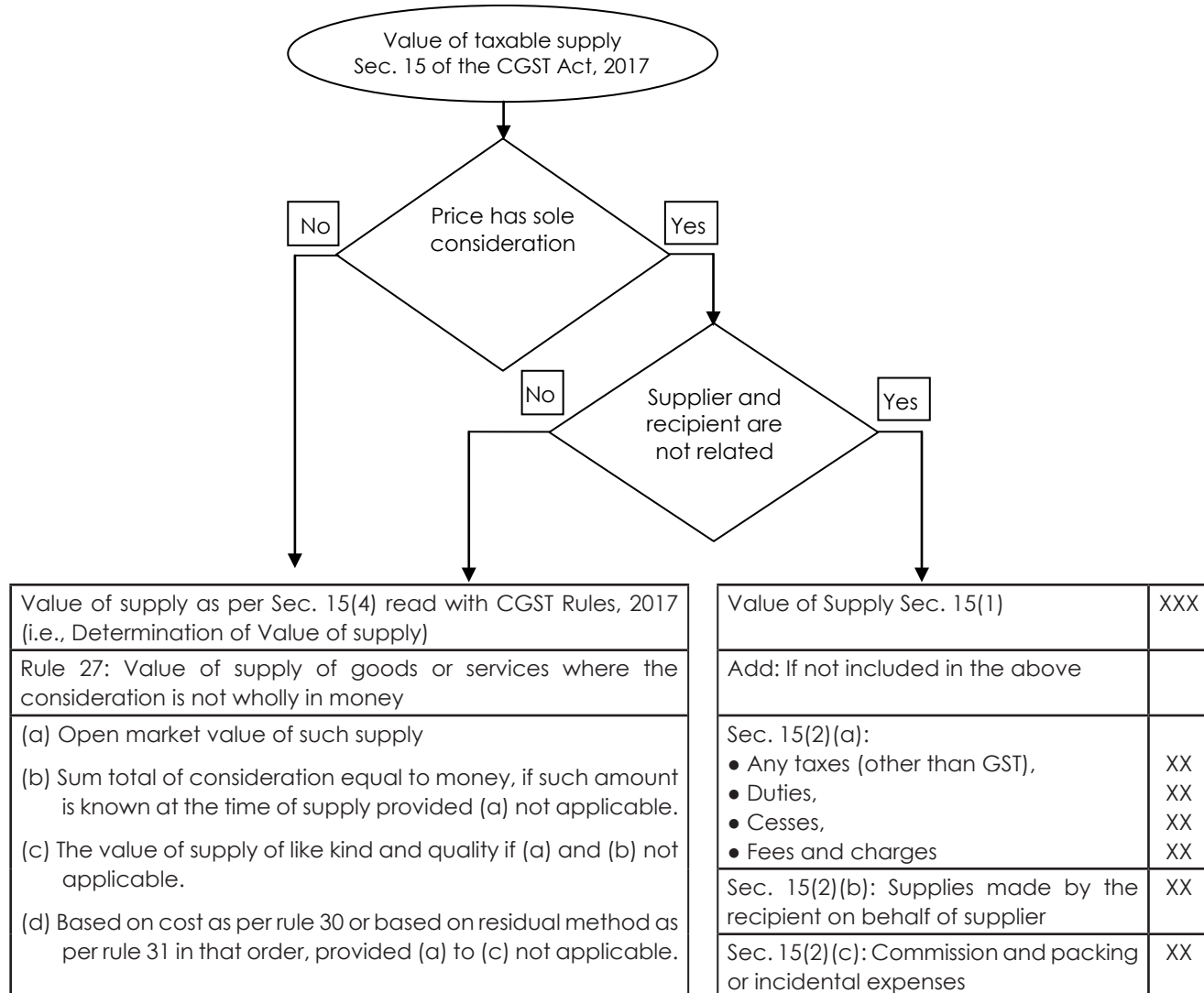
Mr. A goes to shop of Mr. B and purchases television. He pays amount of ₹ 50,000 as consideration for 52 inches LED TV Purchased plus GST. Where MRP of the product ₹ 65,000. Discount offered to all buyers ₹ 15,000. As per section 15(1) of the CGST Act, 2017 the valuation will be as per transaction value basis. Assume applicable rate of CGST 14% and SGST 14%. Invoice will be prepared as follows:

Invoice	
Particulars	Value in ₹
Transaction value	50,000
Add; CGST 14%	7,000
Add: SGST 14%	7,000
Invoice price	64,000

Note: Invoice price should not increase the Maximum Retail Price (MRP)

If Mr. A not maintained sole consideration for such sale or they are related persons then valuation will be based on determination of value of supply rules (i.e. CGST Rules, 2017).

The same concept explained in the following diagram:





Rule 28 : Value of supply of goods or services or both between distinct or related persons, other than through an agent
Rule 29 : Value of supply of goods made or received through an agent
Rule 30 : Value of supply of goods or services or both based on Cost.
Rule 31 : Residual method for determination of value of supply of goods or services or both

Sec. 15(2)(d): Interest or late fee or penalty for delayed payment	XX
Sec. 15(2)(e): Subsidy directly linked to the price (other than Govt. subsidy)	XX
Less: If included in the above	
Sec. 15(3): Discount	XX
Transaction Value	XX

Explanation: For the purpose of the CGST Act, 2017:

- (a) persons shall be deemed to be "related persons" if—
- (i) such persons are officers or directors of one another's businesses;
 - (ii) such persons are legally recognized partners in business;
 - (iii) such persons are employer and employee;
 - (iv) any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;
 - (vii) together they directly or indirectly control a third person; or
 - (viii) they are members of the same family;
- (b) the term "person" also includes legal persons;
- (c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

Section 15(1): the price is sole consideration for sale:

Under GST, the valuation is done based on the transaction value only if price is a sole consideration where supplier and the recipient are not related.

Sole consideration means by paying GST on such consideration there is no revenue loss to the department.

Value of a supply of goods and/or services shall be:

"Transaction Value (TV), that is the price actually paid or payable for the said supply of goods and/or services"

Where:

- The supplier and the recipient of the supply are not related and
- The price is the sole consideration for the supply.

Payment of taxes, duties, cesses, fees and charges [Sec. 15(2)(a) of CGST Act, 2017]:

Any taxes, duties cesses, fees and charges levied under any law for the time being in force other than CGST/ SGST/ UTGST/ IGST/ Compensation Cess shall be added to the value of supply.

**Example : 78**

Admission to True Theater is ₹ 90 per ticket for a Tamil Movie as well as for a Hindi Movie plus entertainment tax ₹ 10% on Tamil Movie and 20% on other languages. In the month of November, True Theater sold 2000 tickets of Tamil Movie and 1500 tickets of Hindi Movie. Find the value of taxable supply of service. Applicable rate of GST 18% & 28%. Find the GST liability if any?

Answer:

Statement showing value of taxable supply of service and GST liability:

Value of taxable services:

Tamil Movie	₹ 1,98,000	(₹ 99 x 2000 tickets)
Hindi Movie	₹ 1,62,000	(₹ 108 x 1500 tickets)

Particulars	9% CGST	9% SGST	14%CGST	14% SGST
GST liability (₹)	17,820	17,820	22,680	22,680

Working note:

Particulars	Tamil Movie (₹)	Hindi Movie (₹)
Rate per ticket	90	90
Add: Entertainment tax	9	18
Value of taxable supply	99	108
Applicable GST rate	18%	28%

Supplies made by recipient on behalf of supplier [Sec. 15(2)(b) of CGST Act, 2017]:

The transaction value will include the amount which the supplier is so liable to pay but it has been paid by the recipient of supply.

Example : 79

Mr. Ram sold goods to Mr. Lakshman for ₹ 2,50,000. As per the contract of sale, Mr. Ram is required to deliver the goods in the premises of Mr. Lakshman. Mr. Ram hires transporter for transportation for delivery of goods. However, the freight paid by Mr. Lakshman to transporter. Freight paid ₹ 2,500.

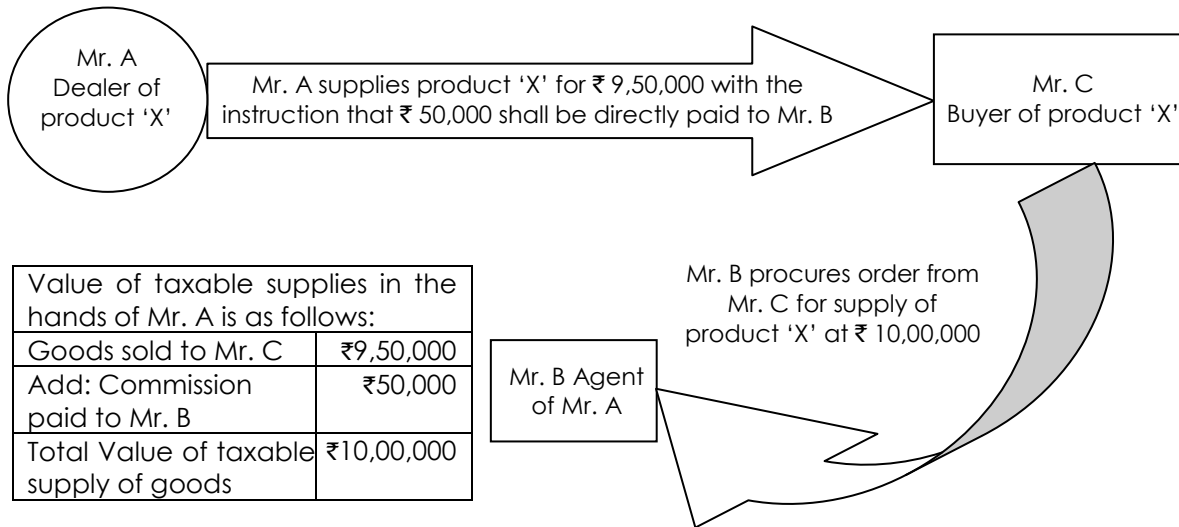
Find the transaction value of supply of goods.

Answer:

Particulars	Value in ₹
Value of supply of goods	2,50,000
Add: Freight paid by recipient of supply (which the supplier is so liable to pay)	2,500
Taxable value of supply of goods	2,52,500

Commission and packing charges [Sec. 15(2)(c) of CGST Act]:

The transaction value will include commission and packing charges charged by the supplier to the recipient of supply and transaction value to include any amount charged by the supplier for anything done in respect of supply either at the time or before delivery of goods or services.

Example : 80**Example : 81**

Mr. A is a seller of furniture. He supplied the furniture for ₹ 5,75,000 to Mr. B with the condition that to remove old furniture from the premises of Mr. B by charging ₹ 5,000. Find the value of taxable supply of goods in the hands of Mr. A.

Answer:

The value of taxable supply of goods is ₹ 5,80,000.

Interest or late fee or penalty for delayed payment [Sec. 15(2)(d) of the CGST Act, 2017]:

It is specifically provided that interest or late fee or penalty for delay in payment of any consideration for supply will form part of the value of supply.

Example : 82

Penal interest charged by the banker for delay in payment of dues is subject to GST.

Subsidy directly linked to the price (other than Govt. Subsidies) [Sec. 15(2)(e) of CGST Act, 2017]:

Subsidy provided in any form or manner linked to the supply will also be included in the transaction value.

Example : 83

Bharat Gas sells cooking gas cylinders. Subsidy directly transferred to the account of the customer. Selling price per cylinder is ₹ 800. Customer received subsidy ₹ 200 directly from Government to his bank account. Net outflow of the buyer is ₹ 600. Find the value of supply of goods (per cylinder) in the hands of Bharat Gas.

Answer:

Since, the amount of subsidy is directly credited to the account holder and not received by the Bharat Gas making the supply. Therefore, such subsidy will not be considered as part of transaction value as it is not received by the Bharat Gas making the supply.

Hence, transaction value is ₹ 800 per cylinder.

**Example : 84**

The Government provides subsidy, for the benefit of farmers but it is given to the manufacturer of fertilizers. Such subsidy will form part of value of supply?

Answer:

The buyer of goods does not provide subsidy, but the Government as per the scheme provides it.

Therefore, this will not form part of value of supply as it is specifically specified that such subsidy provided by the Government will not form part of the value of supply.

Discount under GST [Sec. 15(3) of the CGST Act, 2017]:

S. No.	Nature of Discount	Treatment in GST	
1	If the discount is given before or at the time of supply, and is recorded in the invoice	Value of goods	XXX
		Less: Discount	(XX)
		Transaction value	XXX
2	If the discount is given after supply, but agreed upon before or at the time of supply, and can be specifically linked to relevant invoices.	Can be claimed as deduction from transaction value	
3	If the discount is given after supply, and not known at the time of supply	Cannot be claimed as deduction from transaction value	

Example : 85

M/s Ashok Enterprise sells mineral water bottles, with MRP ₹ 20 per bottle. However, customers availing discount of ₹ 4 per bottle. In the month of Oct 2017, M/s Ashok Enterprise sold 2,000 bottles. Applicable rate of GST 18%. Find the tax liability.

Answer:

Particulars		₹
Transaction value		32,000
Add: CGST 9% on ₹ 32,000		2,880
Add: SGST 9% on ₹ 32,000		2,880
Invoice price		37,760
Working note:		
MRP value	(₹ 20 x 2000 pcs)	40,000
Less: Discount	(₹ 4 x 2000 pcs)	(8,000)
Transaction value		32,000

Example : 86

Best Cars Ltd. sells a car worth ₹ 5,00,000 to Sundar Automobiles. Best Cars Ltd. incurred packing charges of ₹ 6,000 on the car. Best Cars Ltd provided a discount of 1% on the car price, as part of Diwali scheme.

Best Cars Ltd agreed to provide a further discount of 0.5% if Sundar Automobiles makes payment by 31st of the month via net banking. Sundar Automobiles makes the payment by 31st of the month using net banking. Find the Net GST liability in the hands of Best Cars Ltd. Applicable rate of GST 18%.

Answer:



Particulars	Value in ₹
Value of the product	5,00,000
Add: packing charges	6,000
Sub-total	5,06,000
Less: Discount 1% on Rs 5 lakh	(5,000)
Transaction value	5,01,000
Add: CGST 9%	45,090
Add: SGST 9%	45,090
Invoice price	5,91,180

Note: Since, the discount was known at the time of supply, and can be linked to this specific invoice, the discount amount can be reduced from the transaction value.

For this, Best Cars Ltd will issue a credit note to Sundar Automobiles for ₹ 2,500 (0.5% of ₹ 5,00,000 = ₹ 2,500+ GST@ 18% on ₹ 2,500 = ₹ 450), and the same must be linked to the relevant tax invoice.

Discount given after supply but agreed upon before or at the time of supply and can be specifically linked to relevant invoices, can be deducted from the transaction value.

Example : 87

However, due to a severe cash crunch, Best Cars Ltd requests Sundar Automobiles to make the payment within 2 days, promising a discount of 2% on doing so. Sundar Automobiles makes the payment within 2 days.

Answer:

Since, the discount was not known at the time of supply, it couldn't be claimed as a deduction from the transaction value for GST calculation.

Example : 88

M/s Nambiar & Co., an Audit firm based in Cochin undertake an audit assignment of his client based in Chennai. The Contract mentioned about the audit fees of ₹ 5,00,000 and arrangement of taxi by the Client which may be worth ₹ 15,000.

Find the transaction value on which M/s Nambiar and Co., is liable to pay GST.

Answer:

Transaction value in the hands of M/s Nambiar & Co., is ₹ 5,15,000.

Note: Not only audit fees but also the expenditure incurred in connection with the taxi ₹15,000 constitute the sole consideration.

Example : 89

M/s X Ltd. is engaged in doing job work for M/s Y Ltd. M/s Y Ltd. supplies raw material for ₹ 2,00,000 and packing material for ₹ 22,500 to M/s X Ltd. for completion of job work. M/s X Ltd. has agreed to supply services for the purpose of performing the activities specified by M/s Y Ltd. for ₹ 1,00,000. Job worker profit of ₹ 70,000 and material consumed for ₹ 3,500. Find transaction value (i.e. sole consideration) to levy GST in the hands of M/s X Ltd.

Answer:

Particulars	Value in ₹
Service charges	1,00,000
Add: Material consumed	3,500
Add: Jobworker profit	70,000
Transaction value (i.e. taxable value of supply of service in the hands of M/s X Ltd.)	1,73,500



Note: "Although, it includes materials worth ₹ 3,500, still the entire supply including value of material would be treated as services.

Example : 90

Asha Ltd. supplies raw material to a job worker Kareena Ltd. After completing the job-work, the finished product of 5,000 packets are returned to Asha Ltd. putting the retail sale price as ₹ 20 on each packet. The product in the packet is covered under MRP provisions. Determine the transaction value in the hands of Kareena Ltd. under GST law from the following details:

Particulars	Value in ₹
Cost of raw material supplied	30,000
Job worker's charges including profit	10,000
Transportation charges for sending the raw material to the job worker	3,000
Transportation charges for returning the finished packets to Asha Ltd.	4,500
Asha Ltd. paid certain technology transfer fees to 'Reena Ltd', so that 'Kareena Ltd' can use the said technology in the given job-work operation.	22,500

Note: Kareena Ltd offered discount ₹ 2,000, provided full payment is made at the time of raising invoice and the same is mentioned in the invoice. Asha Ltd. made full payment at the time of issue of invoice.

Answer:

Statement showing transaction value of Kareena Ltd.

Particulars	Value in ₹
Cost of raw material supplied	Exempted supply
Job worker's charges including profit	10,000
Transportation charges for sending the raw material to the job worker	Exempted supply
Transportation charges for returning the finished packets to Asha Ltd. [Sec. 15(2)(b) of the CGST Act, 2017]	4,500
Technology fee [Sec. 15(2)(b) of the CGST Act, 2017]	22,500
Sub-total	37,000
Less: Discount [Sec. 15(3) of CGST Act, 2017]	(2,000)
Transaction value (i.e. sole consideration)	35,000

Note: It is very clear that principal to jobworker and jobworker to principal can not be treated as supply as per section 143 of the CGST Act, 2017.

Example : 91

Mr. Bhanu makes supply of ₹ 2,00,000 to Mr. Renu. The contract provides that Mr. Renu will pay ₹ 50,000 to Mr. Bhanu and ₹ 1,50,000 to Mr. Venu to settle the debt of Mr. Bhanu. Find the transaction value and GST liability in the hands of Mr. Bhanu. Applicable rate of CGST and SGST 9% each.

Answer:

Statement showing transaction value and GST liability:

Particulars	Value in ₹
Payment from Renu to Bhanu	50,000
Payment from Renu to Venue for settling the debt of Bhanu	1,50,000
Transaction value (i.e. Sole consideration)	2,00,000
CGST 9%	18,000
SGST 9%	18,000

**Transaction value not available [Sec. 15(4) read with CGST Rules, 2017 (i.e. Determination of value of supply)]:****Rule 27:** Value of supply of goods or services where the consideration is not wholly in money

- (a) Open market value of such supply
- (b) Sum total of consideration equal to money, if such amount is known at the time of supply provided (a) not applicable.
- (c) The value of supply of like kind and quality if (a) and (b) not applicable.
- (d) Based on cost as per rule 30, if not as per residual method rule 31 in that order, provided (a) to (c) not applicable.

Rule 28: value of supply of goods or services or both between distinct or related persons, other than through an agent**Rule 29:** value of supply of goods made or received through an agent**Rule 30:** value of supply of goods or services or both based on Cost.**Rule 31:** Residual method for determination of value of supply of goods or services or both**Rule 27: value of supply of goods or services where the consideration is not wholly in money:**

Valuation based on based on open market value of such supply.

- (a) "Open market value" of supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and price is the sole consideration, to obtain such supply at the same time when the supply being valued is made.

Example : 92

Where a new phone is supplied for ₹ 20,000/- along with the exchange of an old phone and if the price of the new phone without exchange is ₹ 24,000/-, the open market value of the new phone is ₹ 24000/-.

Example : 93

Mr. A being a registered person sells TVs to all customers at ₹ 45,000. He supplied new TV for ₹ 42,000 along with the exchange of an old TV. Find the open market value of TV.

Answer:

Open market value is ₹ 45,000.

Example : 94

M/s X Ltd is a manufacturer of car and sells the car in the open market at a price of ₹ 11,00,000. M/s X Ltd provided the car to his company auditor is only for ₹ 9,00,000. In return auditor provided auditing services to M/s X Ltd and charged ₹ 5,000 with the condition that company will be provided the car at the price of ₹ 9,00,000. Find the value as per Rule 27(a), Determination of value of supply.

Answer:

Open market value of the car is ₹ 11,00,000.

Therefore, M/s X Ltd transaction value should be ₹ 11,00,000 on which GST will be levied.

- (b) Sum total of consideration equal to money, if such amount is known at the time of supply provided open market value is not available.

The value of consideration which is non-monetary terms shall be determined in monetary terms. The said value shall be added to the value in monetary terms in determination of value of supply.



Example : 95

M/s X Ltd. is supplier of security services provided such services to M/s Y Ltd. As per the contract M/s Y Ltd is to pay monthly ₹ 1,00,000. In the month of November M/s Y Ltd. supplied uniforms to all employees of M/s X Ltd. by spending ₹ 20,000. As a result M/s X Ltd. raised the bill for ₹ 80,000 in the month of November. In the given case M/s X Ltd. received consideration for security service is partially in terms of money ₹ 80,000 and partially in kind (i.e uniforms). Find the taxable value of service on which GST will be levied.

Answer:

GST will be levied on the value of ₹ 1,00,000 (₹ 80,000 + uniforms equal to monetary value of ₹ 20,000) in the hands of M/s X Ltd.

Example : 96

Guidelines Academy normally charge ₹ 10,000 for teaching the commerce students. A merit student approaches the management of Guidelines Academy and narrates his financial position. Guidelines Academy management considered his financial position agrees to charge only ₹ 5,000 from such student. Find the value of taxable supply of service.

Answer:

Since, Guidelines Academy has not received any consideration from the student in any other form, ₹ 5,000 it self is a sole consideration. GST will be levied on ₹ 5,000.

(c) The value of supply of like kind and quality if (a) and (b) not applicable:

If the value of supply is not determinable as per open market value and monetary value of non-monetary values, the values of supply shall be of like kind and quality.

Factors facilitates to determine value of supply:

- Goods or services of same kind and quality
- Identical or Similar nature
- Similar circumstances
- Comparison of various factors and so on...

Example : 97

Guidelines Academy teaching or coaching budding CMA's Tuition fee of Guidelines Academy can be compared with another academy of same kind and nature. It means we should not compare with home tuition of a faculty to 4th Standard students.

Example : 98

Feathure light chairs price compare with identical or similar nature product. It means feather light product comapre with Godrej chair products.

Example : 99

Value of product in Chennai will be on higher than the product in Sikkim or Assam. Therefore, the rule provides that the supply of goods or services shall be in similar circumstances. It means that if the supply of goods or services which value is required to be determined has been made in Chennai, supply of goods or services which is considered as base shall be made in Chennai.

Example : 100

Canon heavy duty machines can not be compared with ordinary laser Jet printer. Like wise interior decorator completed interior decoration of a residential house measuring 1000 sq. ft cannot be considered as similar service for doing interior decoration of 1000 sq. ft. of office area.



- (d) Based on cost as per rule 30 or based on residual method as per rule 31 in that order, provided (a) to (c) not applicable.

As per rule 30 of the CGST Rules, 2017 value of supply of goods or services or both on cost. The value shall be 110% of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

Example : 101

Raj & Co. furnish the following expenditure incurred by them to find the transaction value for the purpose of paying GST.

Particulars	₹
(i) Direct material cost per unit inclusive of IGST at 18%	944
(ii) Direct wages	250
(iii) Other direct expenses	100
(iv) Indirect materials	75
(v) Factory overheads	200
(vi) Administrative overhead (25% relating to production capacity)	100
(vii) Selling and distribution expense	150
(viii) Quality control	25
(ix) Sale of scrap realised	20
(x) Actual profit margin	15%

Find the value for the purpose of payment of GST as per Rule 30 of the CGST Rules, 2017.

Answer:

Statement showing value of supply of goods as per Rule 30 of the CGST Rules, 2017:

Particulars	Value in ₹
Direct material cost (944 x 100/118)	800
Direct wages	250
Other direct expenses	100
Indirect materials	75
Factory overheads	200
Administrative overhead (25% of Rs 100)	25
Quality control	25
Sub-total	1475
Less: Sale of scrap	(20)
Cost of production	1,455
Add: 10% profit margin as per Rule 30 of the CGST Rules, 2017	145.50
Value of taxable supply of goods	1,600.50

Cost Accounting Standard (CAS)-4 issued by the Institute of Cost Accountants of India enumerates various costs to be included in determining the cost of production of goods. CAS-4 principles are also applicable for determining the cost of supply of service.

Thus cost of acquisition will include cost of transportation, any local taxes, insurance, other expenditure like commission, fee and so on paid on procurement of goods.

However, GST element will not be considered for the purpose of determining the cost of acquisition.



As per Rule 31 of the CGST Rules, 2017 Residual method for determination of value of supply of goods or services or both

It is provided that where the value of supply of goods or services or both cannot be determined under rule 27 to rule 30 of the CGST Rules, 2017, value shall be determined by using reasonable means consistent with the principles and the general provisions of Sec. 15 and the provisions of this Chapter IV of the CGST Rules, 2017.

It means to say that efforts should be made by proper officer to determine the by using his best judgment assessment.

Case Law : 2

CCEx. Mumbai v. Fiat India Pvt. Ltd. 2012 (283) E.L.T. 161 (S.C.):

Assessee Claim: Fiat UNO model cars for the past five years consistently selling at below manufacturing cost to non-relative buyers for meeting demand in the market. Therefore, such selling price (i.e. transaction value) itself has sole consideration for the purpose of GST.

Department Contention: The extra commercial consideration was involved in this case an additional consideration should be added to the price for the purpose of duty. Therefore, Best Judgement Assessment has been invoked.

Decision: Full commercial cost of manufacturing and selling was not reflected in the price as it was deliberately kept below the cost of production. Thus, price could not be considered as the sole consideration for sale. No prudent businessperson would continuously suffer huge loss only to penetrate market. Therefore, Best Judgment Assessment of the department was proper said by the Hon'ble Supreme Court of India in the case of CCEx. Mumbai v. Fiat India Pvt. Ltd. 2012 (283) E.L.T. 161 (S.C.).

Note: if the assessee sales below manufacturing cost and profit but there is no additional consideration flowing directly or indirectly from buyer to assessee, the transaction value shall be the assessable value.

Rule 28 of the CGST Rules 2017 value of supply of goods or services or both between distinct or related persons other than through an agent:

The value of the supply of goods or services or both between distinct persons as specified in Sec. 25(4) or Sec 25(4) of the CGST Act, 2017 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

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

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to 90% of the price charged of the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of goods or services.

**Example : 102**

M/s X Ltd. owned factory in Chennai (Tamil Nadu) and one depot in Cochin (Kerala). Depot in Cochin is required to obtain separate registration as they are considered as distinct person under Section 25(4) of the CGST Act, 2017. The goods manufactured in Chennai factory will be transferred to Cochin Depot where it will be sold as it is.

Particulars	No. of units	Price at Factory Per unit	Price at Depot Per unit	Rate of IGST Advalorem
(i) Goods transferred from factory to depot on 8th February	1,000	₹ 200	₹ 220	18%
(ii) Goods actually sold at depot on 18th February	750	₹ 220	₹ 250	12%

Find the value of taxable supply of goods and IGST liability in the hands of M/s X Ltd. of Chennai.

Note: Depot in Cochin is not availing input tax credit.

Answer:

Value of taxable supply of goods = ₹ 1,98,000

(₹ 220 x 1,000 units) x 90%

IGST = ₹ 35,640 (i.e. ₹ 1,98,000 x 18/100)

Note: It means at the time of transfer of goods from Chennai Factory to Cochin Depot, M/s X Ltd. will have to determine the price at which depot will sell the goods to his customers.

As per 1st proviso to Rule 28 of Chapter IV of the CGST Rules, 2017 provides that such price should be the price for sale of goods to unrelated person.

M/s X Ltd. has option to pay GST on 90% of such value (i.e. 90% of the price at which the goods are being sold from Cochin Depot).

Example : 103

M/s Y Ltd owned factory in Hyderabad (Telangana) and one depot in Vijayawada (Andhra Pradesh). Depot in Vijayawada is required to obtain separate registration as they are considered as distinct person under Section 25(4) of the CGST Act, 2017. The goods manufactured in Hyderabad factory will be transferred to Vijayawada Depot where it will be sold as it is. Depot in Vijayawada is availing Input Tax Credit.

Particulars	No. of units	Price at Factory Per unit	Price at Depot Per unit	Rate of IGST Advalorem
(i) Goods transferred from factory to depot on 8th February	1,000	₹ 200	₹ 220	18%
(ii) Goods actually sold at depot on 18th February	750	₹ 220	₹ 250	12%

Find the value of taxable supply of goods and IGST liability in the hands of M/s X Ltd. of Chennai.

Answer:

Value of taxable supply of services = ₹ 2,20,000/-

(1000 units x ₹ 220)

IGST = ₹ 39,600 (₹ 2,20,000 x 18/100)

Note:

- As per 2nd proviso to Rule 28 of Chapter IV of the CGST Rules, 2017 provides that where the recipient is eligible for input tax credit, value declared in the invoice shall be deemed to be open market value of goods or services.
- Integrated Tax Department has right to reject the valuation if the value is not full fill the open market value. It should meet the requirement of sole consideration.

**Rule 29 of the CGST Rules 2017 value of supply of goods made or received from an agent:**

As we are aware of that as per clause 3 of Schedule I of the CGST Act 2017:

Schedule - I

Activities to be Treated as Supply even if made without Consideration

3. Supply of goods—

- a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
- b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

As per Rule 29 of the CGST Rules, 2017 provides the manner in which value shall be determined in such cases.

- (a) be the open market value of the goods being supplied, or at the option of the supplier, be 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person, where the goods are intended for further supply by the said recipient;
- (b) where the value of a supply is not determinable under clause (a), the same shall be determined by application of Rule 30 or Rule 31 of Chapter IV of the CGST Rules 2017 in that order.

Example : 104

A principal supplies groundnut to his agent and the agent is supplying groundnuts of like kind and quality in subsequent supplies at a price of ₹ 5,000 per quintal on the day of the supply. Another independent supplier is supplying groundnuts of like kind and quality to the said agent at the price of ₹ 4,550 per quintal.

Find the value of taxable supply in the hands of principal as per Rule 29(a) of the CGST Rules, 2017.

Answer:

The value of taxable supply made by the principal shall be ₹ 4,550 or where he exercises the option, the value shall be ₹ 4,500 (i.e. 90% of ₹5,000) per quintal.

Example : 105

M/s P Ltd. being a principal supplies laptops to his agent and the agent is supplying laptops of like kind and quality in subsequent supplies. M/s P Ltd incorporated in Chennai (Tamil Nadu). Agent is located in Nagercoil (Tamil Nadu). Goods supplied on 15th November by the Principal to his Agent.

Particulars	No. of units	Price at which principal supplies to agent	Price at which agent supplies to his customer not being a related person	Rate of GST Advalorem
(i) Selling price on 15th November	1,000	₹ Nil	₹ 22,000	18%

(ii) Goods procured by agent from other independent supplier supplying laptops of like kind and quality at ₹20,000 per unit on 15th November.

Find the value of taxable supply of goods and GST liability in the hands of M/s P Ltd. of Chennai.

Answer:

Value of taxable supply made by principal shall be ₹ 20,000 per laptop or where the principal exercise the option the value shall be ₹ 19,800 per laptop (i.e. 90% of the ₹ 22,000).

It is economical to opt the 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being related person on the day of supply.

Total taxable value of supply = ₹ 198,00,000 (i.e. 19,800 x 1000 units).

GST liability in the hands of M/s P Ltd. of Chennai:

CGST 9% on ₹ 198 lakh = ₹ 17,82,000

SGST 9% on ₹ 198 lakh = ₹ 17,82,000

Determination of value in respect of certain supplies (Rule 32 of Chapter IV of the CGST Rules, 2017):

Rule 32(1): Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall, at the OPTION of the supplier, be determined in the manner provided hereinafter.

Rule 32(2): Money changing services	Already covered
Rule 32(3): Air travel agent of passenger transport	
Rule 32(4): Life insurance business	

Rule 32(5): Buying and Selling of second hand goods:

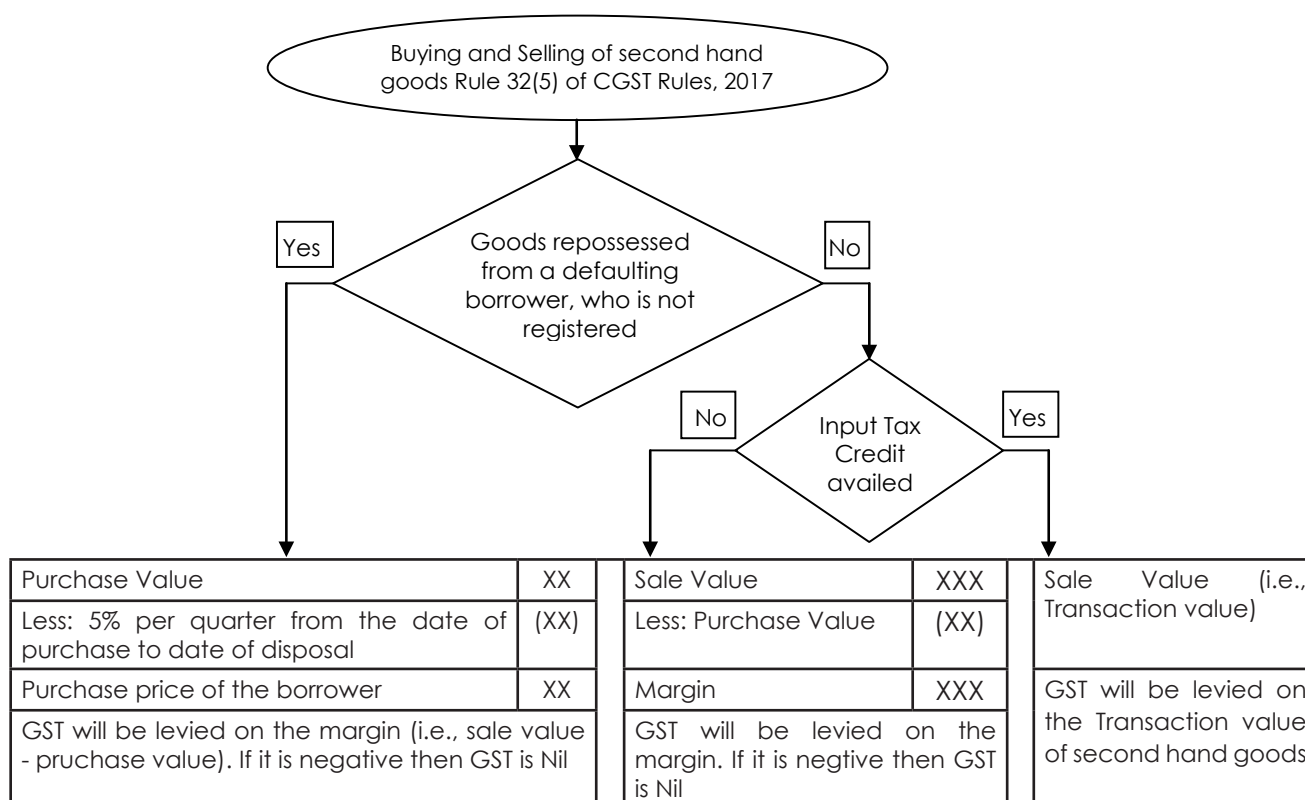
Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e. used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored (i.e. goods are sold at loss then tax will not be payable).

Provided that the purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by 5% points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.

When a registered second-hand goods dealer supplies second-hand goods, the dealer is liable to charge GST on the second-hand goods. For this, 2 options have been given to the dealers:

Charge GST on the full transaction value. Here, the dealer is eligible to claim input tax credit of the tax paid on purchase of the used goods.

Simplified approach:



**Example : 106**

Ram & Co., being a car dealer dealing in second hand cars. Ram & Co., purchases used car from Mr. Raja and sell the very same car to Miss. Rani after water wash and painting. The purchase price is ₹ 2,00,000 whereas the sale price is ₹ 2,50,000. Find the GST liability as per rule 32(5) of the CGST Rules, 2017 by following margin scheme in the hands of Ram & Co. Assume applicable rate of GST 28%.

Ram & Co., is not availing input tax credit on purchase of second hand cars.

Whether your answer is different if the sale of second hand car for ₹ 1,80,000.

Note: Ram & Co., and Miss. Rani are located within the State of Tamil Nadu.

Answer:

GST net liability is as follows:

Particulars	Value ₹	14% CGST ₹	14% SGST ₹	Remarks
Output supply	2,50,000			
Less: purchase price	2,00,000			
Difference known as margin	50,000	7,000	7,000	Charge GST on the margin or profit earned on the goods (₹ 50,000 x 28%)

Yes. Our answer different in case of sale price is ₹ 1,80,000:

Sale price	= ₹ 1,80,000
Less: purchase price	= ₹ (2,00,000)
Margin	= ₹ (20,000)
GST liability	= ₹ Nil

Note: For a dealer who has opted for the margin scheme, there can be a scenario where the second-hand goods are sold at zero margins or for a lesser price than the purchase price. In this case, no GST will be applicable on the supply.

Example : 107

Mr. D being a dealer in goods sells new brand cars at ₹ 11,00,000. He advertises that customers can sell their old car if they buy new car from him. One customer exchanged his old car for ₹ 2,00,000. Mr. D sold new car to that customer for ₹ 9,00,000. The Central Tax Department demanded to pay GST on ₹ 11,00,000 whereas Mr. D argues that he is eligible to pay GST on the difference namely margin of ₹ 9,00,000 as per Rule 32(5) of the CGST Rules, 2017. Discuss and decide the correct approach.

Answer:

Rule 32(5) of the CGST Rules, 2017 is applicable only when person is dealing in buying and selling of second hand goods.

In the given case Mr. D is not eligible for margin scheme as referred in rule 32(5). Since, dealer sold new car and therefore, provisions of rule 32(5) will not apply.

Therefore, from the above it is evident that the Central Tax Department view is correct.

Example : 108

M/s X Ltd, a registered person under GST, being a dealer dealing with second-hand goods. M/s X Ltd. supplies a used camera to a consumer in Chennai for selling price of ₹ 15,000. The used camera (i.e. second hand) was purchased for ₹ 10,000 from a registered dealer in Mumbai, on which CGST + SGST of ₹ 1,400 each was charged (i.e. GST rate applicable to cameras is 28%).

M/s X Ltd. charged IGST 28% on inter State supply.

Find the net GST liability in the following independent cases:

(a) if input tax credit availed.

(b) if input tax credit not availed.

**Answer:****(i) Net GST liability in case of input tax credit availed:**

Particulars	Value ₹	28% IGST ₹
Output supply	15,000	4,200
Less: ITC	10,000	
CGST 14%		(1,400)
SGST 14%		(1,400)
Net GST liability		1,400

(ii) Net GST liability in case of input tax credit not availed:

Particulars	Value ₹	28% IGST ₹	Remarks
Output supply	15,000		
Less: purchase price	12,800		ITC will form part of cost.
Difference known as margin	2,200	616	Charge GST on the margin or profit earned on the goods (₹ 2,200 x 28%)

Repossession of goods in case of default by the unregistered borrower:

Example : 109

Mr. C has taken a loan from the bank on 15th July 2017 worth ₹ 2 crore and purchased a machine. Subsequently Mr. C defaulted in paying the loan amount along with interest. At late date bank repossessed the machine from Mr. C on 1st Jan 2018. The banker sells the said goods on 26th April 2018.

Find the value of taxable supply of goods in the hands of banker in the following two independent cases:

Case 1: machine sold for ₹ 1,90,00,000.

Case 2: machine sold for ₹ 1,70,00,000.

Note: Applicable rate of IGST 18%.

Answer:**Determination of purchase value:**

Particulars	Value in ₹	Working note
Purchase value of the banker	2,00,00,000	Purchase value for the lending company will be the purchase price of the defaulter.
Less: 5% per quarter for 2 quarters	(20,00,000)	From 1st Jan 2018 to 26th April 2018 = 2 quarters
Purchase value at the time of disposal by the bank	1,80,00,000	

Value of taxable supply in the hands of banking company:

Particulars	Case 1	Case 2	Remarks
Sale price	1,90,00,000	1,70,00,000	
Less: purchase price	(1,80,00,000)	(1,80,00,000)	In case the sale price is below ₹ 1,80,00,000, banker will not be liable to pay GST as value is nil.
Taxable value or Margin	10,00,000	Nil	
IGST 18%	1,80,000	Nil	₹ 10 lacs x 18%

Redeemable voucher/coupons/stamp (other than postage stamp) [Rule 32(6) of the CGST Rules, 2017]:

There are many companies who issues vouchers, coupons, stamp and so on the basis of which goods or services can be procured by the holder of such vouchers/coupons/stamps etc.



Valuation:

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

Time of Supply of Vouchers for Goods & Services (Section 12(4) & 13(4) of CGST Act, 2017)

If the supplies is identifiable at that point:

- Time of supply = Date of issue of voucher.

If the supplies is not identifiable at that point:

- Time of supply = The date of redemption of voucher.

Example : 110

A voucher has face value of ₹ 5,000. The holder of voucher can purchase goods or services of equivalent value of ₹ 5,000. When the holder of voucher receives the goods or services against the voucher it is termed as redemption of voucher.

Example : 111

X Ltd. being a cloth merchant sold gift voucher to customer for ₹ 2,000 on 10th November to purchase specific cloth from its showroom. Goods actually purchased by customer on 15th November for ₹ 2,400. Find the time of supply and value of supply with regard to gift voucher in the hands of X Ltd.

Answer:

Time of supply is at the time issue of voucher i.e. 10th November.

Value of supply = ₹ 2,000 for gift voucher.

Example : 112

Ram & Co., being dealer in electronics and electrical items, issued gift voucher to its customer for ₹ 2,000 on 15th November. Customer can used gift voucher to purchase anything which is available. Customer purchased goods worth ₹ 1,400 on 20th Nov 2017. Applicable CGST and SGST 9% each.

Find the following

- (a) time of supply*
- (b) value of supply*
- (c) GST liability in the hands of Ram & Co.*

Answer:

a) Time of supply is 20th November 2017.

b) Value of supply is ₹1,500.

c) GST liability:

- CGST is ₹ 126*
- SGST is ₹ 126*

Working Note: ₹ 1,400 x 9% = ₹126

Example 113:

Mr. & Ms. Kapoor purchase 10 gift vouchers for ₹ 500 each from Crossword, and 5 vouchers from a reputed Spa costing ₹ 1,000 each. The vouchers from a reputed Spa had a special offer for couples, where in services for both persons at the price chargeable to one. Find the value of supply in the hands of Crossword and reputed Spa.

**Answer:****Statement showing value of taxable supply:**

Particulars	Crossword Value in ₹	Reputed Spa value in ₹	Remarks
Value of taxable supply	5,000	10,000	10 gifts x 500 = ₹ 5,000. (5 vouchers x ₹ 1,000) x 2 = ₹ 10,000

Value of service provided by one distinct person to another distinct person [Rule 32(7) of the CGST Rules, 2017]:

The value of taxable services provided by such class of service providers as may be notified by the Government, on the recommendations of the Council, as referred to in paragraph 2 of Schedule I of the CGST Act, 2017 between distinct persons as referred to in section 25, where input tax credit is available, shall be deemed to be NIL.

SCHEDULE - I

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

Provided that gifts not exceeding ₹ 50,000/- in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

Value of supply of services in case of pure agent [Rule 33 of the CGST Rules, 2017]:

Pure Agent means a person who:

- enters into a contractual agreement with the recipient of supply to act on their behalf and incur expenditure or costs in the course of supply of goods or services or both;
- neither intends to hold nor holds any title to the goods or services (or both) procured on behalf of or provided to the recipient of supply;
- does not use the goods or services so procured for his own interest; and
- receives only the actual amount incurred to procure such goods or services.

The expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied namely:-

- the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorization by such recipient;
- the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Example : 114

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

**Example : 115**

Mr. Ram is a registered dealer under GST Law. He sold furniture to a customer for ₹ 51,000 with free delivery. In such case Mr. Ram availing the service of the transporter for his own interest and therefore, transport charges is included in selling price of ₹ 51,000 and he would be not considered as pure agent in this case.

Example : 116

Mr. X is a Customs Broker issues an invoice for reimbursement of a few expenses and for consideration towards agency service rendered to an importer. The amounts charged by the Customs Broker are as below:

S. No.	Component charges in invoice	Amount in ₹
1	Agency income	10,000
2	Travelling expenses	5,500
3	Hotel expenses	9,500
4	Customs duty	55,000
5	Dock dues	2,500

Find the value of taxable supply of service in the hands of Customs Broker.

Answer:

Statement showing taxable value of supply of service:

S.No.	Particulars	Amount in ₹	Remarks
1	Agency income	10,000	Addable into the value
2	Travelling expenses	5,500	-do-
3	Hotel expenses	9,500	-do-
4	Customs duty	Not addable	Pure agent reimbursement
5	Dock dues	Not addable	Pure agent reimbursement
	Total	25,000	

Rate of exchange of currency for determination of value [Rule 34 of the CGST Rules, 2017]:

The rate of exchange for the determination of the value of taxable goods or services or both shall be the applicable reference rate for that currency as determined by the Reserve Bank of India (RBI) on the date of time of supply in respect of such supply in terms of section 12 or as the case may be, section 13 of the Act.

NOTIFICATION No. 17/2017–Central Tax

New Delhi, the 27th July, 2017

for rule 34, the following shall be substituted, namely:

“34. Rate of exchange of currency, other than Indian rupees, for determination of value.—(1) The rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 for the date of time of supply of such goods in terms of section 12 of the Act.

(2) The rate of exchange for determination of value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of section 13 of the Act”;

**Example : 117**

Compute the duty payable under the Customs Act, 1962 for imported equipment based on the following information:

- (i) Assessable value of the imported equipment US \$10,100.
- (ii) Date of Bill of Entry 25.10.2017 exchange rate notified by the Central Board of Excise and Customs US \$ 1 = ₹ 65.
- (iii) Date of Entry inwards 01.11.2017 exchange rate notified by the Central Board of Excise and Customs US \$ 1 = ₹ 60.

Find the taxable value of imported goods.

Answer:

Statement showing taxable value of imported goods:

Particulars	Value in ₹	Remarks
Assessable value of imported goods	6,56,500	10,100 USD x ₹ 65 Exchange rate as on the date of submission of bill of entry is relevant as per section 14 of the Customs Act, 1961.

Value of supply inclusive of integrated tax, State tax, Union territory tax [Rule 35 of the CGST Rules, 2017]:

Where the value of supply is inclusive of integrated tax or, as the case may be, central tax, State tax, Union territory tax, the tax amount shall be determined in the following manner, namely:-

$$\text{Tax Amount} = \left(\frac{\text{Value inclusive of tax}}{100 + \text{GST}} \right) \times \text{Rate of GST}$$

This formula is very useful in case where supplier may treat the particular supply as exempted from GST and therefore will not indicate the tax amount separately in the bill of supply prepared by him. In fact it is taxable supply with GST. In such case transaction value will be determined with help of rule 35.

Example : 118

An assessee was under impression that his product is exempt from GST and hence sold the goods @ ₹100 per piece without charging GST. Later, it was found that actually, the product was chargeable with IGST 18%. Department claimed that since goods were removed without GST, transaction value should be ₹100 and GST is payable accordingly. Assessee contended that price of ₹ 100 should be taken as inclusive of GST and actual GST payable should be calculated by back calculations. Determine the correct GST payable per piece.

Answer:

As per rule 35 of the CGST Rules, 2017 transaction value and GST liability is as follows:

The Transaction value should be taken, as cum-tax-price and tax payable should be calculated by making back calculations. Hence, the transaction value is as follows:

The transaction value = ₹ 100 x 100/118 = ₹ 84.75

IGST = ₹ 100 x 18/118 = ₹ 15.25

Total invoice price = ₹100.00

[CCE v Maruti Udyog Ltd. (2002) 141 ELT 3 (SC)]

**3.4 CHANGE IN RATE OF TAX IN RESPECT OF SUPPLY OF GOODS OR SERVICES**

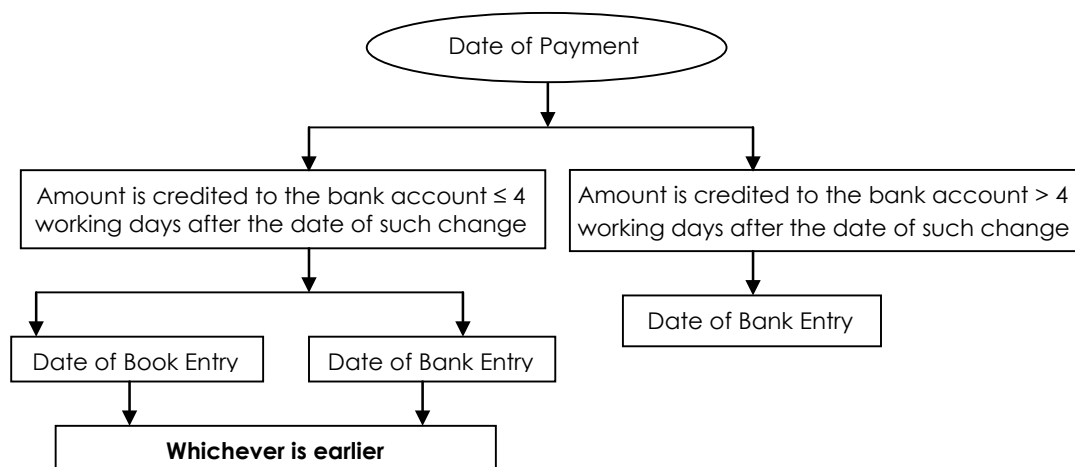
Change in Rate of Tax in respect of supply of goods or services [Sec. 14 of the CGST Act, 2017]:

S.No.	Supply is completed before the change in rate of tax	Invoice issued before the date of change in tax	Payment received before the date of change in tax rate	Time of supply	Applicable rate of tax
1	Yes	No	No	Earliest of the date of invoice or payment	New Rate of Tax
2	Yes	Yes	No	Date of issue of invoice	Old Rate of tax
3	Yes	No	Yes	Date of receipt of payment	Old Rate of tax
4	No	Yes	Yes	Earliest of the date of invoice or payment	Old Rate of Tax
5	No	Yes	No	Date of receipt of payment	New Rate of tax
6	No	No	Yes	Date of issue of Invoice	New Rate of tax

Date of receipt of payment in case of change in rate of tax: Normally the date of receipt of payment is the date of credit in the bank account of the recipient of payment or the date on which the payment is entered into his books of account, whichever is earlier.

However, in cases of change in rate of tax, the date of receipt of payment is the date of credit in the bank account if such credit is after four working days from the date of change in rate of tax.

Date of receipt of payment in case of change in rate of tax:



**Example : 119**

Mr. X supplied goods to Mr. Y on 28th January 2018. The GST rate on goods is changed from 12% to 5% w.e.f. 1st January 2018. Mr. X issued invoice on 28th August 2017 and payment is credited in his bank account on 30th December 2017.

(i) What is the time of supply in this case?

(ii) Effective rate of GST?

Answer:

(i) Time of supply = 28th August 2017

(ii) Effective rate of GST = 12%

Example : 120

X Pvt. Ltd. engaged in providing taxable services by way of training and coaching activities in relation to Accounting and Auditing since, 1st July 2017. It has the following details in respect of that activity:

Date of issuance of invoice	Date on which payment received	Amount in ₹
16.09.2017	03.10.2017	2,50,000
20.10.2017	06.10.2017	25,000
02.10.2017	30.09.2017	1,25,000

The date of change in effective rate of tax in this case is 01-10-2017 from 12% to 18%. These services are rendered in August 2017. Find the time of supply of service, effective rate of tax and due date of payment of tax.

Answer:

Services rendered	Date of issuance of invoice	Date on which payment received	Amount in ₹	Time of supply of service	Effective Rate of tax	Due date of payment
Aug 2017	16.09.2017	03.10.2017	2,50,000	16.09.2017	12%	20.10.2017
Aug 2017	20.10.2017	06.10.2017	25,000	06.10.2017	18%	20.11.2017
Aug 2017	02.10.2017	30.09.2017	1,25,000	30.09.2017	12%	20.10.2017



Study Note - 4

INPUT TAX CREDIT (ITC)



This Study Note includes

- 4.1 Introduction
- 4.2 Eligibility for taking Input Tax Credit (ITC)
- 4.3 Blocked Credits
- 4.4 Method of Reversal of Credits
- 4.5 Input Tax Credit in Special Circumstances
- 4.6 Input Tax Credit in respect of goods sent for Job-Work
- 4.7 Distribution of Credit by Input Service Distributor (ISD)

4.1 INTRODUCTION

The basic concept of Input Tax Credit (ITC) is to avoid the cascading effect of duty. Cascading effect of duty (i.e. duty on duty) happens where tax is levied at every stage of supply.

The following examples will help us understand this.

If the duty is based on the manufacture of a product, the tax burden keeps increasing as raw material and final product passes from one stage to another.

Cascading effect

Assessee	A (₹)	B (₹)	
Purchases	100	224	
Value added	100	76	
Assessable Value	200	300	
Add Excise Duty @ 12%	24	36	
Sale prices	224	336	

200 x 12% = 24

24 x 12% = 2.88

76 x 12% = 9.12

Duty paid on duty

GST eliminates cascading effect of tax

No Cascading effect

Assessee	A (₹)	B (₹)	
Purchases	100	200.00	(₹ 224 – ₹ 24)
Value added	100	76.00	
Assessable Value	200	276.00	Output tax 33.12
Add GST @ 12%	24	33.12	Input tax (24.00)
Sale prices	224	309.12	net payable 9.12 [i.e., 76 × 12% = 9.12]

Uninterrupted and seamless chain of input tax credit (hereinafter referred to as, "ITC") is one of the key features of Goods and Services Tax. As the tax charged by the Central or the State Governments would be part of the same tax regime, the credit of tax paid at every stage would be available as set-off for payment of tax at every subsequent stage.



Input (Sec. 2(59) of the CGST Act, 2017): It means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business.

Capital Goods (Sec. 2(19) of the CGST Act, 2017): It means goods, the value of which is capitalized in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business.

Input Service (Sec 2(60) of the CGST Act, 2017): It means any service used or intended to be used by a supplier in the course or furtherance of business.

Input Tax (Sec. 2(62) of the CGST Act, 2017): In relation to a registered person, it means the Central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes:-

- (a) the integrated goods and services tax charged on import of goods;
- (b) the tax payable under the provisions of Sec 9(3) and Sec. 9(4) of the CGST Act, 2017;
- (c) the tax payable under Sec 5(3) and Sec. 5(4) of the IGST Act, 2017;
- (d) the tax payable under SGST Act (i.e. person liable to pay GST under RCM);
- (e) The tax payable under UTGST Act (i.e. person liable to pay GST under RCM),

But does not include the tax paid under the composition levy.

Input Tax Credit (Sec 2(63) of the CGST Act, 2017): It means the credit of input tax.

Electronic cash ledger (Sec 2(43) of the CGST Act 2017): It means the electronic cash ledger referred to in sub-section (1) of section 49.

Electronic credit ledger Sec 2(46) of the CGST Act, 2017: It means the electronic credit ledger referred to in sub-section (2) of section 49;

Exempted supply (Sec. 2(47) of the CGST Act, 2017): It means supply of any goods or services or both which attracts

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

Invoice or tax invoice (Sec 2(66) of the CGST Act, 2017): It means the tax invoice referred to in section 31;

Inward supply (Sec. 2(67) of the CGST Act, 2017): "Inward supply" in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without consideration;

Job work (Sec 2(68) of the CGST Act, 2017): It means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly;

Non-taxable supply (Sec 2(78) of the CGST Act, 2017): It means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;

Output tax (Sec 2(82) of the CGST Act, 2017): "Output tax" in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;

Outward supply (Sec 2(83) of the CGST Act, 2017): "Outward supply" in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business;

Quarter (Sec 2(92) of the CGST Act, 2017): "Quarter" shall mean a period comprising three consecutive calendar months, ending on the last day of March, June, September and December of a calendar year;

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

Zero rated supply: It means any of the following supplies of goods or services or both, namely:-

- export of goods or services or both; or
- supply of goods or services or both to a Special Economic Zone (SEZ), developer of SEZ unit (As referred under Section 16(1) of the IGST Act, 2017.

Export of goods (Sec 2(5) of the IGST Act, 2017): With its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;

Export of service (Sec. 2(6) of the IGST Act, 2017): It means the supply of any service when,—

- the supplier of service is located in India;
- the recipient of service is located outside India;
- the place of supply of service is outside India;
- the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- 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;

4.2 ELIGIBILITY TO AVAIL INPUT TAX CREDIT (ITC)

As per Section 16(1) of the CGST Act, 2017 Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

Example 1:

Mr. K of Kolkata sold taxable goods to Mr. C of Chennai. Mr. B being a buyer of goods is eligible to claim the IGST as credit on purchases based on the tax invoice issued by Mr. K of Kolkata.

Step by step approach:

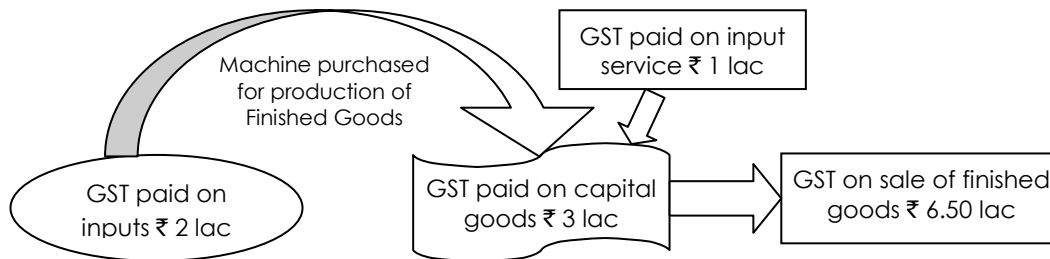
- Mr K will upload the details of all tax invoices issued in GSTR 1.
- The details with respect to sales to Mr C will auto populate/ get reflected in GSTR 2A, the same data will be pulled when Mr C will file GSTR 2 (i.e details of inward supply).
- Mr C will then accept the details that the purchase has been made and reported by the seller correctly and subsequently the tax on purchases will be credited to 'Electronic Credit Ledger' of Mr C and he can adjust it against future output tax liability.

Utilization of ITC:

Inward supply	Outward supply			Remarks
	CGST	SGST	IGST	
ITC of CGST	Allowed	Not allowed	Allowed	1st CGST next IGST in that order
ITC of SGST	Not allowed	Allowed	Allowed	1st SGST next IGST in that order
ITC of IGST	Allowed	Allowed	Allowed	1st IGST next CGST and next SGST in that order

ITC is an integration of Goods and Services:

Since GST is charged on both goods and services, input tax credit can be availed on both goods and services (except those which are on the exempted/negative list). Input tax credit is allowed on capital goods.

**Example 2:****X Ltd. being manufacturer cum seller of taxable goods**

Particulars	GST ₹ in lac
Output supply of goods	6.50
Less: ITC on inward supply of goods	(2)
Less: ITC on capital goods	(3)
Less: ITC on input supply of services	(1)
Net GST liability	0.50

Note: Goods or services or both which are used or intended to be used in the course or furtherance of business and the said amount shall be credited to the electronic credit ledger of such person.

Conditions for taking ITC:

Section 16(2) of the CGST Act, 2017: Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

- he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
- he has received the goods or services or both.

Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

Note: Further explanation has been provided for Sec 16(2)(b) explanation vide CGST Amendment Act, 2018 that: For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

- where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;
 - where the services are provided by the supplier to any person on the direction of and on account of such registered person.
- subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and
 - he has furnished the return under section 39:
Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of **one hundred and eighty days** from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

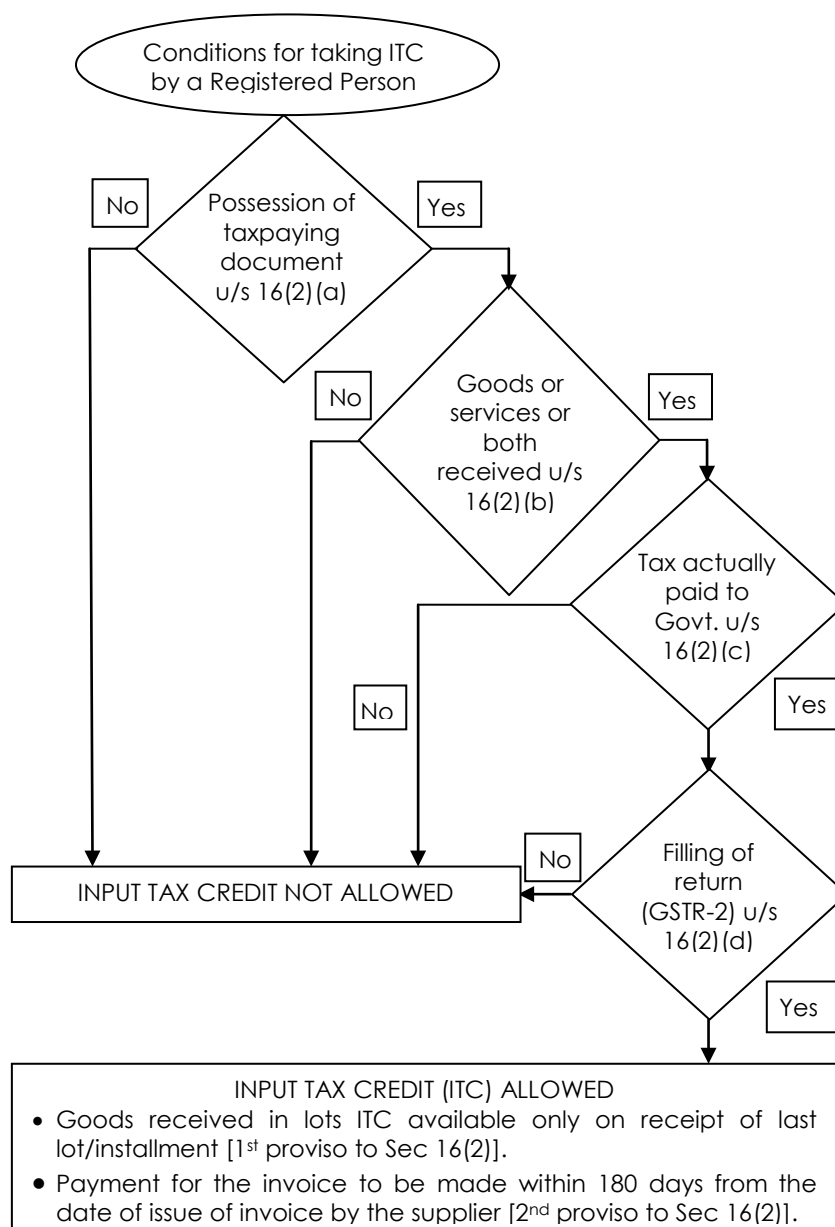
Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

Note : Even if all specified particulars stipulated by Invoice rules is not satisfied, yet the invoice contains the amount of tax charged, description of supplies, total value of supply, GSTIN of the supplier & recipient and place of supply in case of inter-state supply, then the ITC can be availed by registered taxpayers. This is a very important amendment and hence ITC cannot be denied due to certain clerical mistakes in the invoice by the supplier.

Section 16(3) of the CGST Act, 2017: Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

Section 16(4) of the CGST Act, 2017: A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Simplified Approach:



**Quantum of credit Section 16(1) of the CGST Act, 2017:**

The entire credit on the input and capital goods allowed can be availed at the time of receipt of input and capital goods. Thus, to this extent there is no difference between input and capital goods under GST Law.

Tax Invoice or Debit Note [Section 16(2)(a) of the CGST Act, 2017]:

The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents (Rule 36(1) of the CGST Rules, 2017), namely,-

- (a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;
- (b) an invoice issued under reverse charge;
- (c) a debit note;
- (d) a bill of entry
- (e) an Input Service Distributor invoice or
Input Service Distributor credit note.

CASE LAW - 1

CCEx. v Stelko Strips Ltd. 2010 (255) ELT 397 (P&H)

Decision: The Cenvat Credit could be taken on the strength of private challans as the same were not found fake and there was proper certification that duty has been paid.

All these documents are to be furnished at the time of filing form GSTR-2, in accordance with Rule 36(2) of the CGST Rules, 2017.

As per Rule 36(3) of the CGST Rules, 2017, No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, wilful misstatement or suppression of facts.

Example : 3

M/s. X Ltd. supplied taxable goods from the factory after manufacture in the month of Oct 2017 for sale to a distributor for ₹ 8,00,000. M/s X Ltd has suppressed this transaction. However, he deposited the GST @12% on these goods on 10-1-2018 against show cause notice issued under Section 74 (when there is fraud) of the CGST Act, 2017 by the Central Tax Officer and passed the order accordingly.

Whether distributor namely recipient of these goods is eligible to take input tax credit.

Answer:

As per rule 36(3) of the CGST Rules, 2017, No credit on payment of tax due to fraud, willful-misstatement or suppression of fact etc. shall be allowed.

In the given case no input tax credit was available to registered person if the supplier has paid tax in pursuance of order where any demand has been confirmed on account of any fraud, willful-misstatement or suppression of facts and so on under Sec. 74 of the CGST Act, 2017.

Hence, input tax credit is not allowed to recipient of these goods (i.e. distributor in the given case).

ITC on receipt of goods or services [Section 16(2)(b) of the CGST Act, 2017]:**(a) No credit when tax paid on advance receipt:**

As we are aware of that time of supply of goods (Sec 12 of the CGST Act, 2017) or time of supply of supply



of service (Sec 13 of the CGST Act, 2017) where time of supply is the date on which the supplier receives the payment if the payment is received prior to raising of invoice/supply of goods or services (except where supply of goods turnover does not exceed ₹ 150 lacs. In such case date of invoice namely supply of goods is the time of supply).

GST paid by supplier on advance is not auto populated to the account of receipt of goods or services. The recipient of goods or services is not entitled for credit of tax paid on advances by the supplier. Section 16(2) (b) provides that the receiver should have received the goods or services for availment of credit. When the payments are made on advance receipt of supplier, the recipient has not received the goods or services. Therefore, he is not entitled for credit on input tax paid.

(b) Receipt of goods and services:

Registered person shall receive the goods or services and used or intended to be used in the course or furtherance of business. In case of input or input services are not received, by the registered person, the question of its use in the course or furtherance of business does not arise and hence, ITC not allowed.

In case goods received in installment:

Example : 4

M/s C Ltd. Chennai procured goods 10,000 Kgs @ ₹ 100 per Kg. from M/s D Ltd. of Delhi. These goods came to M/s C Ltd. of Chennai in the following manner:

Date of dispatch	No. of Kgs dispatched	Date of receipt	Normal loss in transit kgs	Abnormal loss in transit Kgs	No. Kgs received
10th Oct	2,000	15th Nov	2	Nil	1,998
2nd Nov	5,000	20th Nov	5	Nil	4,995
3rd Dec	3,000	1st Jan	1	20	2,979

Invoice shows 10,000 Kgs. and GST @18%.

You are required to answer:

(a) M/s C Ltd. can avail the proportionate credit on 15th Nov and 20th Nov.

(b) M/s C Ltd. is eligible for input tax credit if so when.

(c) How much credit is allowed to M/s C Ltd.

Answer:

(a) M/s C Ltd. cannot take proportionate credit on the quantity received on 15th Nov and 20th Nov.

(b) M/s C Ltd. is eligible to avail the input tax credit on 1st Jan.

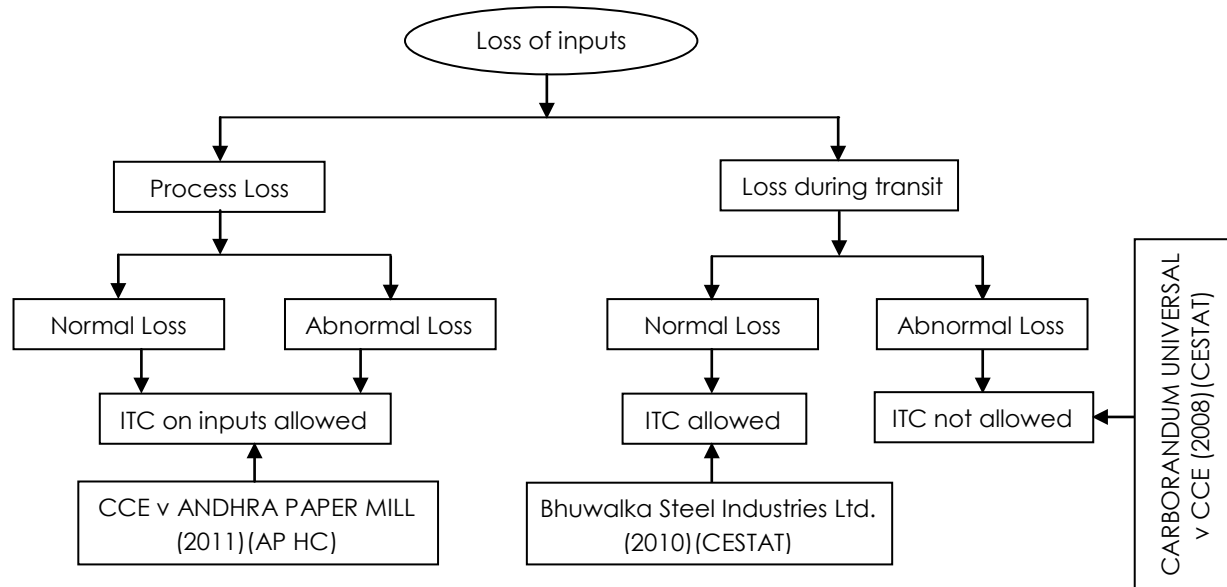
(c) Input tax credit allowed = ₹ 1,79,640/- (10,000 Kgs x ₹ 100) x 18% x 9980 kgs/10,000 kgs.

Note:

(i) Goods received in lots ITC available only on receipt of last lot/installment [1st proviso to Sec 16(2)]

(ii) Entire input tax credit is allowed in case of transit loss (i.e. normal loss). Whereas input tax credit is not allowed to the extent of transit loss (i.e. abnormal loss).

Loss of Inputs

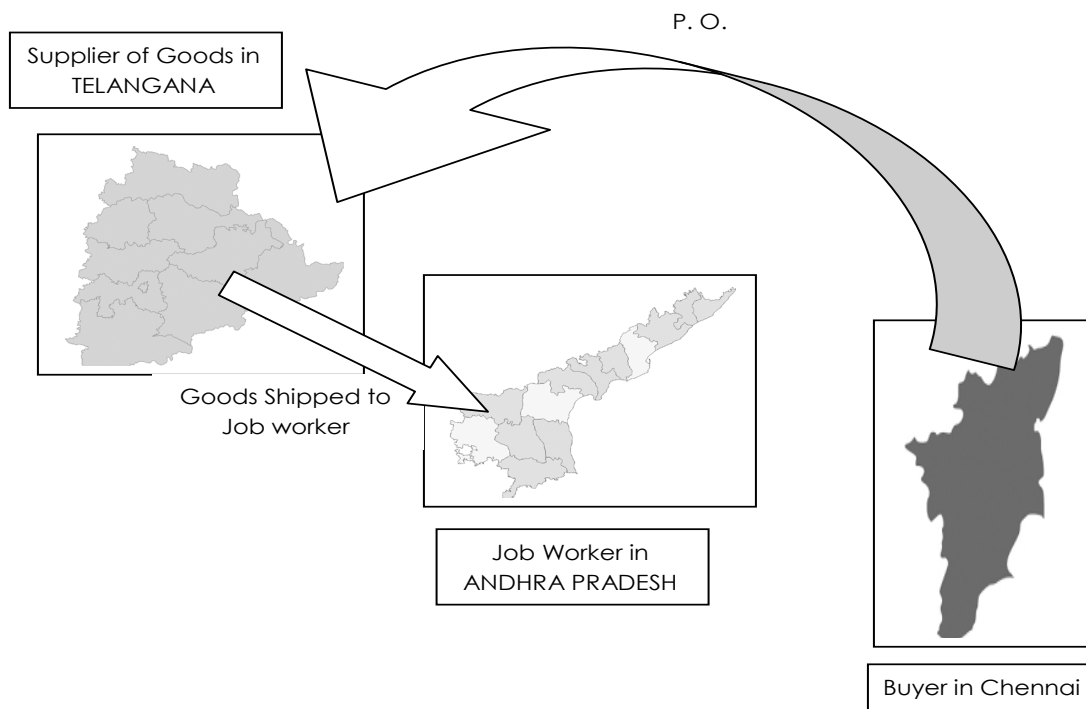


Deemed receipt of goods (Explanation to Sec 16(2)(b) of the CGST Act, 2017:

The explanation expands the meaning of receipt of goods to provide that it is not necessary that the goods are physically received by the recipient. The recipient can issue directions to deliver the goods to third person.

Example : 5

Goods sent to job worker from supplier on the directions of buyer (i.e. Bill To Ship).



In case of Bill To Ship model the goods received by job worker will be considered as received by buyer only.

Tax charged in respect of such supply has been actually paid to the Government [Sec 16(2)(c) of the CGST Act, 2017 subject to the provisions of Sec 41 of the CGST Act, 2017]:

It is now specially provided that the supplier has actually paid to the credit of appropriate Govt. the tax amount on the supply made by him.

The liability of payment of tax will be computed by the common portal based on the information of outward supply declared by the supplier goods or services or by recipient himself. The liability so computed as per GSTR-3 will automatically reflected in common portal in tax liability register of taxpayer in Part 1 of the GST-PMT-1.

The taxpayer can make the payment of such liability either by using the balance available in the credit ledger or cash ledger. The payment is required to be made by 20th of following month.

It means supplier will give the credit to recipient only when tax paid to the Govt.

Example : 6

M/s. X Ltd. supplied taxable goods from the factory after manufacture in the month of Oct 2017 for sale to a distributor for ₹ 8,00,000. However, he deposited the GST @12% on these goods on 10-1-2018 against show cause notice issued under Section 74 (when there is fraud) of the CGST Act, 2017 by the Central Tax Officer and passed the order accordingly.

During the month of December 2017, M/s X Ltd received goods worth ₹ 5,00,000 by paying GST 12%.

- Find the Net GST deposited by M/s X Ltd. into the Government Account on 10th January 2018.*
- Your answer is different if M/s X Ltd. paid GST 12% against show cause notice issued under section 73 (when there is no fraud).*
- Rework, M/s X Ltd. paid output tax by following self-assessment (i.e. when there is no show cause notice issued)*

Note: Ignore penalty and interest

Answer:

(a) Statement showing Net GST deposited by M/s X Ltd. (where there is fraud Sec. 74 of the CGST Act):

Particulars	CGST 6%	SGST 6%	Remarks
Output tax	48,000	48,000	(₹ 8 lac x 6%)
Less: ITC (Since, it is paid against the order where there is fraud)	Not allowed	Not allowed	GST @12% paid on ₹5 lac is not allowed as ITC.
Net GST liability	48,000	48,000	

(b) Our answer remain same as stated in (a) above.

(c) Statement showing Net GST deposited by M/s X Ltd. (where there is no show cause notice issued):

Particulars	CGST 6%	SGST 6%	Remarks
Output tax	48,000	48,000	(₹ 8 lac x 6%)
Less: ITC	(30,000)	(30,000)	GST @12% paid on ₹ 5 lac is allowed as ITC.
Net GST deposited	18,000	18,000	

Return under Section 39 of the CGST Act, 2017 must submit to avail the credit [Sec. 16(2)(d) of the CGST Act, 2017]:

Example : 7

M/s X Ltd. supplied goods in the month of December 2017; the entry for debit must be made by 20th January 2018. In the absence of making payment of tax, the return cannot be filed under section 39 of the CGST Act, 2017. In such case credit to the recipient of goods or services will be denied.



It means the credit will be denied even when the recipient has paid tax to the supplier and supplier has failed to pay the tax to the Government.

Payment to supplier of goods or services or both (2nd Proviso to [Section 16(2) of the CGST Act, 2017]:

The recipient shall pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the value along with the tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier.

It means recipient of goods/services should pay to the supplier (Including Taxes), within 180 days from the date of issue of invoice, else the Input Credit shall be reversed.

Reversal of input tax credit in the case of non-payment of consideration (Rule 37(1A) of the CGST Rules, 2017

A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of section 16 (i.e. 180 days from the date of invoice), shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

It means, if 180 days expires on 15th December 2017, the details are required to be declared in GSTR - 2 for the month of January 2018.

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

It means, where supply is made without consideration in respect of activities specified in **Schedule I** then in such case proviso **to sub-rule (1) to Rule 37** makes the deeming fiction that value against such supplies has deemed to be paid within 180 days from the date of issue of invoice.

The following paragraph has been inserted vide Notification No. 26/2018 – Central Tax, dated 13.6.2018 to amend Rule 37 sub rule (1):

“Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.”

This proviso has been inserted so that any amount that the supplier is liable to pay in relation to supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both shall be deemed to have been paid and no reversal of input tax credit on such amount is required to be made in case recipient fails to pay to the supplier the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice.

The following paragraph has been inserted vide Notification No. 39/2018 – Central Tax, dated 04.9.2018 to amend Rule 36 sub rule (2):

“Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.”.

Even if all specified particulars stipulated by Invoice rules is not satisfied, yet the invoice contains the amount of tax charged, description of supplies, total value of supply, GSTIN of the supplier & recipient and place of supply in case of inter-state supply, then the ITC can be availed by registered taxpayers. This is a very important amendment and hence ITC cannot be denied due to certain clerical mistakes in the invoice by the supplier.

Example : 8

M/s A Ltd. of Aluva (Kerala) receives the input service from M/s B Ltd. of Bengaluru who raises the invoice for supply of service on 17th Dec 2017 and availed the credit on the same date.

Find the time limit within which M/s A Ltd. is required to pay the bill amount inclusive of tax to supplier of service.

Also explain consequence if payment is not made within the stipulated time period as mentioned in 2nd proviso to section 16(2) of the CGST Act, 2017.

Re-credit is allowed if the payment is made to the supplier of service after expiry of time period as mentioned in 2nd proviso to section 16(2) of the CGST Act, 2017.

Answer:

In the given case M/s A Ltd. must pay to M/s B Ltd. the value of services and GST payable thereon by 15th June 2018.

Working note:

From	To	No. of days
18th Dec 2017	15th June 2018	180

In case M/s A Ltd. does not pay by 15th June 2018, the credit availed by it will be added to his output liability. The amount will be added to their output tax liability with interest.

The 3rd proviso to Section 16(2) of the CGST Act, 2017, provides that the amount so reversed can be again taken as a credit when the payment for receipt goods or services has been made to the supplier of goods or services.

As per Rule 37(4) of the CGST Rules, 2017, the time limit specified in sub-section (4) of section 16 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter that had been reversed earlier.

Example : 9

M/s X Ltd. has establishment in Chennai, and establishment in Hyderabad. Supply of goods (open market value of ₹ 5,00,000) made by M/s X Ltd. Chennai to M/s X Ltd. Hyderabad. M/s X Ltd. Chennai paid IGST of ₹ 60,000. Accordingly M/s X Ltd. Hyderabad availed the input tax credit of ₹ 60,000. 2nd Proviso to Section 16(2) of CGST Act, 2017 is applicable in the given case (i.e to reverse the credit where payment is not made within 180 days from the date of invoice). Advise.

Answer:

As per proviso to rule 37(1) of the CGST Rules, 2017, the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

In the given case M/s X Ltd. Hyderabad is not required to reverse the input tax credit. Since, as per Section 25(4) of the CGST Act, 2017 two establishments are considered as establishment of distinct person and accordingly, supply made by one establishment to another establishment will be covered under Schedule I without consideration.

Depreciation on GST component of the Capital Goods under Income Tax Act, 1961 u/s 16(3) of the CGST Act, 2017:

Taxable person shall not claim depreciation on tax component of the cost of capital goods under the provisions of the Income Tax Act, 1961. If the depreciation under section 32 of the Income Tax Act, 1961 is claimed on the tax component by capitalizing with the cost of capital goods, input tax credit shall not be allowed.



Example : 10

M/s Jay Ltd. being a manufacturer purchased machinery worth ₹ 10,00,000 on which GST ₹ 1,80,000 is paid. The manufacturer has following two options:

Option 1: claim depreciation on the entire value of machinery inclusive of GST (i.e ₹ 11,80,000) by forgoing ITC on capital goods.

Option 2: claim depreciation on the cost of machine (i.e. ₹ 10,00,000) and avail the ITC of GST portion (i.e. 1,80,000).

Time limit to avail the input tax credit [Section 16(4) of the CGST Act, 2017]:

Time limit for availment of credit by registered taxable person is prescribed in the following manner.

(a) Filing of return under section 39 for the month of September following end of financial year to which such invoice pertains

or

(b) Filing of annual return

Whichever is earlier.

ITC on invoices pertaining to a financial year or debit notes relating to invoices pertaining to a financial year can be availed any time till the due date of filing of the return for the month of September of the succeeding financial year or the date of filing of the relevant annual return, whichever is earlier.

Exception: the time limit u/s 16(4) does not apply to claim for re-availing of credit that had been reversed earlier.

It is worthy to that the return for the month of September is to be filed by 20th October and annual return of a financial year is to be filed by 31st December of the succeeding financial year.

Return for month of September:

As per section 39 of the CGST Act, 2017, every registered taxable person is required to file return in the prescribed form by 20th of the following month. Thus, return for the month of September is required to file by 20th of October. The credit thereof shall be availed by 30th September and declare in return.

Example : 11

For financial year 2017-18, the registered taxable person files the return on 18th Oct 2018. It is provided that after filing of return, the input tax credit for the supply of goods or services pertaining to the period 2017-18 cannot be claimed by the registered taxable person.

Annual Return of the succeeding financial year:

As per Section 44 of the CGST Act, 2017, every registered taxable person is required to file annual return by 31st December following end of financial year. Thus, for the financial year 2017-18, the annual return is required to be filed by 31st December 2018.

**Example : 12**

M/s X Ltd. purchased input for ₹ 2,00,000 vide Tax Invoice No. 12 dated 1st December 2017. M/s X Ltd. has submitted annual return for the financial year 2017-18 on 15th September 2018 and return for September 2018 has been filed 19th Oct 2018. Find the time limit within which input tax credit can be availed on input by X Ltd.

M/s X Ltd. wants to take input tax credit on such input on 30th September 2018, advise.

Answer:

Time limit to avail the credit is earlier of the following:

(a) 19th October 2018

or

(b) 15th September 2018

Therefore, M/s X Ltd has to avail the input tax credit on or before 15th September 2018.

Advise:

After 15th September 2018, the registered taxable person cannot take credit based on invoice pertaining to supply of goods or services for the period 1st April 2017 to 31 March 2018. Hence, in the given case M/s X Ltd is NOT eligible to avail the input tax credit on 30th September 2018.

Example 13:

M/s X Ltd. delivered a machine to M/s Y Ltd. in January 2018 under Invoice No. 180 dated 21st January for ₹ 5,00,000 plus GST, and undertook trial runs and calibration of the same machine as per the requirements of M/s Y Ltd. The amount chargeable for the past delivery activities were covered in a debit note raised in May 2018 for ₹ 1,25,000 plus GST. M/s Y Ltd did not file its annual return till October 2018.

Find the time limit u/s 16(4) of the CGST Act, 2017 within which input tax credit can be availed by M/s Y Ltd.

Answer:

Time limit to avail the ITC on machine (vide Invoice No. 180 dt. 21.01.2018) is 30th September 2018.

Time limit to avail the ITC on debit note is also 30th September 2018.

Note: though the debit note was received in the next financial year (2018-19), it relates to an invoice received in the financial year ending 31st March 2018 (i.e. 2017-18).

Therefore, the time limit for taking ITC available on ₹ 5,00,000 as well as on ₹ 1,25,000 is 30th September 2018; earlier of the date of filing the annual return for 2017-18 or the due date for filing return for September 2018.

4.3 BLOCKED CREDIT

Common inputs and input services for taxable and exempted supplies [Section 17 of the CGST Act, 2017]:

Section 17(1) of the CGST Act, 2017 where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

Section 17(2) of the CGST Act, 2017 where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

Section 17(3) of the CGST Act, 2017 the value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

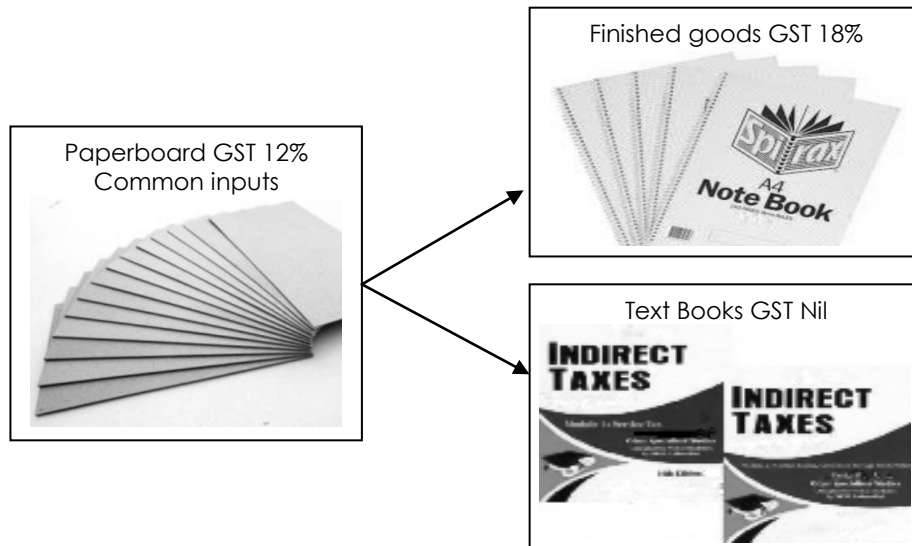
The following explanation was inserted for Sec 17(3) vide CGST Amendment Act, 2018, namely:



“For the purposes of this sub- section, the expression “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule”.

Note: The objective to amend Sec 17(3) vide CGST Amendment Act, 2018 is to specify the scope of input tax credit.

Section 17(2) of the CGST Act, 2017 where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.



Manner of determination of input tax credit in respect of inputs or input services and reversal thereof [Rule 42(1) of the CGST Rules, 2017]:

The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

Step 1: Calculate common input tax credit on inputs and input services which are used to supply taxable as well as exempted output supplies:

Particulars	Value in ₹	CGST Rules, 2017
Total ITC on inputs and input services	Xxx	As per rule 42(1)(a)
Less: ITC on supplies exclusively used for the purpose other than business	(xx)	As per rule 42(1)(b)
Less: ITC on supplies exclusively used for providing exempted supplies	(xx)	As per rule 42(1)(c)
Less: ITC not available u/s 17(5) of the CGST Act, 2017	(xx)	As per rule 42(1)(d)
Input tax credit which are used to supply taxable as well as exempted output supplies	Xxx	As per rule 42(1)(e)
Less: ITC on supplies used exclusively for taxable supply including Zero rated supply (i.e. ITC on normal supplies)	(xx)	As per rule 42(1)(f)
Common ITC, which are used to supply taxable as well as exempted output supplies (denoted as “C2”)	Xx	As per rule 42(1)(h)

Note: As per Rule 42(1)(g) of the CGST Rules, 2017, information relating to Rule 42(1)(b), (c), (d) and (f) shall be determined and declared by the registered person at the invoice level in FORM GSTR-2;

Step 2: Amount of reversal of input tax credit attributable towards Exempt supplies rule 42(1)(i) of the CGST Rules, 2017 (denoted as "D₁"):

$$= \left[\frac{\text{Exempted Supplies during the Tax Period ('E')}}{\text{Total turnover in the State of the registered person during the tax period ('F')}} \right] \times \text{Common ITC which are used to supply taxable as well as exempted, output supplies}$$

Provided that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

Explanation: For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

Tax period:

As per section 2(106) of the CGST Act, 2017 tax period means for the purpose for which return is required to be furnished. As per section 39 return is required to be furnished on monthly basis by the registered person except the person opting for composition scheme or persons eligible to file return quarterly based on their aggregate turnover not exceeds ₹ 150 lacs.

This rule is not applicable to persons opting for composition scheme.

Computing proportionate amount attributable to use for non-business purposes (i.e. Personal purpose) [Rule 42(1)(j) of the CGST Act, 2017]:

The amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as 'D₂', and shall be equal to five per cent. of C₂; and

Common ITC, which are used to supply taxable as well as exempted output supplies (denoted as "C ₂ ")	XX	As per rule 42(1)(h)

Thus, if input or input services have been used for the purpose of non-business, as per rule 42(1)(j) of the CGST Rules, 2017 credit of 5% of "C₂" will be required to be reversed. It means the same should be deducting from input tax credit on input or input services exclusively used for taxable supply in the electronic credit ledger.

Quantum of eligible ITC [Rule 42(1)(k) of the CGST Act, 2017]:

The remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as 'C₃', where,-

$$C_3 = C_2 - (D_1 + D_2)$$

Eligible ITC to be separately computed for different taxes [Rule 42(1)(l) of the CGST Rules, 2017]:

That "C₃" shall be computed separately for CGST, SGST, UTGST and IGST.

Added to the output tax liability [Rule 42(1)(m) of the CGST Rules, 2017]:

Person shall compute D₁ and D₂ (i.e. ineligible credit in addition to ineligible credit at invoice level and add that amount to the output tax liability. This will be added on monthly basis and the registered person should pay the amount.

**Adjustment at the year end [Rule 42(2) of the CGST Rules, 2017]:**

The input tax credit determined under sub-rule (1) shall be calculated finally for the financial year before the due date for furnishing of the return for the month of September following the end of the financial year to which such credit relates, in the manner specified in the said sub-rule and-

- (a) where the aggregate of the amounts calculated finally in respect of 'D₁' and 'D₂' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D₁' and 'D₂', such excess shall be added to the output tax liability of the registered person in the month not later than the month of September following the end of the financial year to which such credit relates and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or
- (b) where the aggregate of the amounts determined under sub-rule (1) in respect of 'D₁' and 'D₂' exceeds the aggregate of the amounts calculated finally in respect of 'D₁' and 'D₂', such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year to which such credit relates.

Example 14:

M/s. Vipin Ltd. purchased raw material 'A' 10,000 kg @ ₹ 80 per Kg. plus GST. The said raw material was used to manufacture product 'P'. The other information's are as under:

- (i) Processing loss : 2% on inputs 'A'.
- (ii) Transaction value of 'P' : ₹ 100 per kg.
- (iii) Other material 'M' used in the manufacture of 'P' : ₹ 2 lac plus GST.
- (iv) GST on capital goods imported during the period and used in the manufacture of 'P':
 - Basic customs duty ₹ 20,000
 - IGST under customs under section 3(1) of the Customs Tariff Act, 1975 ₹ 10,000;
- (v) Rate of GST on 'A', 'M' and 'P' : 12%.

M/s. Vipin Ltd. is not eligible for composition scheme under Section 10 of CGST Act, 2017

Compute:

- (a) Amount of input tax credit available and
- (b) Net GST payable by M/s. Vipin Ltd.

Answer:

- (a) Statement showing eligible input tax credit of M/s Vipin

Particulars	Value in (₹)	Working note
Raw material 'P'	96,000	(10,000 kg x ₹ 80) x 12%
Other material 'M'	24,000	2,00,000 x 12%
Capital goods (imported)	10,000	IGST allowed as ITC.
Total ITC	1,30,000	

- (b) Net GST liability of M/s Vipin
 Input 'A' 10,000 kg → Output 'P' 9,800 kg

₹

 GST payable on value of supply 'P' (9,800 kg x ₹ 100) x 12% = 1,17,600
 less: ITC allowed = (1,30,000)
 Excess ITC c/f = (12,400)

Example : 15

M/s X Ltd. manufacturer of textile products. Company received order from Government to supply goods to defense (exempted supply). The turnover of the other taxable goods and exempted goods ₹ 4 crore and ₹ 1 crore respectively. Common inputs on which GST paid ₹ 20,000.

Calculate the eligible ITC on common inputs?

Answer:

Common inputs credit	₹ 20,000
Total turnover	₹ 5 crores
Credit attributable to exempted supplies (₹ 20,000 x ₹ 1 crore/₹ 5 crore)	₹ 4,000
Eligible ITC is ₹ 16,000 (i.e 20,000 – 4,000)	

Example 16:

M/s Lips Ltd., manufactures four types of 'Nail Polishes', namely Sweety, Pretty, Beauty, Tweety.

The Company has taken input tax credit of ₹ 3,00,000 on the common inputs used in the manufacture of 'Nail Polishes'. Common inputs also used partly for non-business purposes. During the financial year 2017-18 (w.e.f 1-7-2017) the company manufactured 1000 liters of each type of 'Nail Polishes'. The Company was not in a position to maintain separate set of records with regards to inputs used for final products. GST payable on final goods @12%.

You are required to calculate the net GST payable by M/s Lips Ltd. for the year 2017-18 from the following data:

Product Name	Description	Sale price (Exclusive of GST)
Sweety	Sale to Domestic Tariff Area	₹ 30 per 20ml. bottle
Pretty	Sale to a Special Economic Zone (SEZ)	₹ 40 per 20ml. bottle
Beauty	Sale to A Ltd. of USA	₹ 50 per 20ml. bottle
Tweety	Sale to Defence Canteen (Exempted from GST)	₹ 60 per 20ml. bottle

Answer:

Statement showing GST on outward supplies:

Product Name	Description	Sale price (Exclusive of GST)	Transaction Value ₹	GST liable to pay ₹	Remarks
Sweety	Sale to Domestic Tariff Area	₹ 30 per 20ml. bottle	15,00,000	1,80,000	₹ 15,00,000 (1000 liters × 1000ml./ 20ml × ₹ 30) GST = ₹ 1,80,000 (₹ 15,00,000 × 12%)
Pretty	Sale to a unit of SEZ (treated as exports)	₹ 40 per 20ml. bottle	20,00,000	Zero rated supplies	₹ 20,00,000 (1000 liters × 1000ml./ 20ml × ₹ 40)
Beauty	Sale to A Ltd. of USA (export sales)	₹ 50 per 20ml. bottle	25,00,000	Zero rated supplies	₹ 25,00,000 (1000 liters × 1000ml./ 20ml × ₹ 50)
Tweety	Sale to Defence Canteen (Exempted from GST)	₹ 60 per 20ml. bottle	30,00,000	Exempted	₹ 30,00,000 (1000 liters × 1000ml./ 20ml × ₹ 60)
	Total		90,00,000	1,80,000	

As per Section 17(3) of the CGST Act, 2017 read with rule 42(1)(i) and rule 42(1)(j) of the CGST Rules, 2017 proportionate reversal of credit is as follows:

Particulars	ITC reversal ₹	Working note
Input tax credit proportionate reversal on common inputs [rule 42(1)(i)]	1,00,000	(₹ 30,00,000/ ₹ 90,00,000) × ₹ 3,00,000
Credit attributable to non-business purposes on common inputs [rule 42(1)(j)]	15,000	₹ 3,00,000 × 5%
Total	1,15,000	

Quantum of eligible ITC (Rule 42(1)(k) of the CGST Rules, 2017) is ₹ 1,85,000/- [₹ 3,00,000 – (1,00,000 + 15,000)]

Statement showing net GST liability or excess credit:

Therefore, the GST payable on taxable supply of goods	= ₹ 1,80,000
Less: ITC credit allowed	= ₹ 1,85,000
Excess ITC can be carried forward into next month	= ₹ (5,000)

**Example 17:**

Assume in Example 3 above, M/s Lips Ltd., utilized the credit ₹ 2,25,000. Excess credit paid on 15th April 2018. Find the interest if any payable by M/s Lips Ltd.

Answer:

As per Rule 42(2) of the CGST Rules, 2017 where the aggregate of the amount calculated finally in respect of ineligible credit exceeds the aggregate of the amounts determined under rule 42(1)(i) and (j), such excess shall be added to the output tax liability of the registered person in the month not later than the month of September following the end of the financial year to which such credit relates and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of Section 50 for the period starting from the 1st day of April of the succeeding financial year till the date of payment.

Interest = ₹ 296/-

$[(2,25,000 - 1,85,000) \times 18\% \times 15/365]$

Example 18:

Y Ltd. manufactures taxable and exempted goods. Y Ltd. also simultaneously provides taxable as well as exempted output services. Raw material 10,000 units were purchased @ Rs 100 per unit used commonly during the month of January 2018 to produce all final products. GST paid on inputs 12%. Input services commonly used for all goods and services in the month of January 2018. Total ITC on inputs and input services taken into books of account in the relevant tax period is 1,74,000.

Turnover for the month of January 2018 (excluding all taxes)

Particulars	Value of finished goods ₹
Taxable supply of goods	2,00,000
Exempted supply of goods (₹ 80 per unit)	1,00,000
Taxable supply of services	1,00,000
Exempted supply of services	50,000
Total	4,50,000

You are required to compute the amount of reversal of input tax credit as per rule 42(1)(i) of the CGST Rules, 2017 of the month of January 2018.

Note: Each unit of exempted final product needs 2 units of raw materials. Assumed that there is no process loss.

Answer:

Step 1: Calculate common input tax credit on inputs and input services which are used to supply taxable as well as exempted output supplies:

Particulars	Value in ₹	Working note
Total ITC on inputs and input services	1,74,000	rule 42(1)(a)
Less: ITC on supplies exclusively used for the purpose other than business	Nil	rule 42(1)(b)
Less: ITC on supplies exclusively used for providing exempted supplies	(30,000)	$2,500u \times ₹ 100 \times 12\%$ [rule 42(1)(c)]
Less: ITC not available u/s 17(5) of the CGST Act, 2017	Nil	rule 42(1)(d)
Input tax credit which are used to supply taxable as well as exempted output supplies	1,44,000	rule 42(1)(e).
Less: ITC on supplies used exclusively for taxable supply including Zero rated supply (i.e. ITC on normal supplies)	(90,000)	$(10,000u - 2,500u) \times 12\%$ As per rule 42(1)(f)
Common ITC, which are used to supply taxable as well as exempted output supplies (denoted as "C2")	54,000	As per rule 42(1)(h)

Step 2: Amount of reversal of input tax credit attributable towards exempted supplies rule 42(1)(i) of the CGST Rules, 2017 is as follows:

$$(\text{₹ } 1,50,000 / 4,50,000) \times \text{₹ } 54,000 = \text{₹ } 18,000/-$$

Working Note:

- (i) Number of units of exempted final products 1,250 units (i.e. ₹ 1,00,000/₹ 80 per unit = 1,250 units)
- (ii) Since, each unit of exempted final product needs 2 units of raw materials. Raw material used exclusively for exempted final product 2,500 units (i.e. 1,250 units x 2 units = 2,500 units).

Banking Company or NBFC [Section 17(4) of the CGST Act, 2017]:

A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to 50% of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:

Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:

Provided further that the restriction of 50% shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

Example : 19

X Bank of India has corporate office in Mumbai and branches in Chennai, Delhi and Kolkata. Mumbai office provided services to Chennai office accordingly IGST paid. Office of Chennai will avail the credit of IGST. Chennai office is required to reverse such credit? Explain.

Answer:

As per Section 17(4) of the CGST Act, 2017 that reversal of 50% shall not be made for the credit availed by Chennai office on services provided by corporate office. Thus, no credit reversal shall be made for the credit availed on input services provided by one registered person to another registered person holding same PAN.

Example : 20

OK Bank has availed credit of ₹ 25,00,000 lacs in the month of December 2017. Total credit, out of which ₹ 5,00,000 pertains to non-business purpose and ₹ 7,00,000 pertains to credit availed under 2nd proviso of section 17(4). Find the total input tax credit eligible to OK Bank.

Note: OK Bank opted to avail ITC an amount equal to 50% of eligible credit.

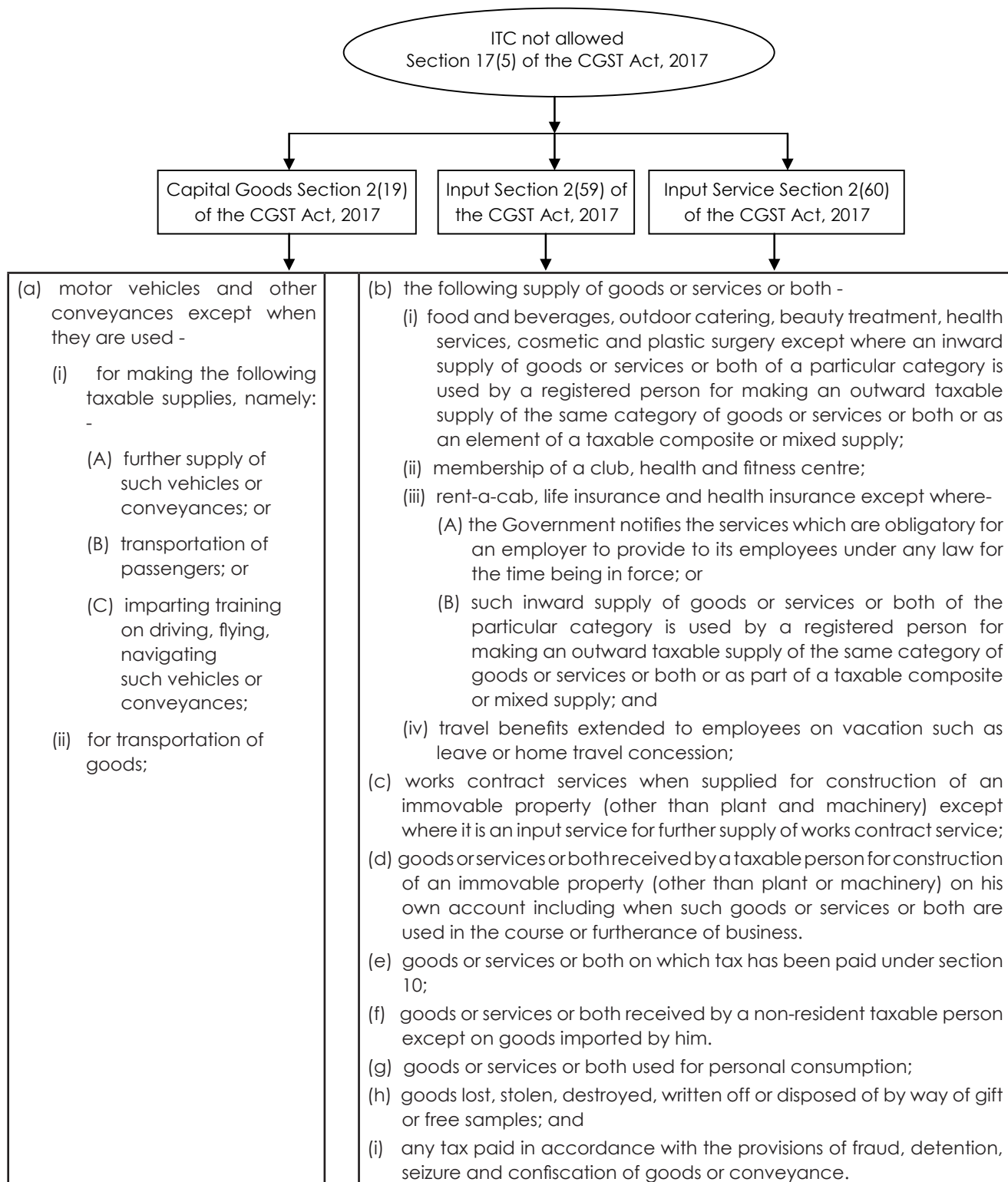
Answer:

Statement showing eligible ITC to OK Bank for the month of December 2017:

Particulars	ITC Amount in ₹	Remarks
Input tax credit attributable to non-business purpose	Nil	ITC fully not allowed
ITC from its other establishment	7,00,000	ITC fully allowed.
Other ITC	6,50,000	(25,00,000 – 5,00,000 – 7,00,000) x 50%
Total ITC allowed in Form GSTR-2	13,50,000	

Input Tax Credit (ITC) not applicable goods and services [Section 17(5) of the CGST Act, 2017]:

Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following:



Explanation.—For the purposes of clauses (c) and (d) of Section 17(5) of the CGST Act, 2017, the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;

Section 2(76) of the CGST Act, 2017 "motor vehicle" shall have the same meaning as assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988;

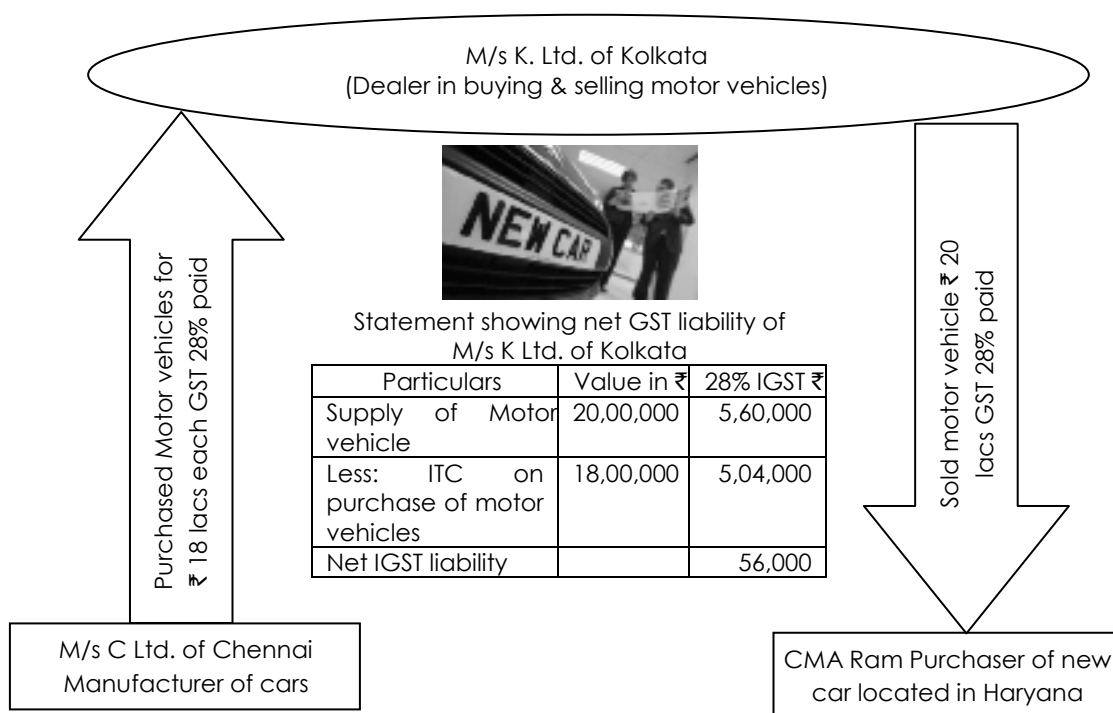
Section 2(34) "conveyance" includes a vessel, an aircraft and a vehicle;

Section 17(5)(a)(ii) of the CGST Act, 2017 further provides that credit on any motor vehicle or other conveyance used for transportation of goods by the company himself or for making taxable supply will be available to avail credit on motor vehicles.

Section 17(5)(a) motor vehicles and other conveyances ITC Not allowed except when they are used—

(i) for making the following taxable supplies, namely:—

(A) Motor vehicles or conveyances are used for further supply of such vehicles or conveyances:



There are many taxable persons who are engaged in purchase and sale of used cars. These dealers purchase used cars from others by paying GST then the credit of GST paid will be available to such dealers (i.e. while selling they are liable to pay GST).

Example : 21

M/s A Ltd. a registered person under GST law and purchased 10 cars for ₹45 lakh plus 28% GST. M/s A Ltd sold 8 cars for ₹ 55 Lakh plus 28% GST.

Find the GST liability in the following two independent cases:

(a) M/s A Ltd is a dealer of motor vehicles

(b) M/s A Ltd is not a dealer of motor vehicles



Answer:			
Statement showing net GST liability of M/s A Ltd.			
Particulars	M/s A Ltd. is a dealer in motor vehicles (₹ in lacs)	M/s A Ltd. is not a dealer in motor vehicles (₹ in lacs)	Remarks
GST on Supply of goods	15.40	15.40	₹ 55 lacs x 28%
Less: ITC	(12.60)	Not allowed	₹ 45 lacs x 28%
Net GST liability	2.80	15.40	

Section 17(5)(a) motor vehicles and other conveyances ITC not allowed except when they are used—

(i) for making the following taxable supplies, namely:—

(B) Motor vehicles or conveyances are used for transportation of passengers:

The person boarding in the motor vehicle for performing the journey can be considered as passenger under GST. As a result transportation of passengers from one place to another in any motor vehicle can be considered as transportation of passenger.

Example : 22

M/s Parveen Travels transporting passengers from Chennai-Mumbai-Chennai. For this purpose M/s Parveen Travels purchased Volvo Bus (air-conditioned) for ₹ 55 lakhs plus GST 28%. M/s Parveen Travels is eligible for ITC on Volvo Bus in the following two cases:

1. M/s Parveen Travels paying GST 12% on supply of output supplies.
2. M/s Parveen Travels paying GST 5% on supply of output supplies.

Answer:

Case (1). Yes. M/s Parveen Travels is eligible to avail the ITC on purchase of Volvo Bus.

Case (2). No. M/s Parveen Travels is not eligible to avail the ITC on capital goods and input goods (except input services).

Note: AC contract/stage carriage other than motor cab GST @5% – with ITC of input services only from similar line of business (vide Notification No. 31/2017-Central Tax (Rate) Dt.13th October 2017)

Example : 23

M/s MR Ltd. manufacturer of motor vehicles. Company purchased passenger motor vehicle for ₹20 lacs plus GST 28% for transportation of their employees from their residence to factory and from factory to their residence. M/s MR Ltd. is eligible to avail the credit on purchase motor vehicle?

Answer:

No. M/s MR Ltd. is not in the business of transporting passengers and hence credit on purchase of motor vehicle is not allowed.

Note: If the taxable person transports its own employees free of cost it will not be covered by the aforesaid clause and hence he will not be able to claim benefit of input tax credit in respect of the same.

Example : 24

Sukhee Bhava Hospital is a clinical establishment purchased four ambulances for ₹ 32 lakhs plus GST 28%. Find the input tax credit available to Sukhee Bhava Hospital.

Answer:

Input tax credit = nil

Note: since, supply of services of Sukhee Bhava is exempted from GST under health care services.

**Example : 25**

Ferrari Company for conducting Formulae One car races purchased 20 Racing Cars for ₹ 80 lakhs plus GST 28%. Ferrari company is eligible for availing ITC on purchase of Racing Cars.

Answer:

No. Ferrai Company can not avail the ITC on purchase of Racing Cars which are not treated as passenger vehicles.

Example : 26

Mr. Ram a school van driver and also registered person under GST law. He purchased Omni vehicle for ₹ 8 lacs plus GST 28%. Mr. Ram is eligible for ITC on this vehicle. Explain.

Answer:

Since, Mr. Ram is a registered person supplying taxable services in the nature of transportation of passengers, he is eligible to avail the ITC on motor vehicle.

Section 17(5)(a) motor vehicles and other conveyances ITC not allowed except when they are used—

(i) for making the following taxable supplies, namely:—

(C) Motor vehicles or conveyances are used for imparting training on driving, flying, navigating such vehicles or conveyances;

Example : 27

M/s Maruti Driving School Pvt. Ltd. supplied taxable services in the month of October 2017 for ₹15 lacs (plus GST 18%) to provide training on driving. Company purchased two vehicles for this purpose namely passenger vehicle for ₹ 20 lacs plus GST 28% and goods vehicle for ₹ 33 lacs plus GST 28%. Find the net GST liability of M/s Maruti Driving School Pvt. Ltd.

Answer:

GST on output supply	= ₹ 2,70,000
Less: ITC	
On passenger vehicle	= ₹ -5,60,000
On goods vehicle	= ₹ -9,24,000
Net Excess ITC c/f	= ₹ 12,14,000

Example : 28

Course completion certificate/training offered M/s Sky Ltd. (Flying Training Institute) purchased aircraft for ₹ 22 crores plus GST 28%. Whether the flying institute is eligible for input tax credit on purchase of air craft.

Answer:

Yes. M/s Sky Ltd. (Flying Training Institute) is eligible to avail ITC.

Navigating means: transport to direct the way that a ship, aircraft, etc. will travel, or to find a direction across, along, or over an area of water or land, often by using a map.

Section 17(5)(a) motor vehicles and other conveyances ITC not allowed except when they are used—

(ii) for transportation of goods

Credit of GST paid on motor vehicle and other conveyance will be available when motor vehicle and other conveyance are used for transportation of goods. The motor vehicle and other conveyance can be used for



- (a) making outward supply of transportation of goods;
 (b) transporting own goods.

Note: if the vehicle is used for supplying own goods if those goods are taxable supplies the taxable person will be entitled to avail credit of such input tax paid on such vehicle.

Section 17(5)(b) the following supply of goods or services or both— ITC not allowed:

- (i) food and beverages,
 outdoor catering,
 beauty treatment,
 health services,
 cosmetic and plastic surgery

except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

Example : 29

Guideline Academy organizes parents meeting and provides meal during meeting to students and their parents. The supplier of food charged ₹ 72,500 plus GST 18%, under the category of outdoor catering. Explain Guideline Academy being provider of taxable supply of services namely commercial training and coaching services is eligible to avail the credit of GST paid on outdoor catering service.

Answer:

GST paid on outdoor catering is not allowed as ITC even though such services are used for business purpose. Since, it is specifically mentioned under Section 17(5)(b)(i) of the CGST Act, 2017 where credit is not allowed.

Example : 30

Annapoorna caterings supply outdoor catering services to its customers by sub-contracting the same. Sub-contractor supplied food items like ice creams, North Indian Meals, South Indian Meals and so on to Annapoorna caterings. Sub-contractor raised invoice on Annapoorna caterings for supply of outdoor catering services ₹ 2,00,000 plus GST 18%. Annapoorna caterings supplied outdoor catering to its customers for ₹ 2,10,000 plus GST 18%. Find the Net GST liability of Annapoorna caterings.

Answer:

Statement showing net GST liability of Annapoorna caterings:

Particulars	Value in ₹	Remarks
GST on outward supply	37,800	₹ 2,10,000 x 18%
Less: ITC from similar line of business	(36,000)	₹ 2,00,000 x 18%
Net GST liability	1,800	

Example : 31

Sky Ltd. is engaged in supply of transport of passengers by air services. The company avails outdoor catering services of M/s Anna Caterers in order to provide food and beverages to the passengers. M/s Anna Caterers raises an invoice on Sky Ltd charging GST.

Sky Ltd. wants to avail the ITC on outdoor catering services supplied by M/s Anna Caterers. Advise.

Answer:

ITC shall be available where an inward supply of goods or services or both of a particular category is used by a registered person as an element of a taxable composite or mixed supply.

Advise: In the given case, Sky Ltd will be entitled to avail the ITC of the GST paid to M/s Anna Caterers since outdoor catering services forms part of taxable composite supply of passengers by air services.

Section 17(5)(b) the following supply of goods or services or both— ITC not allowed

(ii) membership of a club, health and fitness centre;

the following are not eligible for availing ITC:

(a) only Membership charges.

Example : 32

if you have taken any subscription of the gym, yoga classes, or membership of any club for any sport or for anything else, the ITC credit shall not be allowed.

Section 17(5)(b) the following supply of goods or services or

both— ITC Not allowed:

(iii) rent-a-cab, life insurance and health insurance except where—

(A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or

(B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply;

Example : 33

Wipro Pro Ltd is a BPO which works on night shift basis. As per the Government Notification, it has to provide rent a cab facilities to its employees who work on night shifts.

Whether, Wipro Pro is eligible to avail ITC on rent a cab services.

Answer:

Yes. Wipro pro Ltd can claim ITC on the GST paid on such rent-a-cab services.

Example : 34

Hotel King Pvt Ltd. provider of short-term accommodation services and also provides picking up guest from airport. Accordingly, Hotel King Pvt. Ltd availed rent-a-cab services from M/s X & Co.

Rent-a-cab services provided by M/s X & Co to Hotel King Pvt Ltd. during Nov 2017 for ₹ 2,00,000 plus GST 18%.

Hotel King Pvt Ltd. provided short-term accommodation services to its customers (i.e. guests) during Nov 2017 for ₹ 15,75,250 plus GST 18%.

Find the Net GST liability of Hotel King Pvt Ltd. during the month of November 2017.

Answer:

Statement showing Net GST liability of Hotel King Pvt. Ltd for the month of Nov 2017

Particulars	Value in ₹	Remarks
GST on outward supplies	2,83,545	15,75,250 x 18%
Less: ITC on rent-a-cab service	(36,000)	2,00,000 x 18%
Net GST liability	2,47,545	

Note: In the given case Hotel King Pvt. Ltd. providing a composite supply of rent-a-cab and accommodation service. The principal supply of service is accommodation service. Hence, GST paid on rent-a-cab will be available as a credit to Hotel King Pvt. Ltd.



Example : 35

Infosys Ltd. being a registered person under GST Law paid insurance premium for its employees along with GST thereon. Infosys Ltd. is can avail the ITC of GST paid on insurance premium?

Answer:

No. Infosys Ltd cannot avail the ITC benefit in the given case.

Example : 36

M/s MRFL Ltd. being a manufacturer of taxable goods paid general insurance premium to cover loss of stock of finished goods. Company wants to avail the GST paid on such premium as input tax credit. Advise.

Answer:

GST paid on general insurance premium to cover loss of stock of finished goods is well allowed as input tax credit. Hence, M/s MRFL Ltd. is eligible to avail the tax paid on general insurance premium as ITC.

Section 17(5)(b) the following supply of goods or services or both— ITC Not allowed:

(iv) travel benefits extended to employees on vacation such as leave or home travel concession;

ITC on tax paid on travel benefits extended to employees on vacation such as leave or home travel concession shall not be available under any circumstances. This restriction is absolute and no exception has been provided.

Section 17(5) of the CGST Act, 2017 ITC Not allowed:

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

Situations in which ITC can be availed on any tax paid on work contract services:

ITC for any tax paid on work contract services shall be available in the following cases:

- a. When supplied for construction of plant and machinery
- b. Where it is an input service for further supply of works contract service.

Works contract:

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

The expression ‘works contract’ is limited to contracts to do with immoveable property, unlike the existing understanding of the phrase which also extends to moveable property. A contract will amount to a ‘works contract’ only where there is a transfer of property in goods, while such a transfer may result in goods or anything else (i.e., immoveable property).

Construction [applicable to clause (c) and (d)]:

The expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

Plant and machinery:

The expression ‘plant and machinery’ means apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such

foundation and structural supports but excludes:

- land, building or any other civil structures
- telecommunication towers; and
- pipelines laid outside the factory premises.

Section 17(5) of the CGST Act, 2017 ITC Not allowed:

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

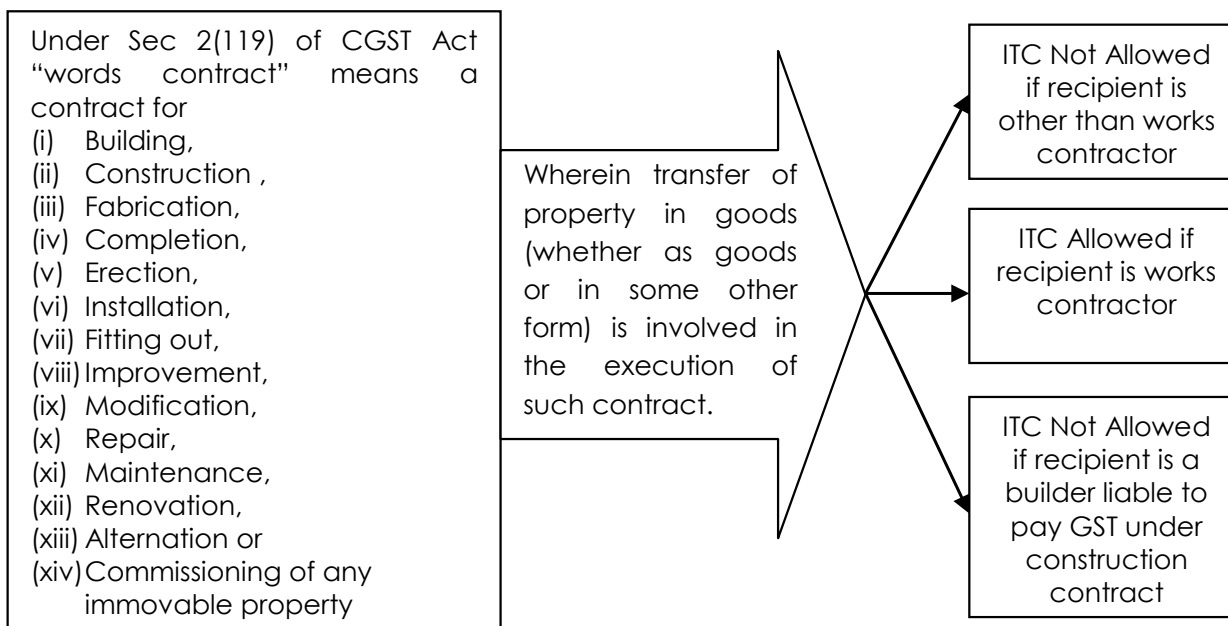
It is important to note: Distinction between Section 17(5)(c) and Section 17(5)(d) of the CGST Act, 2017:

Section 17(5)(c), deals with works contract services i.e when such services are received under composite contracts and used for the purpose of construction of an immovable property (other than plant and machinery).

Section 17(5)(d), deals with situations when goods or services or both are received under different independent contracts i.e supply of goods and supply of services under separate contracts for the construction of an immovable property (other than plant and machinery).

Concept of Input Tax Credit in Real Estate Industry:

Works Contract Service



This concept further elucidated in the following table:

Nature of service	ITC	Remarks
Cement is used for construction of administration building	Not allowed	Building is not plant and machinery.
Cement is used for foundation of pillars supporting a boiler	Allowed	As such structural support for plant and machinery is included in definition of plant and machinery.



Works contract services is provided by sub-contractor to a contractor	Allowed	Works contracts service is excluded except when used for providing work contract service
Steel and other structural supports are used for Land, building or any other civil structures; or setting up a telecommunication tower; or pipelines laid outside the factory premises	Not allowed	These are specifically excluded from the term plant and machinery. Note: Credit of tax paid on goods and services used for construction of immovable property including work contract service has been allowed only if such immovable property is in the nature of "plant and machinery".
GST paid on parts of telecommunication towers or parts of pipelines.	Not Allowed	GST paid on any inputs or capital goods used for construction of telecommunication towers, pipeline laid outside the factory, will not be available as input tax credit.

Input tax credit (ITC) shall not be available in respect of the following [Section 17(5) of the CGST Act, 2017]:

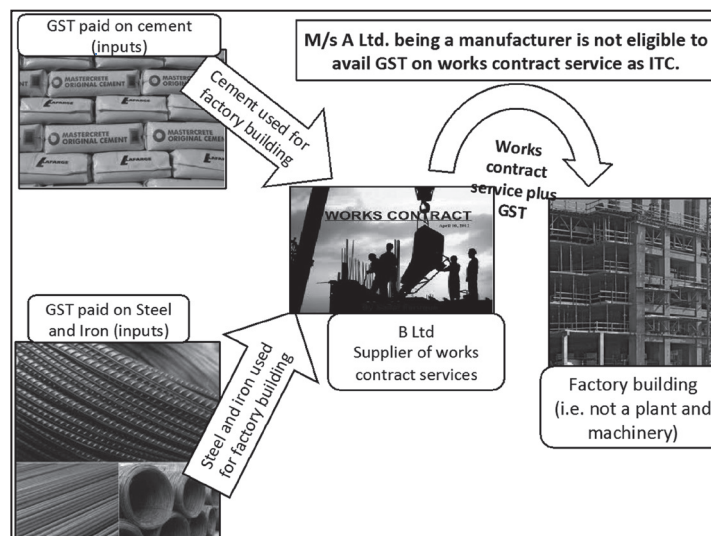
- (c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is input service for further supply of works contract service;

Explanation: For the purpose of Chapter V (i.e Input Tax Credit) and Chapter VI (i.e. Registration), the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural support but excludes-

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises.

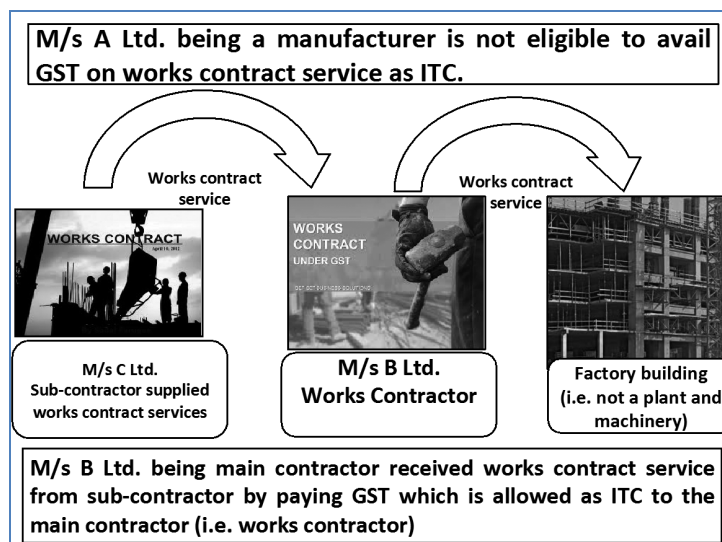
Example 37:

M/s A Ltd. being a manufacturer of laptops registered under GST. Company appointed M/s B Ltd. for construction of factory building in the factory premises.



Example 38:

M/s A Ltd. being a manufacturer of laptops registered under GST. Company appointed M/s B Ltd. for construction of factory building in the factory premises. Accordingly M/s B Ltd. sub-contacted works contract service to M/s C Ltd.

**Example 39:**

M/s A Ltd. being a manufacturer of laptops registered under GST. Company appointed M/s B Ltd. for construction of foundation or structural support of Hot Mix Plant (i.e. plant and machinery) that are used for making outward supply of goods or services or both. Accordingly M/s B Ltd used cement, steel, Iron, water, chemicals and labour to complete the job. GST paid on such works contract service is allowed as input tax credit to M/s A Ltd. GST paid on Hot Mix Plant (i.e. plant and machinery) is also allowed as input tax credit to M/s A Ltd.

Input tax credit (ITC) shall not be available in respect of the following [Section 17(5) of the CGST Act, 2017]:

- (d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.;

Explanation: Construction [applicable to clause (c) and (d) of Section 17(5) of the CGST Act, 2017]:

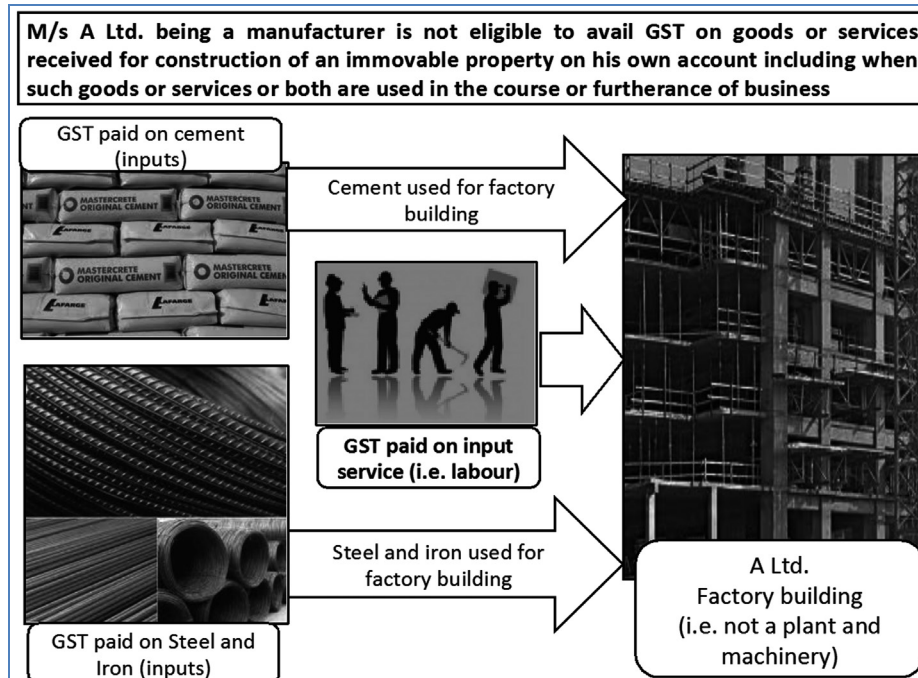
The expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

Explanation: For the purpose of Chapter V (i.e Input Tax Credit) and Chapter VI (i.e. Registration), the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural support but excludes-

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises.

Example 40:

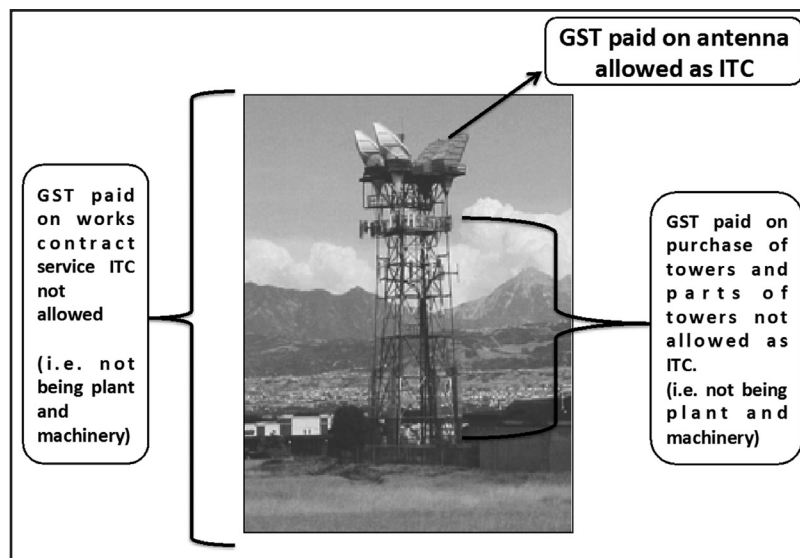
M/s A Ltd. being a manufacturer of laptops registered under GST. Company appointed M/s B Ltd. for construction of factory building in the factory premises. M/s B Ltd. agreed to undertake only labour contract plus GST. Material supplied by M/s C Ltd, plus GST.



Example 41:

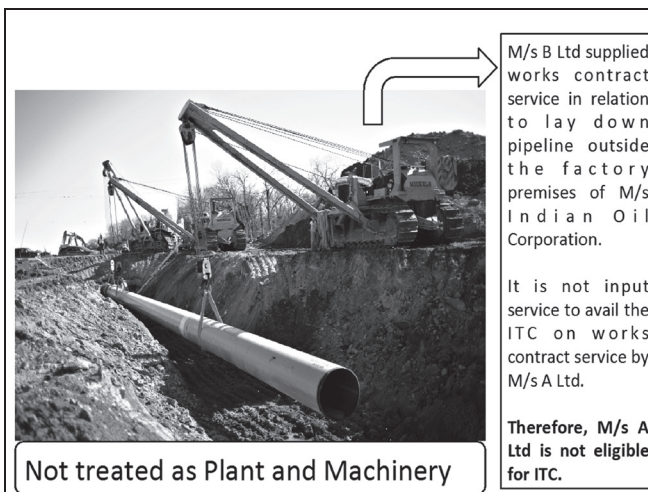
M/s Bharti Airtel Limited purchased antennas, towers and parts thereof by paying GST. Company also received works contract service from M/s B Ltd. for its installation by paying GST thereon. Finally towers and parts thereof are fastened and are fixed to the earth and after their erection become Immovable. Find the eligibility of input tax credit to M/s Bharti Airtel Limited.

Answer:



Example 42:

M/s Indian Oil Corporation wants to lay down pipeline from Bhubaneswar to Chennai. Company awarded this contract to M/s B Ltd. for a consideration plus GST. Is it input service to M/s Indian Oil Corporation.

**Example : 43**

M/s X Ltd manufacturer of taxable goods and registered under GST Law. M/s X Ltd assigned the contract in the month of January 2018, for ₹ 5,00,000 plus GST 18% to M/s Y Ltd. for constructing structural support of Hot Mix Plant, which is used for making taxable supply of goods.

Accordingly M/s Y Ltd used cement, steel, Iron, water, chemicals and labour to complete the job. Entire work has been completed and payment also be received in the month of January 2018.

M/s X Ltd further provides the following information to find net GST liability of M/s X Ltd. for the month of January 2018:

Inward supply	Value in ₹	GST Rate	Outward supply	Value in ₹	GST Rate
Raw material (10 Kgs)	2,00,000	18%	Finished goods	15,00,000	28%
Hot Mix Plant	6,00,000	28%			
Works contract service	5,00,000	18%			

Note: there is process loss @1% while converting raw materials into finished goods.

Answer:

Statement showing net GST liability for the month of January 2018 of M/s X Ltd.

Particulars	GST ₹	Remarks
Output tax	4,20,000	15,00,000 x 28%
Less: ITC on Input	(36,000)	2,00,000 x 18%
ITC on Capital goods	(1,68,000)	6,00,000 x 28%
ITC on Input service	(90,000)	5,00,000 x 18%
Net GST liability	1,26,000	

Note: Hot Mix Plant is capital goods, hence ITC allowed.



Inputs and Input services used for constructing of building or any other civil structures ITC not allowed:

Example : 44

M/s A Ltd. being a manufacturer of laptops registered under GST. Company appointed M/s B Ltd. for construction of factory building in the factory premises. Contract price is ₹ 120 lacs plus GST 18%. M/s B Ltd., supplied cement, steel and labour while executing the contract. Whether M/s A Ltd is eligible to avail the input tax credit on such works contract service.

Answer:

GST paid on works contract services which is used for land, building or any other civil structures specifically excluded from availing input tax credit under section 17(5)(c) of the CGST Act, 2017.

Therefore, in the given case M/s A Ltd is not eligible for input tax credit.

Example : 45

Mr. X being a contractor undertaken construction work of an individual residential unit otherwise than as part of a residential complex.

Your are required to answer:

- (a) Mr. X is liable to pay GST where he under taken pure labour contract.
- (b) Mr. X is liable to pay GST where he under taken both labour and material contract.
- (c) Mr. X is gives contract to sub-contractor, can sub-contractor also get exemption if it is pure labour contract.

Answer:

As per Notification No. 12/2017 Central tax (rate) "Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex." are exempt from GST.

- (a) Since, Mr. X under taken services by way of pure labour contracts of construction of single residential unit is exempt from GST.
- (b) If in case Mr. X providing service with both labor and material i.e. termed as works contract under GST. He will be charged 12% GST.
- (c) Yes. Services provided by a sub-contractor to a contractor are also exempt as he is providing labor for the construction of residential house.

Example : 46

M/s Raji builders appoint M/s Viswa contractors for providing the service of plastering of walls. As per terms of contract M/s Raji builders provides the entire material namely cement, water, bricks and chemicals and so on. As a result M/s Viswa contractors do not use any material.

Is it works contract service?

Answer:

It cannot be considered as works contract service, as it does not involve the transfer of property.

**Example : 47**

M/s MR Ltd. manufacturer of laptops. Company appoints M/s RM Constructions for constructing a new factory building. Terms and conditions of contract are as follows:

S.No.	Particulars	Value in ₹	Remarks
(1)	Land value	2 crore	Land owned by M/s MR Ltd.
(2)	Material cost	30 lacs	Material supplied by M/s RM Constructions
(3)	Service cost	10 lacs	Supplied by RM Constructions

(a) Construction completed in the month of October 2017.

(b) Assume Time of supply in the month of October 2017.

(c) Applicable rate of GST 18%.

(d) Fully payment made in the month of October 2017.

Output supplies of M/s MR Ltd during the month of October 2017 are ₹ 20,00,000 plus GST 18%.

Find the net liability of GST in the hands of M/s MR Ltd. in the month of October 2017.

Rework, if M/s MR limited is provider of works contract service.

Answer:

Net GST liability in the month of October 2017 is ₹ 3,60,000. $(20,00,000 \times 18\%)$.

Note: works contract service is not input service to M/s MR Ltd.

Net GST liability in the month of October 2017 is ₹

GST on output supply	= ₹ 3,60,000
Less: ITC on Works contract service $(₹ 30 \text{ lacs} + ₹ 10 \text{ lacs}) \times 18\%$	= ₹ (7,20,000)
Excess ITC c/f	= ₹ (3,60,000)

Note: works contract services are an input service to a supplier of works contract services.

Example 48:

M/s P Ltd. appoints M/s Q Ltd. for laying of pipelines inside its factory premises which resulting into movable property. For which M/s P Ltd. purchased pipelines for ₹ 10,00,000 plus GST 12%. On completion of works contract service M/s Q Ltd charged for ₹ 2,00,000 plus GST 18%. Find the eligible input tax credit to M/s M/s P Ltd.

Answer:

The credit of GST paid on pipelines inside the factory will be available. Since, pipelines laid inside the factory premises are in the course or furtherance of business (i.e. capital goods). Therefore, input tax credit allowed is ₹ 1,20,000.

GST paid on works contract services, which are used for laying of pipelines resulting into movable property, is also qualify for claiming input tax credit of ₹ 36,000.

Therefore, total eligible input tax credit is ₹ 1,56,000.

Example 49:

Ram is the chairman of reputed construction company. He ordered certain input goods or services like cement, steel and labour to be used for the construction of his house. Cement purchased was also used partly for the company building (i.e. captive use).

Input tax credit allowed on purchase of cement?

Answer:

ITC would not be available on purchase of cement including steel and labour.

Note: As per Section 17(5)(d) of the CGST Act, 2017, No ITC will be provided for materials used in the construction of immovable property or for furtherance of business. ITC will not be available for the goods or services or both provided to a taxable person used in the construction of an immovable property on his own account including when such goods or services or both are used in the course or furtherance of business.

**Example : 50**

Determine the amount of input tax credit available with Arihant Manufacturing Ltd. in respect of the following items procured by them in the month of January 2018:

Items	GST paid in ₹
Raw materials	72,000
Food and beverages & catering services are used in the guesthouse primarily for the stay of the newly recruited employees.	40,000
Inputs used for making structures for support of plant and machinery	1,25,000
Capital goods used as parts and components for use in the manufacture of final product	40,000

Answer:

Statement showing eligible input tax credit to Arihant Manufacturing Ltd.

Items	ITC in ₹
Raw materials	72,000
Food and beverages & catering services are used in the guesthouse primarily for the stay of the newly recruited employees.	Not allowed
Inputs used for making structures for support of plant and machinery	1,25,000
Capital goods used as parts and components for use in the manufacture of final product	40,000
Total credit allowed	2,37,000

Example : 51

ABC India Ltd. is engaged in the manufacture of some taxable goods. It purchased the following goods in the month of October, 2017:-

Items	GST paid in ₹
Raw material used for the production of the final product	1,00,000
Goods used for generation of electricity for captive consumption	20,000
Goods used for providing free warranty – Value of such freewarranty provided by ABC India Ltd. is included in the price of the final product and is not charged separately from the customers	10,000
Light diesel oil	5,000

Note: ABC India Ltd. is also purchased High Speed Diesel oil by paying central excise duty of Rs 12,000, which is also used in the manufacture of taxable output.

Compute the amount of input tax credit available to ABC India Ltd.

Answer:

Statement showing Input tax Credit of ABC India Ltd.

Items	ITC in ₹
Raw material used for the production of the final product	1,00,000
Goods used for generation of electricity for captive consumption	20,000
Goods used for providing free warranty – Value of such freewarranty provided by ABC India Ltd. is included in the price of the final product and is not charged separately from the customers	10,000
Light diesel oil	5,000
High Speed Diesel oil	Not allowed
Total input tax credit	1,35,000

Section 17(5)(e) of the CGST Act, 2017 - Goods or services or both on which tax has been paid under section 10;

Goods and/ or services on which tax is paid to the supplier under composition scheme is not eligible for ITC.

Accordingly, a small supplier who has opted for composition scheme would stand to lose business, because neither supplier nor recipient of supply is eligible for ITC.

Section 17(5)(f) of the CGST Act, 2017 - Goods or services or both received by a nonresident taxable person except on goods imported by him;

Input tax credit shall not be available in respect of goods or services or both received by a non-resident taxable person except on goods imported by him. It means IGST on import of goods allowed as ITC. It is to avoid double taxation.

The taxes paid by a non-resident taxable person shall be available as credit to the respective recipients.

Example : 52

Mr. A of USA being technician came to India to assemble parts of machinery. He also imported goods worth ₹ 10,00,000 and paid following customs duties:

- (i) Basic customs duty is ₹ 1,00,000.**
- (ii) Education Cess 2% plus 1% Secondary and Higher Education Cess together it is ₹ 3,000.**
- (iii) Integrated Goods and Services Tax (IGST) of ₹ 1,98,540.**

In India Mr. A wants to register as non-resident taxable person and his estimated liability is ₹ 2,50,000. How much Mr. A is liable to pay as advance tax?

Answer:

Mr. A of USA is liable to pay advance tax of ₹ 51,460. (i.e. ₹ 2,50,000 – 1,98,540)

Section 17(5)(g) of the CGST Act, 2017 goods or services or both used for personal consumption;

Input tax paid on goods and or services used for personal consumption is not eligible for ITC.

If the goods or services on which input tax credit has been availed are used for personal consumption, it actually means that the credit on the input or input services to the extent of its use for personal consumption shall be disallowed. It means reverse the credit by debiting to profit and loss account or pay an amount to the department by using electronic cash ledger account.

Example : 53

M/s X Ltd. purchased shoes for their employee's personal consumption by paying GST thereon. ITC not allowed on such goods.

Example : 54

M/s Y Ltd. for safety reasons purchased hand gloves and shoes for workers as mandatory. Hence, ITC on such goods cannot be considered as used for personal purpose. Therefore, ITC allowed.

Example : 55

M/s Info Ltd. providing various facilities to their employees like club, sports facilities etc. to ensure that the employees stay comfortably in the colony. It increases the efficiency of employee. Examine the credit applicability in this case.

Answer:

Expenses incurred in colony are in the course or furtherance of business. Hence, credit of GST paid on such services will also be available to the taxable person.



Example : 56

M/s Andhra ITC Ltd. purchased inputs and capital goods by paying GST to produce electricity or steam for manufacture of taxable goods. The electricity generated for use in manufacture of goods is sometimes also supplied in the residential colony of employees. Whether, M/s Andhra ITC Ltd. is eligible to avail the credit fully?

Answer:

As per the GST Law provisions there is no requirement of use of electricity in manufacture of goods. The only requirement is that the input or capital goods shall be used in the course or furtherance of business. This view also confirmed by Hon'ble Andhra Pradesh High Court in the case of ITC Ltd. 2013(32) STR 283 (AP).

Therefore, M/s Andhra ITC Ltd. is eligible to avail input tax credit.

Section 17(5)(h) of the CGST Act, 2017 goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples;

Credit of GST paid on input or capital goods is permitted when input or capital goods are used in the course or furtherance of business.

ITC not allowed in the following cases:

- Goods lost
- Goods stolen
- Goods destroyed
- Goods written off or
- Disposed of by way of gift
- Disposed of by way of free samples

Note: As per Section 17(5)(h) of the CGST Act, 2017 input tax credit shall be reversed when the goods have been disposed of by way of gift or free sample. In this case, there is no consideration for sale of goods and GST is not payable on output supply. However, the input tax credit availed on such goods shall be reversed or pay GST to the department as the case may be.

Section 17(5)(i) of the CGST Act, 2017 any tax paid in accordance with the provisions of fraud, detention, seizure and confiscation of goods or conveyance.

- (a) Section 74 of the CGST Act, 2017: Show cause notice issued in case of fraud, to recover the GST.
- (b) Section 129 of the CGST Act, 2017: Tax is paid, when goods are under detention by the officers for further investigation
- (c) Section 130 of the CGST Act, 2017: Tax paid, when the goods or conveyance are being confiscated.

GST paid under the above provisions, credit is not available to a taxable person.

Note: Section 73 of the CGST Act, 2017: Show cause notice issued in case other than fraud to recover the GST. It means duty paid under section 73 of the CGST Act, 2017 can avail the credit by the taxable person (namely receipt of goods or services)

Example : 57

M/s X Ltd. sold goods to M/s Y Ltd. for ₹ 2,00,000 plus GST ₹ 36,000. M/s X Ltd. remitted the GST on or before the due date. During the audit of M/s X Ltd. books by the Central Tax Department quantified the GST liability ₹ 72,000 and demanded to pay differential duty of ₹ 36,000 u/s 74 of the CGST Act, 2017. Finally, M/s X Ltd. paid the differential GST of ₹ 36,000.

M/s Y Ltd. wants to avail the input tax credit of differential amount of GST, advise.

Answer:

Since, the differential GST paid by M/s X Ltd. against show cause notice u/s 74 of the CGST Act, 2017, will not be available as credit to M/s Y Ltd. in view of clause (i) of section 17(5) of the CGST Act, 2017.

Case Law: 2

Commr. of C. Ex., & S.T., LTU v. Rane TRW Steering Systems Ltd. 2015 (039) STR 13 (Mad.)

Facts of the case: Assessee had availed credit of GST paid on housekeeping and gardening services. However, Revenue disallowed the credit and also imposed penalty on the ground that the assessee was not eligible to avail credit of GST on these services.



Decision: The High Court noted that principle laid down in the case of CCE v. Millipore India Pvt. Ltd. 2012 (26) S.T.R. 514 (Kar.). In this case, the Karnataka High Court held that landscaping of factory or garden certainly would fall within the concept of modernization, renovation, repair, etc., of the office premises. The environmental law expects the employer to keep the factory without contravening any of those laws. That apart, now the concept of corporate social responsibility is also relevant. It is to discharge a statutory obligation, when the employer spends money to maintain their factory premises in an eco-friendly manner, certainly, the tax paid on such services would form part of the costs of the final products. Therefore, housekeeping and gardening services would fall within the ambit of input services and the assessee is entitled to claim the benefit of input tax credit on the same.

Amendments:

The following amendments were made vide CGST Amendment Act, 2018 to amend Sec 17(5) of CGST Act, 2017:

1. **Motor Vehicles** - input tax credit will be available in respect of dumpers, work-trucks, fork-lift trucks and other special purpose motor vehicles, vessels and aircraft when these are used for personal purposes.
2. **ITC allowed for motor vehicles used for transportation of money for or by a banking company or a financial institution**
3. **ITC allowed in respect of food and beverages or both where the provision of such goods or services or both is obligatory for an employer to provide to its employees under any law for the time being in force.**

**4.4 METHOD OF REVERSAL OF CREDITS**

Under GST, a registered person can use input tax on purchase to pay output GST Tax on supply/sale.

Apart from general ITC rule and list of ineligible ITC, availed ITC of input supplies needsto be reversed on subsequent occurrence of the below-mentioned event:

1. Recipient of supply Doesn't pay to the supplier within 180 days of issue of the invoice.
2. Recipient of supply uses input goods/services for any purpose other than business or for supplying exempted supplies [like Personal use]
3. Recipient of supply uses capital goods for any purpose other than business or for supplying exempted supplies
4. A person transfer his regular GST registration into Composite Scheme [u/s 18(4)] or Cancels GST registration [u/s 29(5)]
5. A person sells Capital good or Plant and machinery [u/s 18(6)].

In Form GSTR-2, point 11 deals with reversal of input tax credit. Following format is seen for reversal of input tax credit:

Description for reversal of Input Tax Credit	To be added or to be reduced from output tax liability	Amount of Input Tax Credit			
		IGST	CGST	SGST	Cess
Amount in terms of rule 37(2)	To be Added				
Amount in terms of rule 42(1)(m)	To be Added				
Amount in terms of rule 43(1)(h)	To be Added				
Amount in terms of rule 42(2)(a)	To be Added				
Amount in terms of rule 42(2)(b)	To be Added				
On account of amount paid subsequent to reversal of ITC	To be Reduced				
Any other liability					

The detailed Analysis of the Reversal of Input Tax credit are as follows:

Amount in terms of Rule 37(2):

Reversal of Input Tax credit in case of Non-payment of consideration

- If a registered person who has availed input tax credit on any inward supply of goods or services or both, but fails to pay the supplier within a period of 180 days, then ITC availed is to be reversed. If part of the invoice is paid then ITC will be reversed on a proportionate basis.
- The amount of input tax credit shall be added to the output tax liability of the registered person.
- The registered person shall be liable to pay interest not exceeding 18% for the period starting from the date of availing the credit till the date when the amount added to the output tax liability.

For example –

Mr.A received goods on 1st July 2017 worth ₹ 10000 on which GST ₹ 1800 was charged.

Mr. A claimed the GST of Rs 1800 as ITC in his GSTR 2

Mr. A could not pay the invoice amount till December 2017.

This means that Mr. A will have to reverse the ITC of ₹ 1800 while filing GSTR 2 for December 2017 in January 2018.

Amount in terms of rule 42(1) (m):

ITC on input supplies partly used for business and partly for exempt supplies or personal use:

The ITC used for exempt supplies and personal purpose has to be reversed in GSTR 2.

How to Calculate ITC reversal on Exempt Supplies:

**Step 1: Calculate Common Credit**

Common Credit = Total ITC on Input Supplies

(Less) ITC on input supplies used for Personal purposes (non-business)

(Less) ITC on input supplies used for providing exempt supplies

(Less) ITC on which credit is not available (section 17(5))

(Less) ITC on input supplies other than exempted but including zero rated supplies

In simple words, Common Credit is ITC on inputs partly used for exempt supplies or personal use.

Step 2: Amount of reversal of input tax credit attributable to inputs partly used for Exempt supplies

= (Value of Exempt Supplies * Common Credit) / Total Turnover in the State

How to Calculate ITC on Personal Use: 5 % of Common Credit

The ITC amounts as calculated above has to be reversed in the GSTR 2 filed by the registered person.

Amount in terms of rule 43(1) (h):

ITC on Capital Goods partly used for business and partly for exempt supplies or personal use:

ITC on capital goods used for the supply of exempt supplies and non-business purposes will also be reversed.

The calculation will be similar to the calculation for ITC on inputs used for exempt supplies and personal use.

Step 1: Calculate Common Credit –

Common Credit = ITC on Capital Goods

(Less) ITC on capital goods put to personal use

(Less) ITC on capital goods used for exempted goods

(Less) ITC on capital goods used in supplies other than exempted but including zero rated supplies (ITC on normal supplies)

Step 2: Amount of ITC reversal attributable to capital goods partly used for Exempt supplies and Personal use

= (Value of Exempt Supplies * Common Credit)/Total Turnover in the State

Step 3: This reversal of input tax credit has to be done on a monthly basis. The life of any asset is considered as 5 years. So the amount of ITC reversal every month will be

= Amount arrived at in Step 2 / 60 (months)

Amount in terms of rule 42(2) (a)

Reversal of ITC on inputs used for exempted/non-business purpose is more than the ITC reversed during the year:

If the total of ITC on input supplies for exempted/non-business is more than total ITC reversed during the year in GSTR-2, then the differential amount should be reversed in GSTR-2 that is it should be added to the output tax liability.

Amount in terms of rule 42(2) (b)

ITC reversed during the year is more than ITC on inputs used for exempted/non-business purpose:

At the year-end after filing GSTR-9 (Annual Return), if the total of ITC reversed is more than the ITC on inputs used for exempted/non-business purpose, then the differential amount should be reclaimed as ITC that is it should be reduced from output tax liability.



4.5 INPUT TAX CREDIT IN SPECIAL CIRCUMSTANCES

Availability of credit in special circumstances [Section 18 of the CGST Act, 2017]:

Section 18 (1) Subject to such conditions and restrictions as may be prescribed—

- (a) a person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;
- (b) a person who takes registration under sub-section (3) of section 25 (i.e. voluntary registration) shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration;
- (c) where any registered person ceases to pay tax under section 10 (i.e. from composition levy to normal levy of GST), he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed;

- (d) where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed.

- (2) A registered person shall not be entitled to take input tax credit under sub-section (1) in respect of any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply.
- (3) Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.
- (4) Where any registered person who has availed of input tax credit opts to pay tax under section 10 or, where the goods or services or both supplied by him become wholly exempt, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of exercising of such option or, as the case may be, the date of such exemption:

Provided that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

- (5) The amount of credit under sub-section (1) and the amount payable under sub-section (4) shall be calculated in such manner as may be prescribed.
- (6) In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher:

Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.

Simplified approach with regard to Section 18 of the CGST Act, 2017:

ITC Capital Goods Sec 18(1)(c) or (d)	XXX
Less: 5% p.q. of a year or part thereof from the date of invoice (rule 40(1)(a) of the CST Rules, 2017	(XX)
ITC allowed on C.G.	XX

Availability of Credit
Section 18 of the CGST Act, 2017

YES

Credit is
eligible to
avail

NO

Provision	Goods eligible for ITC	Provision	Goods not eligible for ITC	
Sec. 18(1)(a): Person got registered ≤ 30 days from date need arises.	Inputs held in stock, WIP or F.G. as on the day immediately preceding the date from which he becomes liable to pay GST.	Sec. 18(2):	ITC not allowed to take under Sec. 18(1) in respect of goods > 1 Year from the date of issue of tax invoice.	
Sec. 18(1)(b): Person voluntarily registered	Inputs held in stock, WIP or F.G. as on the day immediately preceding the date of grant of registration	Sec. 18(4): Person opted to pay GST u/s 10 or goods or services are wholly exempt.	Total ITC as on the day other than C.G.	XX
Sec. 18(1)(c): Person who ceases to pay composition tax	Inputs held in stock, WIP or F.G. and capital goods as on the day immediately preceding the date from which he becomes liable to pay GST under regular scheme. ITC on capital goods as stated in rule 40(1) (a) of the CGST Rules, 2017.		Less: Input tax on RM, WIP or F.G.	(XX)
Sec. 18(1)(d): Exempt supply becomes taxable	Inputs held in stock, WIP or F.G. and capital goods as on the day immediately preceding the date from which such supply becomes taxable. ITC on capital goods as stated in rule 40(1) (a) of the CGST Rules, 2017.		Pay an amount though electronic cash ledger account (If excess ITC if any shall lapse). [In case of input tax credit on C.G. involved in the remaining useful life in months shall be computed on pro-rata basis, taking useful life as 5 Years (Rule 44(1)(b) of the CGST Rules, 2017]	XX
Sec. 18(3): Change in constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business	ITC remains unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, lease or transferred business.	Sec. 18(6): Supply of capital goods	ITC taken on Capital Goods	XX
			Less: 5% p.q. of a year or part thereof from the date of invoice (rule 40(2) of the CGST Rules, 2017	(XX)
			Balance ITC (i.e., Tax on notional value) or	XX
			Tax on Transaction value u/s 15	XX
			Whichever is higher, shall pay an amount.	



Proviso to section 18(6) of the CGST Act, 2017 where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under Sec. 15. It means 5% p.q. reduction not required to apply.

As per Rule 40(1)(b) of the CGST Rules, 2017 the registered person shall within a period of 30 days from the date of his becoming eligible to avail the input tax credit under sub-section (1) of section 18 shall make a declaration, electronically, on the common portal in FORM GST ITC-01 to the effect that he is eligible to avail the input tax credit as aforesaid;

As per Rule 40(1)(d) of the CGST Rules, 2017 the details furnished in the declaration under clause (b) shall be duly certified by a practicing Chartered Accountant or a Cost Accountant if the aggregate value of the claim on account of central tax, State tax, Union territory tax and integrated tax exceeds ₹ 2,00,000;

Manner of reversal of credit under special circumstances:

Illustration:

Capital goods have been in use for 4 years, 6 month and 15 days.

The useful remaining life in months = 5 months ignoring a part of the month.

Input tax credit taken on such capital goods = C

Input tax credit attributable to remaining useful life = $C \times 5/60$.

Therefore, input tax credit attributable to remaining useful life shall be revised or pay as an amount.

As per Rule 44(1)(b) of the CGST Rules, 2017 the amount of tax credit relating to capital goods held in stock shall, for the purpose of Section 18(4) of the CGST Act, 2017 (i.e. person opted to pay composition scheme or supplies are exempted wholly from GST) or section 29(5) of the CGST Act, 2017 (i.e. registration cancelled), be determined in the following manner, namely:-

For capital goods held in stock, the input tax credit involved in the remaining useful life in months shall be computed on pro-rata basis, taking the useful life as FIVE Years.

Example : 58

M/s X Ltd. becomes liable to pay tax on 1st December and has obtained registration on 15th December.

The GST paid goods lying in the premises of M/s X Ltd. as on 30th November are as follows:

Particulars	Value in ₹ (Excluding tax)	GST ₹
Raw material	2,00,000	36,000
Capital goods	5,00,000	1,40,000
Raw material lying work in progress	3,00,000	54,000
Raw material lying in Finished Goods	12,00,000	2,16,000

You are required to answer the following:

(a) Eligible amount of input tax credit.

(b) Time limit to submit declaration on common portal.

(c) Whether any certification required while availing the credit, if so from whom.

Answer:

(a) Eligible input tax credit is ₹ 3,06,000/-

(b) Declaration in Form GST ITC-01 on or before 14th January should be submitted on common portal of GSTN.

(c) Declaration regarding inputs tax credit shall be duly certified by a practicing Chartered Accountant or a Cost Accountant if the aggregate value of the claim on account of central tax, State tax, Union territory tax and integrated tax exceeds ₹ 2,00,000.

In the give case, since, input tax credit declared is ₹ 3,06,000. Therefore, certificate from a practicing Chartered Accountant or a Cost Accountant is required.

Note: M/s X Ltd. cannot take ITC on capital goods.

Example : 59

Mr. A applies for voluntary registration on 22nd November and obtained registration on 25th November.

Mr. A has stock on the following two dates:

Date	Opening balance (units)	Purchased (units)	Sold (units)
21st November	12,000	20,000	8,000

On 24th November, Mr. A purchased 5,000 units and sold 15,000 units.

On 24th November, Mr. A is also purchased plant and machinery for ₹ 2,00,000 plus GST 28%.

Mr. A purchased good at uniform rate through out the year at ₹ 100 per unit plus GST paid 18%.

You are required to find the eligible input tax credit to Mr. A.

Answer:

Stock as on 24th November = 14,000 units

Value of stock = ₹ 14,00,000

(i.e. 14,000 units x ₹ 100 per unit).

Input tax credit eligible is ₹ 2,52,000/-.

Note: ITC on capital goods not allowed.

Example : 60

Mr. C a registered taxable person, was paying tax at composition scheme upto 30th July. However, w.e.f. 31st July, Mr. C becomes liable to pay tax under regular scheme.

Other information:

(a) Input as on 30th July for ₹ 3,54,000 (inclusive of GST paid @18%).

(b) Capital goods purchased for ₹ 5,00,000 (invoice date 22nd April 2017, GST 18%)

Find the eligible ITC to Mr. C.

Note: Mr. C not availed depreciation on the GST paid on capital goods.

Answer:

ITC allowed on inputs = ₹ 54,000

ITC allowed on capital goods

ITC on capital goods = 90,000

Less: 5% p.q = - 4,500 = ₹ 85,500 (₹ 90,000 x 5% x 1)

Total ITC allowed to Mr. C as on 31st July = ₹ 1,39,500

Example : 61

M/s A Ltd. sold plant and machinery after being used in the manufacture of taxable goods for ₹ 4,00,000 on 1st November 2018. GST is payable on transaction value of plant and machinery 18%. M/s A Ltd. was purchased this machine vide invoice dated 22nd November 2017 for ₹ 5,50,000/- plus GST 18%.

M/s A Ltd. availed the credit on said plant and machinery. Find the amount payable by M/s A Ltd. under section 18(6) of the CGST Act, 2017.

Answer:

Particulars	Amount in ₹	Working note
ITC taken on capital goods	99,000	5,50,000 x 18%
Less: 25% reduction	(24,750)	No. of quarters = 5
5% x 5 = 25% reduction		
Balance ITC	74,250	
Tax on Transaction value	72,000	4,00,000 x 18%



Note: M/s A Ltd. shall pay amount equal to the input tax credit taken on the said capital goods reduced by 5% per quarter or part thereof from the date of the issue of the invoice for such goods or the tax on the transaction value of such capital goods u/s 15 of the CGST Act, 2017 whichever is higher.

Therefore, M/s A Ltd. is liable to pay an amount of ₹ 74,250/-.

Example : 62

The goods manufactured by Royal Ltd. have been exempted from GST with effect from 15th November 2017. Earlier these goods were liable to tax @18%. Its inputs were liable to GST @12%. Following information is supplied on 15th November 2017:

- (i) The inputs costing ₹1,44,720 are lying in stock.
- (ii) The inputs costing ₹77,184 are in process.
- (iii) The finished goods valuing ₹4,82,400 are in stock, the input cost is 50% of the value.
- (iv) The balance in electronic credit ledger account shows credit balance of ₹2,79,104.
- (v) Royal Ltd. also purchased capital goods for ₹ 2,00,000 by paying GST 28% (invoice dated 10th July 2017)

The department has asked Royal Ltd. to reverse the credit taken on inputs referred above. However, Royal Ltd. contends that credit once validly taken is indefeasible and not required to be reversed. Decide.

What would be your answer if the balance in electronic credit ledger receivable account as on 15th November 2017 were ₹ 29,104?

Answer:

Statement showing amount to be paid by Royal Ltd. as on 15th November 2017

S.No.	Particulars	Amount to be paid (₹)	Workings
(i)	Inputs lying in stock	17,366	₹ 1,44,720 x 12/100 = ₹17,366
(ii)	Inputs in process (i.e. Work in Progress)	9,262	₹77,184 x 12/100 = ₹9,262
(iii)	Inputs contained in finished goods lying in stock	28,944	₹4,82,400 x 50% x 12/100 = ₹28,944
(iv)	Capital goods	51,333	Useful life as per rule 44(1)(b) = 5 years (i.e. 60 months). No. of months capital goods have been in use = 4months 5 days (i.e. 5 months) The useful remaining life in months = 55 months 2,00,000 x 28% x 55/60 = ₹ 51,333
	Amount to be paid by Royal Ltd.	1,06,906	

Amount payable by Royal Ltd. = ₹ 1,06,906

Less: ITC Receivable = ₹ (2,79,104)

Excess ITC = ₹ (1,72,198)

Excess ITC in electronic credit ledger of ₹1,72,198 shall lapse as 15th November 2017.

If the balance in electronic credit ledger as on 15th November 2017 is ₹29,104, then amount payable is as follows:

Amount payable by Royal Ltd. = ₹ 1,06,906

Less: ITC Receivable = ₹ (29,104)

Amount payable = ₹ 77,802

4.6 INPUT TAX CREDIT IN RESPECT OF GOODS SENT FOR JOB - WORK

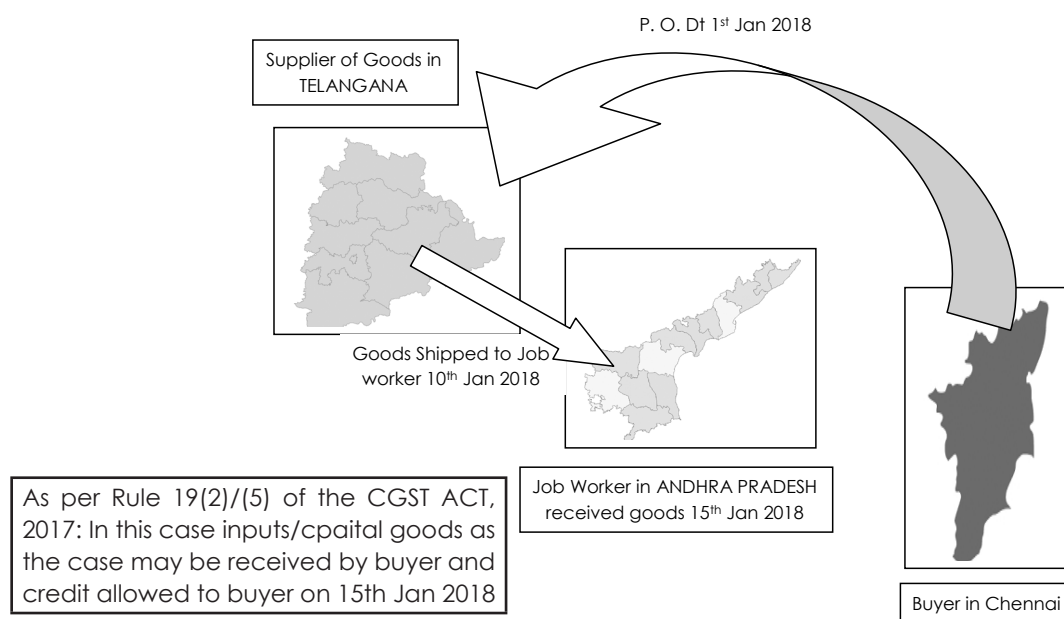
Taking input tax credit in respect of inputs and capital goods sent for job work [Section 19 of the CGST Act, 2017]:

- (1) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on inputs sent to a job worker for job work.
- (2) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job work without being first brought to his place of business.
- (3) Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise or are not supplied from the place of business of the job worker in accordance with clause (a) or clause (b) of sub-section (1) of section 143 within one year of being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out: Provided that where the inputs are sent directly to a job worker, the period of one year shall be counted from the date of receipt of inputs by the job worker.
- (4) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on capital goods sent to a job worker for job work.
- (5) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on capital goods even if the capital goods are directly sent to a job worker for job work without being first brought to his place of business.
- (6) Where the capital goods sent for job work are not received back by the principal within a period of three years of being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out: Provided that where the capital goods are sent directly to a job worker, the period of three years shall be counted from the date of receipt of capital goods by the job worker.
- (7) Nothing contained in sub-section (3) or sub-section (6) shall apply to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work.

Explanation.—For the purpose of this section, "principal" means the person referred to in section 143.

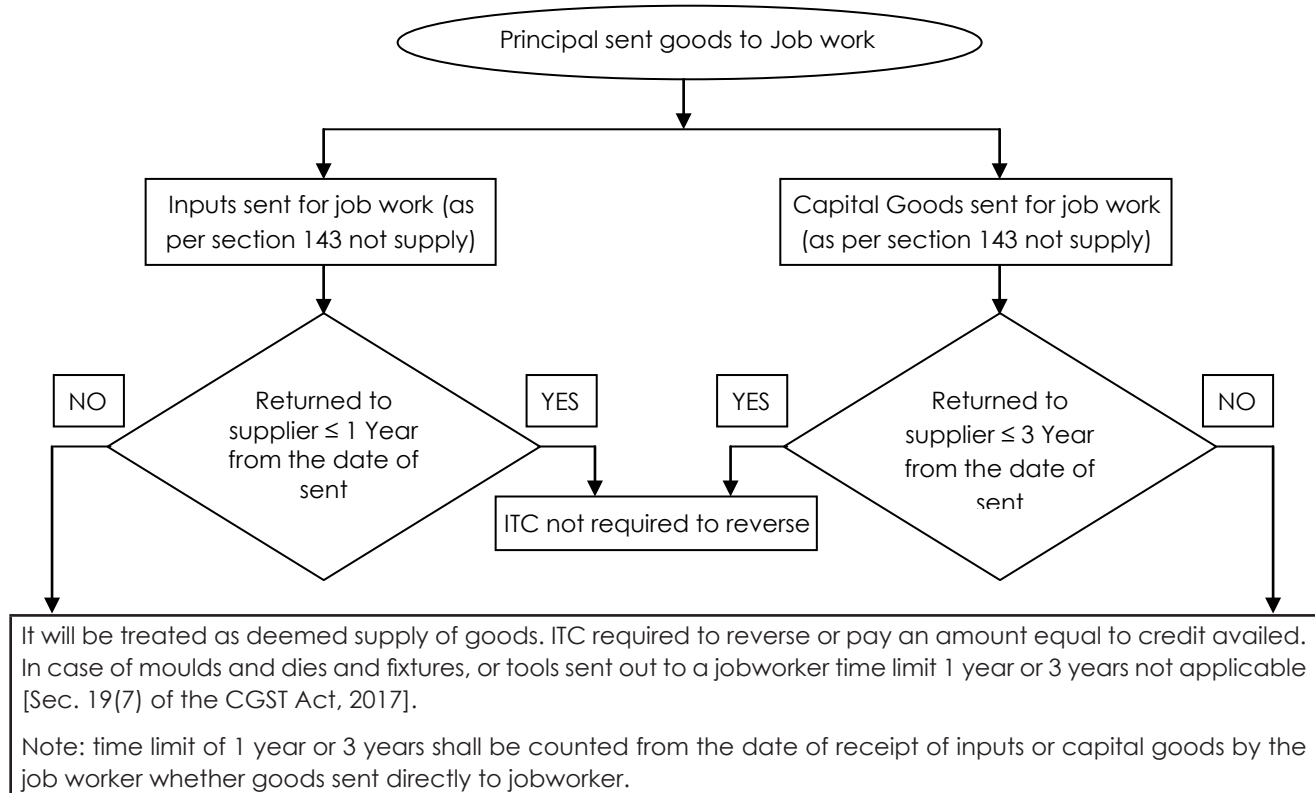
Taking input tax credit in respect of inputs and capital goods sent for job work [Section 19 of the CGST Act, 2017]:

As per Section 19(2) or (5) of the CGST Act, 2017:





As per Section 19(3)/19(6) of the CGST Act, 2017:



What is job-work?

Section 2(68) of the CGST Act, 2017 defines job-work as 'any treatment or process undertaken by a person on goods belonging to another registered person'. The one who does the said job would be termed as 'job worker'.

Contents of a job-work

- The ownership of the goods does not transfer to the job-worker but it rests with the principal.
- The job worker is required to carry out the process specified by the principal on the goods.

Who is Principal?

Section 143 of the CGST Act, 2017: A registered person (hereafter in this section referred to as the "principal") may under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, without payment of tax, to a job worker for job work and from there subsequently send to another job worker and likewise.

Deemed supply:

As per section 143(3) and 143(4) of the CGST Act, 2017 makes provision for payment of tax when the inputs or capital goods respectively are not returned back by the job worker.

The inputs after processing shall be returned back within ONE year of their being sent out. Other wise it will be treated as deemed supply (i.e. supplied by the principal to the job worker on the day when the said inputs were sent out). Therefore, the principal will have to pay tax along with interest.

Example : 63

M/s X Ltd. has supplied inputs to job worker M/s Y Ltd on 25th August 2017. These inputs not received back till 24th August 2018 by M/s X Ltd., after processing.

Find the consequences in this regards?

Answer:

As per section 143(3) of the CGST Act, 2017 principal will be required to pay the tax on supply of inputs. The time of supply is 25th August 2017. If the principal decided to pay tax on 25th August 2018 he will have to pay tax with interest of one year.

Example : 64

M/s X Ltd. (i.e. seller) supplied capital goods on 20th August 2017 directly to job worker M/s Y Ltd and the same received on 25th August 2017 by the job worker, based on the directions of M/s Z (i.e. Buyer-Principal).

These capital goods not received back till 24th August 2020 by M/s Z Ltd. after processing.

Find the consequences in this regards?

Answer:

These capital goods not received back by 24th August 2020 by M/s Z Ltd., after processing. As per section 143(4) of the CGST Act, 2017 principal will be required to pay the tax on supply of capital goods. The time of supply is 25th August 2017. If the principal decided to pay tax on 25th August 2020 he will have to pay tax with interest of 3 year.

Job-work procedural aspects:

Certain facilities with certain conditions are offered in relation to job-work, some of which are as under:

- a) A registered person (Principal) can send inputs/capital goods under intimation and subject to certain conditions without payment of tax to a job-worker and from there to another job-worker and after completion of job-work bring back such goods without payment of tax. The principal is not required to reverse the ITC availed on inputs or capital goods dispatched to job-worker.
- b) Principal can send inputs or capital goods directly to the job-worker without bringing them to his premises and can still avail the credit of tax paid on such inputs or capital goods.
- c) However, inputs and/or capital goods sent to a job worker are required to be returned to the principal within 1 year and 3 years, respectively, from the date of sending such goods to the job-worker.
- d) After processing of goods, the job-worker may clear the goods to-
 - (i) Another job-worker for further processing
 - (ii) Dispatch the goods to any of the place of business of the principal without payment of tax
 - (iii) Remove the goods on payment of tax within India or without payment of tax for export outside India on fulfillment of conditions.

The facility of supply of goods by the principal to the third party directly from the premises of the job worker on payment of tax in India and likewise with or without payment of tax for export may be availed by the principal on declaring premise of the job-worker as his additional place of business in registration.

In case the job-worker is a registered person under GST, even declaring the premises of the job-worker as additional place of business is not required.

Before supply of goods to the job-worker, the principal would be required to intimate the Jurisdictional Officer containing the details of the description of inputs intended to be sent by the principal and the nature of processing



to be carried out by the job-worker.

The said intimation shall also contain the details of the other job-workers, if any. The inputs or capital goods shall be sent to the jobworker under the cover of a challan issued by the principal.

The challan shall be issued even for the inputs or capital goods sent directly to the job-worker. The challan shall contain the details specified in Rule 10 of the Invoice Rules. The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal.

Waste clearing provisions:

As per Section 143 (5) of the CGST Act, 2017, waste generated at the premises of the job-worker may be supplied directly by the registered job-worker from his place of business on payment of tax or the principal may clear such waste, in case the job-worker is not registered.

4.7 DISTRIBUTION OF CREDIT BY INPUT SERVICE DISTRIBUTOR

Manner of distribution of credit by Input Service Distributor [Section 20 of the CGST Act, 2017]:

- (1) The Input Service Distributor (ISD) shall distribute the credit of central tax as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed.
- (2) The Input Service Distributor may distribute the credit subject to the following conditions, namely:—
 - (a) the credit can be distributed to the recipients of credit against a document containing such details as may be prescribed;
 - (b) the amount of the credit distributed shall not exceed the amount of credit available for distribution;
 - (c) the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;
 - (d) the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;
 - (e) the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.

Explanation.—For the purposes of this section,—

- (a) the “relevant period” shall be—
 - (i) if the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or
 - (ii) if some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;
- (b) the expression “recipient of credit” means the supplier of goods or services or both having the same Permanent Account Number as that of the Input Service Distributor;
- (c) the term “turnover”, in relation to any registered person engaged in the supply of taxable goods as well as



goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.

Clarifications of certain issues under GST- Input Tax Credit

1. Clarification on issue whether moulds and dies owned by Original Equipment Manufacturers (OEM) that are sent free of cost (FOC) to a component manufacturer is leviable to tax and whether OEMs are required to reverse input tax credit in this case- Under GST Law

The above mentioned issue has been clarified vide Circular No. 47/21/2018-GST dt 08.06.2018:

Moulds and dies owned by the original equipment manufacturer (OEM) which are provided to a component manufacturer (the two not being related persons or distinct persons) on FOC basis does not constitute a supply as there is no consideration involved. Further, since the moulds and dies are provided on FOC basis by the OEM to the component manufacturer in the course or furtherance of his business, there is no requirement for reversal of input tax credit availed on such moulds and dies by the OEM. However, if the contract between OEM and component manufacturer was for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis, the amortised cost of such moulds/dies shall be added to the value of the components. In such cases, the OEM will be required to reverse the credit availed on such moulds/ dies, as the same will not be considered to be provided by OEM to the component manufacturer in the course or furtherance of the former's business.

Example – A die of Rs. 10,000/- can be used to manufacture 10,00,000 pieces. But the recipient has ordered only 5000 pieces @ 10/- per piece. Now the complete cost of die comes to Rs. 10,000/- cannot be loaded to supply of 5000 pieces. Hence, the amortised value is to be arrived at and value is to be added. So, we will calculate the amortized value by dividing 10,000 by 10,00,000 and will add per unit cost in the GST value.

2. Clarification on issue whether the books of accounts are required to be maintained at every place of business by the principal and the auctioneer of auction of tea, coffee, rubber etc, and whether they are eligible to avail input tax credit?

The above mentioned issue has been clarified vide Circular No. 47/21/2018-GST dt 08.06.2018:

Books of accounts will be maintained at the principal place of business and additional place(s) of business as follow-

- The principal and the auctioneer may declare the warehouses, where such goods are stored, as their additional place of business.
- The buyer is also required to disclose such warehouse as his additional place of business if he wants to store the goods purchased through auction in such warehouses.

(For the purpose of supply of tea through a private treaty, the principal and an auctioneer may also comply with the said provisions) The principal and the auctioneer are required to maintain the books of accounts relating to each and every place of business in that place it.

However, in case of any difficulty, they may maintain the books of accounts relating to the additional place(s) of business at their principal place of business. (Principal and the auctioneer are required to intimate their jurisdictional officer in writing about the same.)

Principal and the auctioneer shall be eligible to avail input tax credit subject to the fulfillment of other provisions of the CGST Act read with the rules made there under.



Study Note - 5

REGISTRATION UNDER GST



This Study Note includes

- 5.1 Introduction
- 5.2 Persons not liable for Registration
- 5.3 Compulsory Registration in Certain Cases
- 5.4 Procedure for Registration
- 5.5 Concept of Distinct Person under GST
- 5.6 Deemed Registration
- 5.7 Cancellation of Registration
- 5.8 Revocation of Registration

5.1 INTRODUCTION

Registration is the most fundamental requirement for identification of taxpayers ensuring tax compliance in the economy. Without registration, a person can neither collect tax from his customers nor claim any input tax credit of tax paid by him.

Registration of any business entity under the GST Law implies obtaining a unique number from the concerned tax authorities for the purpose of collecting tax on behalf of the government and to avail input tax credit for the taxes on his inward supplies.

Advantages of registration:

The following are advantages to a taxpayer who obtain registration under GST:

- (i) He is legally recognized as supplier of goods or services or both.
- (ii) He is legally authorized to collect taxes from his customers and pass on the credit of the taxes paid on the goods or services supplied to the purchasers/recipients.
- (iii) He can claim Input Tax Credit of taxes paid and can utilize the same for payment of taxes due on supply of goods or services.
- (iv) Seamless flow of Input Tax Credit from suppliers to recipients at the national level.
- (v) Registered person is eligible to apply for Government bids or contracts or assignments.
- (vi) Registered person under GST can easily gain trust from customers.

Exception of One Registration for One State:

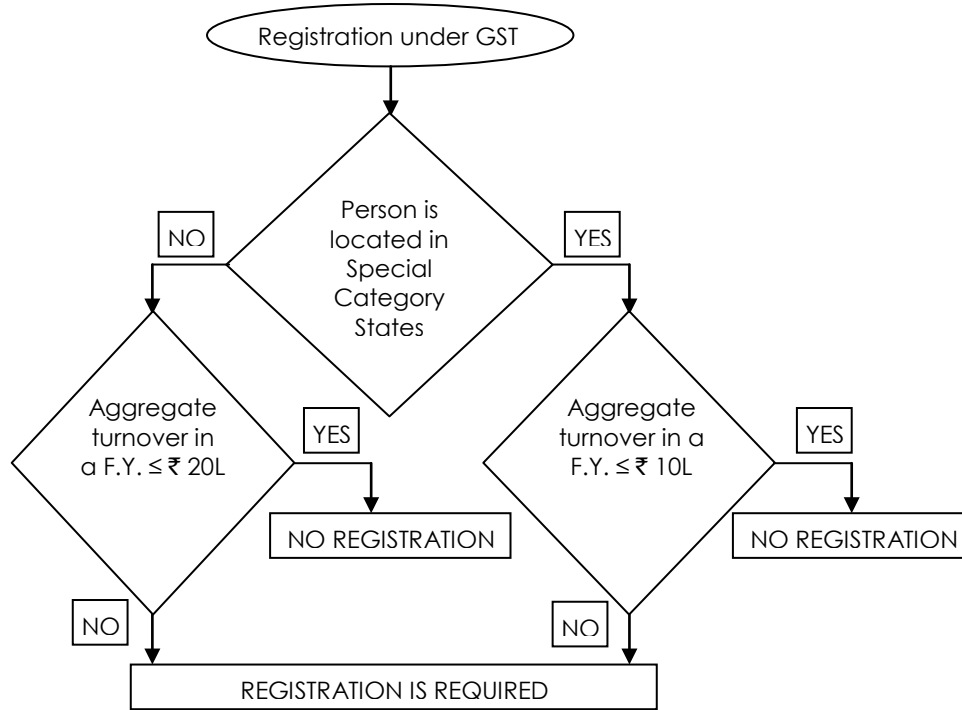
- (i) Multiple registrations permitted for separate business vertical.
- (ii) One as an input service distributor and other for outward supply

Example : 1

Apple manufactures computers, tablets, phones, headphones, music players and more. Management at Apple can divide the overall company performance into smaller segments based on these products to measure where the company is succeeding.

Note: It is similar to AS 17 Business Segments

Sec. 22 (1): Every supply shall be liable to be registered under the GST other than special category States, from where he makes a taxable supply of goods and services or both, if his aggregate turnover in a financial year exceeds ₹ 20 Lakh (in case of special category States ₹ 10 lakhs).



Special Category States under GST:

As per Explanation (3) of Section 22 of CGST act 2017, "special category States" shall mean the States as specified in sub-clause (g) of clause (4) of article 279A of the Constitution. List of which is as follows: –

1. Arunachal Pradesh
2. Assam
3. Jammu & Kashmir
4. Manipur
5. Meghalaya
6. Mizoram
7. Nagaland
8. Sikkim
9. Tripura
10. Himachal Pradesh
11. Uttarakhand

Note:

- (1) Registration is required if the aggregate turnover exceeds ₹10 Lakhs in case of special category States except Jammu & Kashmir and States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand. It means person located in Jammu & Kashmir may enjoy the benefit of minimum threshold limit of ₹ 20 lakh.
- (2) The small businesses, having turnover below the threshold limit can, however, voluntarily opt to register.

**Advantages of voluntary registration under GST:**

- (i) Legally recognized as supplier of goods or services; This helps in attracting more customers.
- (ii) Provide input tax credit to customers. As they can issue taxable invoices, they can collect GST. Their customers can take input credit on their purchases.
- (iii) They will be more competitive than other small business as buying from them will ensure input credit.
- (iv) Voluntarily registered persons can take input credit on their own purchases and input services like legal fees, consultation fees etc.
- (v) They can make inter-state sales without many restrictions.

Note: The following paragraph has been inserted vide THE CENTRAL GOODS AND SERVICES TAX (AMENDMENT), ACT, 2018 to amend Sec 22(1) of CGST Act, 2018:

"Provided further that the Government may, at the request of a special category State and on the recommendations of the Council, enhance the aggregate turnover referred to in the first proviso from ten lakh rupees to such amount, not exceeding twenty lakh rupees and subject to such conditions and limitations, as may be so notified";

However, the objective to amend Section 22 of the Act is to enhance the exemption limit for registration in the special category States from ten lakh rupees to twenty lakh rupees.

Aggregate turnover in a Financial Year [Sec. 2(6) of CGST]:

Aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-state supplies of person having the same PAN, to be computed on all India basis but excludes Central Tax, State Tax, Union Territory Tax, integrated tax and Cess.

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

Important points:

- (i) The turnover will be computed PAN wise.
- (ii) The partner and partnership firm will have different PAN Nos. Thus the turnover of the partner and partnership firm will not be aggregated.
- (iii) The HUF and individual coparcener of the family have different PAN Nos. Hence, turnover of Karta of HUF in his individual capacity and turnover of Karta as a Karta of HUF will not be aggregated.
- (iv) Supply of goods, after completion of jobwork, by a registered jobworker shall be treated as the supply of goods by the principal referred to in Sec. 143 of the CGST Act, 2017, and the value of such goods shall not be included in the aggregate turnover of the registered jobworker. It will be included in the turnover of principal.

**Example : 2**

Mr. J has been involved in supplying taxable material in J&K, since, 1st July 2017. His turnover in the month of Nov 2017 exceeded the limit of ₹ 20 lacs. Mr. J is required to register under GST law?

Answer:

Taxable turnover exceeds ₹ 20 lacs, and then the supplier shall apply for registration in the month of Nov 2017. Therefore, Mr. J is required to register under GST law.

Example : 3

Mr. C of Calicut is trading on his own goods and also acting as an agent of Mr. B of Bengaluru. Mr. C turnover in the financial year 2017-18 is ₹ 12 lacs in his own account and ₹ 9 lacs on behalf of principal. Whether Mr. C is liable to register compulsorily under GST law.

Answer:

As per explanation 1 in computing the total turnover, both the value of supply on his own account that is ₹ 12 lacs and on behalf of principal ₹ 9 lacs will be aggregated. Hence, the aggregate turnover will be ₹ 21 lacs. Mr. C is liable to register compulsorily under the GST law.

Example : 4

Mr. Rajan is a farmer with an annual turnover in relation to agriculture of ₹ 18,00,000 lakh. Since this income is agriculture-related, the turnover is exempt from GST. However, Mr. Rajan also supplies plastic bags worth of ₹ 2,50,000 (taxable goods) along with his crop and charges separately for this. Mr. Rajan is required to register under GST? Advise.

Answer:

Mr. Rajan is required to register under GST because his aggregate turnover exceeds the threshold limit of ₹ 20 lakh.

Example 5:

Mr. X a dealer dealing with Intra State supply of goods and services has place of business in India furnished the following information in the financial year 2017-18:

1. Sale of taxable goods by Head Office located in Chennai for ₹ 1,00,000
2. Supply of taxable services by Branch office at Bengaluru for ₹ 50,000
3. Supply of goods exempted from GST ₹ 10,000
4. Export of goods and services for ₹ 2,00,000
5. Sale of goods acting as agent on behalf of principal for ₹ 15,00,000

Answer:

Statement showing aggregate turnover in a Financial Year

Particulars	Value in ₹
Sale of taxable goods by Head Office located in Chennai	1,00,000
Supply of taxable services by Branch office at Bengaluru	50,000
Supply of goods exempted from GST	10,000
Export of goods and services	2,00,000
Sale of goods acting as agent on behalf of principal	15,00,000
Aggregate turnover	18,60,000

Since, aggregate turnover does not exceeds ₹ 20 lakhs, Mr. X is not required to register under GST.



Registration effective w.e.f. 1st July 2017 under GST

Sec. 22(2): Every person who, on the day immediately preceding, the appointed day, is registered or holds a licence under an existing law shall be liable to be registered under this Act with effect from the appointed day.

Registration under GST in case of transfer of going concern

Sec. 22(3): Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee or the successor, as the may be, shall be liable to be registered w.e.f. The date of such transfer or succession.

Registration under GST in case of amalgamation or demerger

Sec. 22(4): in case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of High Court, Tribunal or otherwise, the transferee should be liable to be registered, w.e.f the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.

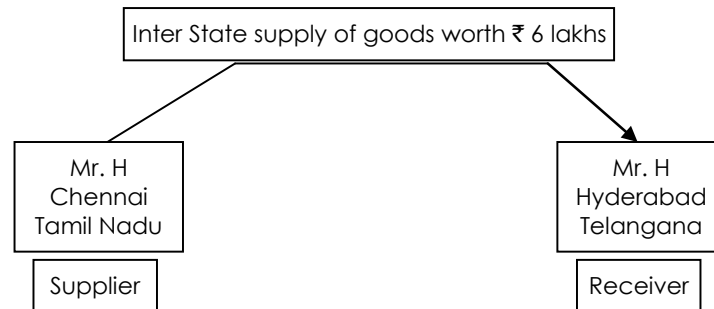
5.2 PERSONS NOT LIABLE FOR REGISTRATION

- (i) **Sec 23(1)(a):** Any person engaged exclusively in the business of supplying of goods or services or both they are not liable to tax or wholly exempt from tax under CGST or IGST.
- (ii) **Sec 23(1)(b):** An agriculturist, to the extent of supply of produce out of cultivation of land.
- (iii) **Sec. 23(2):** The Government may, on the recommendation of the GST Council.

5.3 COMPULSORY REGISTRATION IN CERTAIN CASES

Sec. 24: the following categories of persons shall be required to be registered under GST:

- i. Person making any inter-state taxable supply;
- ii. Causal taxable persons making taxable supply;
- iii. Person who are required to pay tax under reverse charge;
- iv. Person who are required to pay tax under sec. 9(5) of CGST (i.e. Electronic Commerce Operator);
- v. Non-resident taxable person making taxable supply;
- vi. Persons who are required to deduct tax under Sec 51, whether or not separately registered under this Act;
- vii. Persons who make taxable supply of goods or services or both on behalf of other taxable person whether as an agent or otherwise;
- viii. Input Service Distributor, whether or not separately registered under CGST;
- ix. Persons who supply of goods or services or both, other than supplies specified under Sec 9(5), through such electronic commerce operator who is required to collect tax at source under Sec 52;
- x. Every electronic commerce operator;
- xi. Every person supplying online information and database access or retrieval services from place outside India to a person in India, other than a registered person; and
- xii. Such other person or class of persons as may be notified by the Govt. on the recommendation of the Council.

**(i) Person making any inter state taxable supplies;**

If a person makes a single inter-state supply, he will be liable to obtain registration and pay GST.

Inter State supply of services exempted from registration:

The GST Council, in its 22nd meeting held on 6th October 2017, has recommended that it has now been decided to exempt those service providers whose annual aggregate turnover is less than ₹ 20 lacs (₹ 10 lacs in special category states. ₹ 20 lacs for J & K) from obtaining registration even if they are making inter-State taxable supplies of services (vide Notification No. 10/2017 – Integrated Tax Dt 13th Oct 2017).

Example : 6

Mr. CMA Manish, an unregistered person under GST, has place of profession in Bhubaneswar, Odisha, supplies taxable services to Infosys Ltd, a registered person under GST in Bangalore.

Answer the following:

(a) Is it inter-State supply or intra-State supply.

(b) Who is liable to pay GST.

Note: Mr. CMA Manish turnover in the P.Y. is ₹ 18 lakhs.

Answer:

Any person making inter-state supply has to compulsorily obtain registration and therefore in such cases, section 5(4) of IGST will not come into play.

However, Services providers providing aggregate supplies including inter-state services up to ₹ 20 lakh will be exempted from GST.

(a) It is inter-State supply.

(b) Mr. C is not liable to pay IGST. Since, registration is not made mandatory to him.

Example : 7

M/s Moon Pvt. Ltd. is incorporated in Chennai on 1st July 2017 has the following details for the year 2017-18:

S.No.	Particulars	Value (₹ in lacs)
i	Inter-State exempted supply of goods	4.0
ii	Intra-State supplies of services	5.0
iii	Non-taxable supplies	2.0
iv	Exempted supplies of services	0.60
V	Value of export of goods	7.0

M/s Moon Pvt. Ltd. is required to register compulsorily under GST Law, advise.

Whether your answer is different if S.No. (i) above, inter-State taxable supply goods for ₹ 4 lacs.

Answer:

Aggregate turnover is as follows:

S.No.	Particulars	Value (₹ in lacs)
I	Inter-State exempted supply of goods	4.0
II	Intra-State supplies of services	5.0
III	Non-taxable supplies	2.0
IV	Exempted supplies of services	0.60
V	Value of export of goods	7.0
	Aggregate turnover	18.60

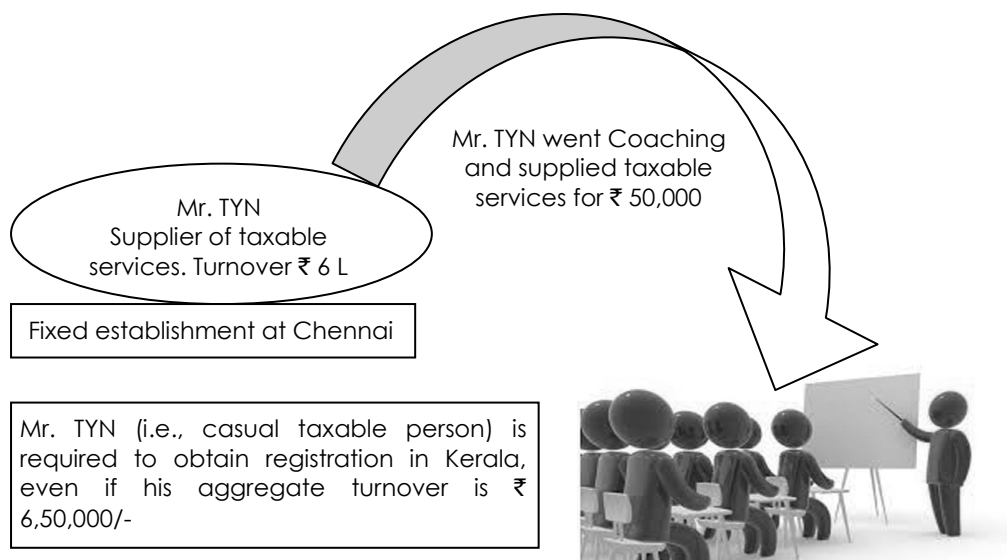
Advise: Since, aggregate turnover of Moon Pvt. Ltd. does not exceeds ₹ 20 lakhs, registration is not compulsory in the financial year 2017-18.

Yes. Our answer is different in the case of M/s Moon Pvt. Ltd. made inter state taxable supply of goods. As per Sec. 24 of the CGST Act, 2017 Person making any inter-state taxable supply of goods is required to register under GST Law irrespective of his aggregate turnover. Therefore, M/s Moon Pvt. Ltd. is required to register under GST Law.

(ii) Causal taxable persons making taxable supply [Sec 2(20)]:

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

Example : 8



Registration compulsory:

A casual taxable person making taxable supply in India has to compulsorily take registration. There is no threshold limit for registration. A casual taxable person cannot exercise the option to pay tax under composition levy.

Application for Registration:

Casual taxable persons are required to obtain GST registration under a special category at least 5 days prior to the undertaking business.

There is no special form to register as a casual taxable person. Casual taxable person can use the normal form GST REG-01 which is used by other taxable persons for registration.



A casual taxable person, before applying for registration, declare his:

- Permanent Account Number,
- mobile number,
- e-mail address,
- State or Union territory

in Part A of FORM GST REG-01 on the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

The Permanent Account Number shall be validated online by the common portal from the database maintained by the Central Board of Direct Taxes. The mobile number declared shall be verified through a one-time password sent to the said mobile number; and the e-mail address shall be verified through a separate one-time password sent to the said e-mail address.

On successful verification of the Permanent Account Number, mobile number and e-mail address, a temporary reference number shall be generated and communicated to the applicant on the said mobile number and e-mail address. Using this reference number generated, the applicant shall electronically submit an application in Part B of FORM GST REG-01, duly signed or verified through electronic verification code, along with the documents specified in the said Form at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

Advance Payment of Tax:

The Common Portal, after making the mandatory advance deposit of tax for an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought will give the applicant a temporary reference number. The registration certificate shall be issued electronically only after the said deposit appears in his electronic cash ledger. The amount deposited shall be credited to the electronic cash ledger of casual taxable person.

On depositing the amount, an acknowledgement shall be issued electronically to the applicant in FORM GST REG-02.

The casual taxable person can make taxable supplies only after the issuance of the certificate of registration.

Validity of Registration:

The certificate of registration shall be valid for the period specified in the application for registration or ninety days from the effective date of registration, whichever is earlier.

The proper officer may extend registration for a period not exceeding 90 days. The casual taxable person shall make an advance deposit of tax (i.e. ADVANCE PAYMENT OF TAX) in an amount equivalent to estimated tax liability of such person for the period for which extension of registration is sought.

Returns:

The casual taxable person is required to furnish the following returns electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

- a) **FORM GSTR-1** giving the details of outward supplies of goods or services to be filed on or before the tenth day of the following month.
- b) **FORM GSTR-2**, giving the details of inward supplies to be filed after tenth but before before the fifteenth day of the following month.
- c) **FORM GSTR-3** to be filed after fifteenth day but before the twentieth day of the following month.

**Annual return:**

However, a casual tax person shall not be required to file any annual return as required by a normal registered taxpayer.

Refund by Casual taxable person:

The casual taxable person is eligible for the refund of any balance of the advance tax deposited by him after adjusting his tax liability. The balance advance tax deposit can be refunded only after all the returns have been furnished, in respect of the entire period for which the certificate of registration was granted to him had remained in force. The refund relating to balance in the electronic cash ledger has to be made in serial no. 14 of the last FORM GSTR-3 return required to be furnished by him.

"If the estimated tax is much more than what is payable, it would be a lengthy process to obtain a refund. In the absence of output tax in the state where the goods or service has been supplied as a casual taxable person, input tax credit also cannot be claimed."

Input Tax Credit:

Input tax credit shall be availed in respect of goods or services or both received by a casual taxable person. The taxes paid by a casual taxable person shall be available as credit to the respective recipients.

Example : 9

Mr. Gold runs a retail shop for handmade jewellery and is registered in Chennai. Mr. Gold is planning to sell the jewellery at an exhibition in Mumbai, to be held from 1st January 2018 to 10th January 2018. Advise time with regard to registration and payment of GST.

Answer:

Mr. Gold should apply for registration as a casual taxable person within 5 days prior to the date of commencing the exhibition on 1st January 2018. Mr. Gold should also make an advance deposit of the estimated tax liability for the period from 1st January 2018 to 10th January 2018.

Example : 10

M/s X Ltd is an advertising company located in Chennai and is registered as a normal taxable person there. Now, they have secured an assignment to manage digital marketing for the Koti Deepothsavam Festival, which will take place in Hyderabad, Telangana. This will require M/s X Ltd. to displace some resources in Hyderabad until the festival is over. Advise M/s X Ltd. to obtain for separate registration in the State of Telangana.

Answer:

In this case, since M/s X Ltd does not have too many assignments coming from Hyderabad, they can register as a Casual Taxable Person in Telangana for 90 days. This will enable the organizers of the festival to take input credit on all GST paid to M/s X Ltd.

(iii) Person who are required to pay tax under reverse charge;

Already discussed.

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

Electronic commerce operator: shall include every person who, directly or indirectly, owns, operates or manages an electronic platform that is engaged in facilitating the supply of any goods and/or services or in providing any information or any other services incidental to or in connection there with but shall not include persons engaged in supply of such goods and/or services on their own behalf.

However, Titan company supplying watches and jewels through its own website would not be considered as an e-commerce operator for the purpose of this provision.



(v) Non-resident taxable person making taxable supply:

Sec 2(77): non-resident taxable person means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India. A non-resident taxable person cannot exercise the option to pay tax under composition levy.

Registration compulsory:

A non-resident taxable person making taxable supply in India has to compulsorily take registration. There is no threshold limit for registration.

Application for Registration:

Non-resident taxable person has to apply for registration at least five days prior to commencing his business in India using a valid passport (and need not have a PAN number in India).

A non-resident taxable person is not required to apply in normal application for registration being filed by other taxpayers. A simplified form GST REG-09 is required to be filled. A non-resident taxable person has to electronically submit an application, along with a self-attested copy of his valid passport, for registration, duly signed or verified through electronic verification code (EVC), in FORM GST REG-09, at least five days prior to the commencement of business at the Common Portal either directly or through a Facilitation Centre notified by the Commissioner.

In case the non-resident taxable person is a business entity incorporated or established outside India, the application for registration shall be submitted along with its tax identification number or unique number on the basis of which the entity is identified by the Government of that country or its PAN, if available.

The application for registration made by a non-resident taxable person has to be signed by his authorized signatory who shall be a person resident in India having a valid PAN. On successful verification of PAN, mobile number and e-mail address the person applying for registration as a non-resident taxable person will be given a temporary reference number by the Common Portal for making the mandatory advance deposit of tax for an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought.

The registration certificate shall be issued electronically only after the said deposit appears in his electronic cash ledger. The amount deposited shall be credited to the electronic cash ledger of the Non-resident person.

The non-resident taxable person can make taxable supplies only after the issuance of the certificate of registration.

Advance tax:

A non-resident taxable person has to make an advance deposit of tax in an amount equivalent to his estimated tax liability for the period for which the registration is sought.

Validity of Registration:

The certificate of registration shall be valid for the period specified in the application for registration or ninety days from the effective date of registration, whichever is earlier.

In case the non-resident taxable person intends to extend the period of registration indicated in his application of registration, an application in FORM GST REG-11 shall be submitted electronically through the Common Portal, either directly or through Facilitation Centre notified by the Commissioner, before the end of the validity of registration granted to him.

The validity period of 90 days can be extended by a further period not exceeding ninety days. The extension will be allowed only on payment of the amount of an additional amount of tax equivalent to the estimated tax liability for the period for which the extension is sought has to be deposited.

Input Tax Credit:

Input tax credit shall not be available in respect of goods or services or both received by a non-resident taxable person except on goods imported by him. The taxes paid by a non-resident taxable person shall be available as credit to the respective recipients.

**Returns:**

The non-resident taxable person shall furnish a return in FORM GSTR-5 electronically through the Common Portal, either directly or through a Facilitation Centre notified by the Commissioner, including therein the details of outward supplies and inward supplies and shall pay the tax, interest, penalty, fees or any other amount payable under the Act or these rules within 20 days after the end of a calendar month or within 7 days after the last day of the validity period of registration, whichever is earlier.

Refund:

The amount of advance tax deposited by a non-resident taxable person under, will be refunded only after the person has furnished all the returns required in respect of the entire period for which the certificate of registration granted to him had remained in force. Refund can be applied in the serial no. 13 of the FORM GSTR -5.

(vi) Persons who are required to deduct tax under Sec 51 whether or not separately registered under this Act:

As per 22nd GST Council meeting of 6th October 2017 Provisions of TDS deferred to 1st April 2018.

(vii) Persons who make taxable supply of goods or services or both on behalf of other taxable person whether as an agent or otherwise;

Clearing and forwarding (C&F) Agent receives the goods on behalf of the principal. Subsequently he supplies goods to the customer as an agent of the principal. He maintains the stock and report to the principal. If so such an agent shall be liable to obtain the registration compulsorily irrespective of the aggregate turnover of such agent.

(viii) Input Service Distributor whether or not separately registered under CGST;

As per Sec. 2(61) of the CGST Act, 2017, Input Service Distributor (ISD) means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 of the CGST Act, 2017 towards receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax (CGST), State tax (SGST)/ Union territory tax (UTGST) or integrated tax (IGST) paid on the said services to a supplier of taxable goods or services or both having same PAN as that of the ISD.

It is important to note that the ISD mechanism is meant only for distributing the credit on common invoices pertaining to input services only and not goods (i.e. inputs or capital goods).

Registration compulsory:

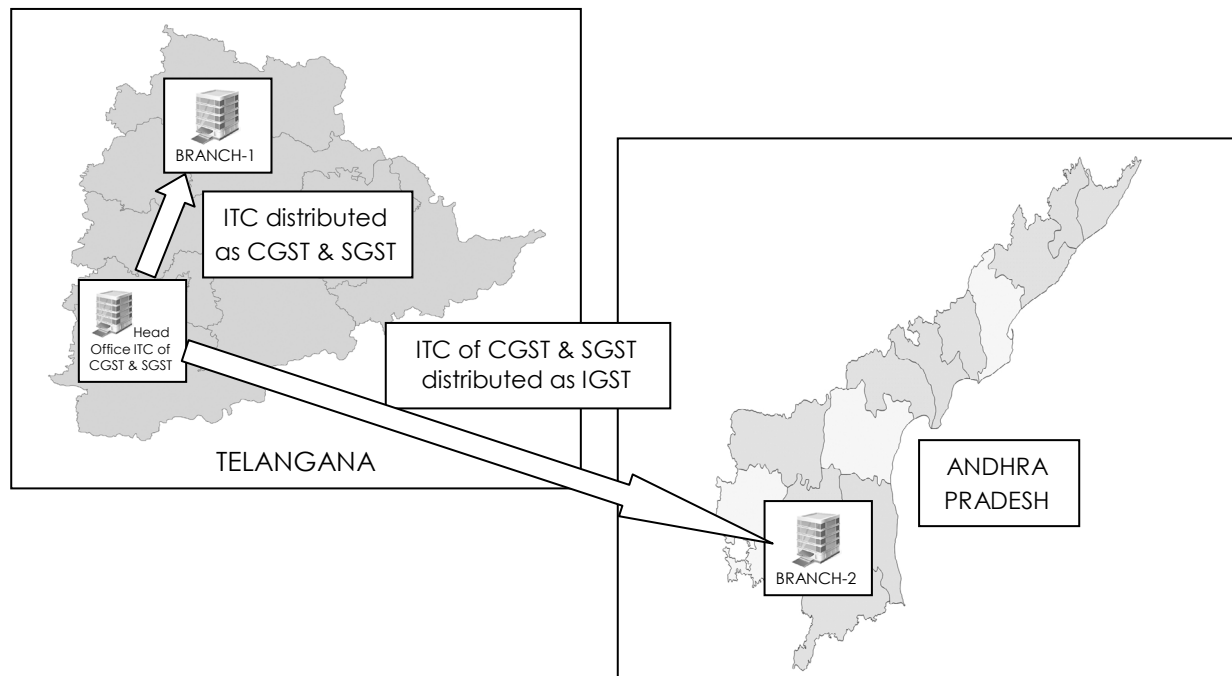
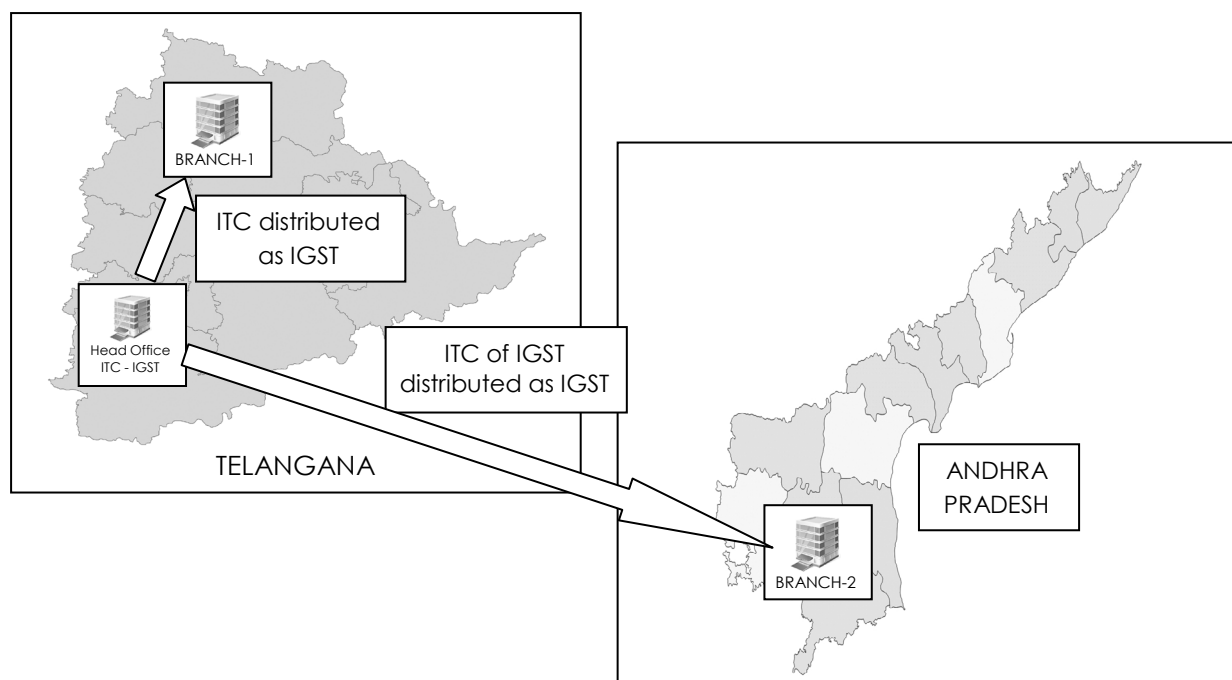
An ISD will have to compulsorily take a separate registration as such ISD and apply for the same in form GST REG-1. There is no threshold limit for registration for an ISD. The other locations may be registered separately.

Distribution of input tax credit by ISD:

The Head Office would be procuring certain services which would be for common utilization of all units across the country. The bills for such expenses would be raised on the Head Office. But the Head Office itself would not be providing any output supply so as to utilize the credit which gets accumulated on account of such input services. ISD mechanism enables such proportionate distribution of credit of input services amongst all the consuming units.

For the purposes of distributing the input tax credit, an ISD has to issue an ISD invoice, as prescribed in rule 54(1) of the CGST Rules, 2017, clearly indicating in such invoice that it is issued only for distribution of input tax credit.

The input tax credit available for distribution in a month shall be distributed in the same month and details furnished in FORM GSTR-6. Further, an ISD shall separately distribute both the amount of ineligible and eligible input tax credit.

Distribution of CGST and SGST or UTGST:**Distribution of CGST and SGST or UTGST by Input Service Distributor****Distribution of IGST:****Distribution of IGST by Input Service Distributor**

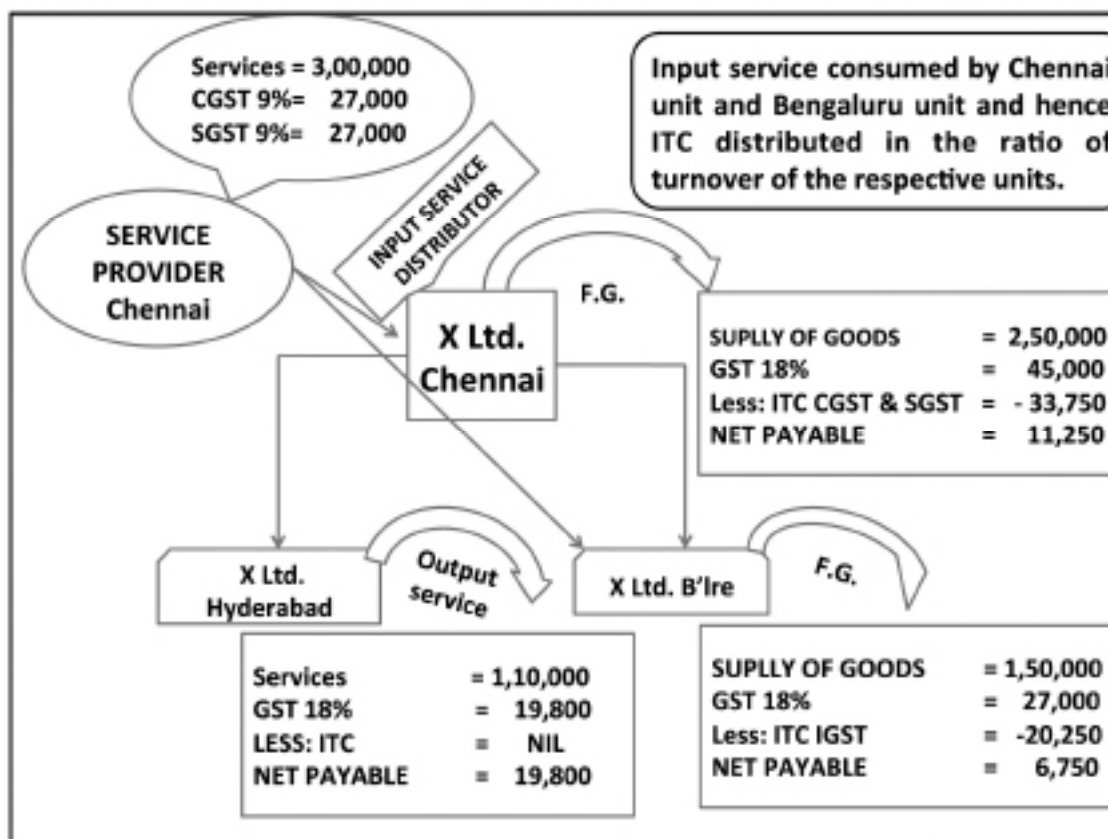
Manner of Distribution of ITC by ISD:

- (i) The credit has to be distributed only to the unit to which the supply is directly attributable to.

For example, if an ISD has 4 units across the country. However, if a particular input service pertains exclusively to only one unit and the bill is raised in the name of ISD, the ISD can distribute the credit only to that unit and not to other units.

- (ii) If input services are attributable to more than one recipient of credit, the distribution shall be in the pro-rata basis of turnover in the State/Union Territory.

For example, if an ISD has 4 units across the country. If the input services are common for all units, then it will be distributed according to the ratio of turnover of all the units.

Example 11:**Example : 12**

M/s X Ltd. incorporated in Bangalore, with its business locations of selling and servicing of goods in Bangalore, Chennai, Mumbai and Kolkata.

M/s X Ltd. an ISD situated in Bangalore receives invoices indicating ₹ 4 lakhs of Central tax, ₹ 4 lakhs of State tax and ₹ 7 lakhs of integrated tax on input service. Input services commonly used by the units of M/s X Ltd. How these taxes are distributed by M/s X Ltd. to their other units.

Answer:

M/s X Ltd. can distribute central tax, State tax as well as integrated tax of ₹ 15 lakhs as credit of integrated tax amongst its locations at Bangalore, Chennai, Mumbai and Kolkata through an ISD invoice containing the amount of credit distributed.

**Example : 13**

M/s XYZ Ltd, having its head Office at Mumbai, is registered as ISD. It has three units in different states namely 'Mumbai', 'Chennai' and 'Delhi' which are operational in the current year. M/s XYZ Ltd furnishes the following information for the month of December 2017. You are required to distribute the below input tax credit.

(i) CGST and SGST paid on services used only for Mumbai Unit: ₹3,00,000/-

(ii) IGST, CGST & SGST paid on services used for all units: ₹12,00,000/-

Total Turnover of the units for the Financial Year 2016-17 are as follows: -

Unit	Turnover in ₹
Turnover of Mumbai unit	5,00,00,000
Turnover of Chennai	3,00,00,000
Turnover of Delhi	2,00,00,000
Total turnover	10,00,00,000

Answer:

Statement showing distribution of input tax credit:

Particulars	Credit distributed to all the units			
	Total credit available ₹	Mumbai ₹	Chennai ₹	Delhi ₹
CGST & SGST paid on services used only for Mumbai Unit.	3,00,000	3,00,000	0	0
IGST, CGST & SGST paid on services used in all units Distribution on pro-rata basis to all the units which are operational in the current year	12,00,000	6,00,000	3,60,000	2,40,000
Total	15,00,000	9,00,000	3,60,000	2,40,000

Working note:

(1) CGST & SGST paid on services used only for Mumbai Unit should be distributed only to that unit.

(2) Credit distributed pro rata basis on the basis of the turnover of all the units is as under: -

	₹
(a) Unit Mumbai: $(5,00,00,000/10,00,00,000)*12,00,000$	6,00,000
(b) Unit Chennai: $(3,00,00,000/10,00,00,000)*12,00,000$	3,60,000
(c) Unit Delhi: $(2,00,00,000/10,00,00,000)*12,00,000$	2,40,000

Return:

An ISD will have to file monthly returns in GSTR-6 within 13 days after the end of the month and will have to furnish information of all ISD invoices issued.

The details in the returns will be made available to the respective recipients in their GSTR 2A.

The recipients may include these in its GSTR-2 and take credit.

Annual Return:

An ISD shall not be required to file Annual return.

Important Note: An ISD cannot accept any invoices on which tax is to be discharged under reverse charge mechanism. This is because the ISD mechanism is only to facilitate distribution of credit of taxes paid. The ISD itself cannot discharge any tax liability (as person liable to pay tax) and remit tax to government account. If ISD wants to take reverse charge supplies, then in that case ISD has to separately register as Normal taxpayer.



Clarifications of certain issues under GST

Clarification on issues under GST related to casual taxable person and recovery of excess Input Tax Credit distributed by an Input Service distributor – under GST Law

The above mentioned issue has been clarified vide Circular No. 71/45/2018-GST dt 26.10.2018:

1. CBIC has clarified that the amount of advance tax, which a casual taxable person is required to deposit while obtaining registration should be calculated after considering the due eligible ITC, which might be available to such taxable person.
2. The Circular clarified that in case of long running exhibitions (for a period more than 180 days), the taxable person cannot be treated as a CTP and thus such person would be required to obtain registration as a normal taxable person, subject to certain conditions as prescribed in the said circular.
3. It has also directed that recipient unit(s) who have received excess credit from ISD may deposit the said excess amount voluntarily along with interest if any by using FORM GST DRC-03. If not, then proceedings under section 73 or 74 of the CGST Act can be initiated against the said recipient unit(s) and general penalty may also be imposed.

(ix) Persons who supply of goods or services or both, other than supplies specified under Sec 9(5) through such Electronic Commerce Operator (ECO) who is required to collect tax at source under Sec 52;

As per 22nd GST Council meeting of 6th October 2017 Provisions TCS deferred to 1st April 2018.

(x) Every electronic commerce operator:

As per section 2(45) of the CGST Act, 2017, Electronic Commerce Operator (ECO) means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

As per CGST (Amendment) Act, 2018 – In Section 24 [Compulsory registration in certain cases], now small e-commerce operators who are not required to collect TCS u/s 52 would not be liable for registration.

Registration compulsory:

As per Section 24(x) of the CGST Act, 2017 the benefit of threshold exemption is not available to e-commerce operators and they are liable to be registered irrespective of the value of supply made by them.

A person supplying goods or services through e-commerce operator would not be entitled to threshold exemption (i.e. ₹ 20 lacs or ₹ 10 lacs as the case may be). This requirement is, however, applicable only if the supply is made through such electronic commerce operator who is required to collect tax at source under section 52 of the CGST Act, 2017.

Hence, any person who intends to sell on Flipkart or Amazon or Snapdeal must obtain GST registration.

An e-commerce operator is any online business that operates using a marketplace model. Under the marketplace model, an organization sets up an online portal where several small suppliers put up their products for sale. The organization that runs the portal collects payments, takes a percentage as a convenience fee, and sends the rest of the payment to the suppliers (like Flipkart, Amazon, and Snapdeal etc.).

However, where the e-commerce operators are liable to pay tax on behalf of the suppliers under a notification issued under section 9 (5) of the CGST Act, 2017, the suppliers of such services are entitled for threshold exemption.

(xi) Every person supplying online information and database access or retrieval services from place outside India to a person in India, other than a registered person;

Sec. 2(17) of IGST Act, 2017 "online information and database access or retrieval services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as:-



- (i) advertising on the internet;
- (ii) providing cloud services;
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- (v) online supplies of digital content (movies, television shows, music and the like);
- (vi) digital data storage; and
- (vii) online gaming;

5.4 PROCEDURE FOR REGISTRATION

Registration Procedure under GST [u/s 25 of CGST]:

Every person who is liable to be registered shall apply for registration within 30 days from the date on which he becomes liable to registration, before applying for registration declare his

1. Legal name of business
2. PAN,
3. Mobile number,
4. e-mail address,
5. State or Union territory

in Part A of Form GST REG -01 on Common Portal.

On successful verification of these numbers, a reference number will be generated.

Applicant shall submit Part B of Form GST REG-01, duly signed, along with documents specified in the said Form at the Common Portal.

Form GST REG – 02: Acknowledgement of Application

If these documents are found to be in order, the Proper Officer shall approve the registration within 3 working days from the date of submission.

5.5 CONCEPT OF DISTINCT PERSON UNDER GST

Distinct persons are persons with different GSTINs belonging to one legal entity (single PAN) situated within the same state or in two different states or in a different country..

Provisions of Distinct Person under the CGST (Amendment) Act[u/s 25 (2),(4) and (25):

(2) A person seeking registration under this Act shall be granted a single registration in a State or Union territory: Provided that a person having multiple business verticals in a State or Union territory may be granted a separate registration for each business vertical, subject to such conditions as may be prescribed.

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

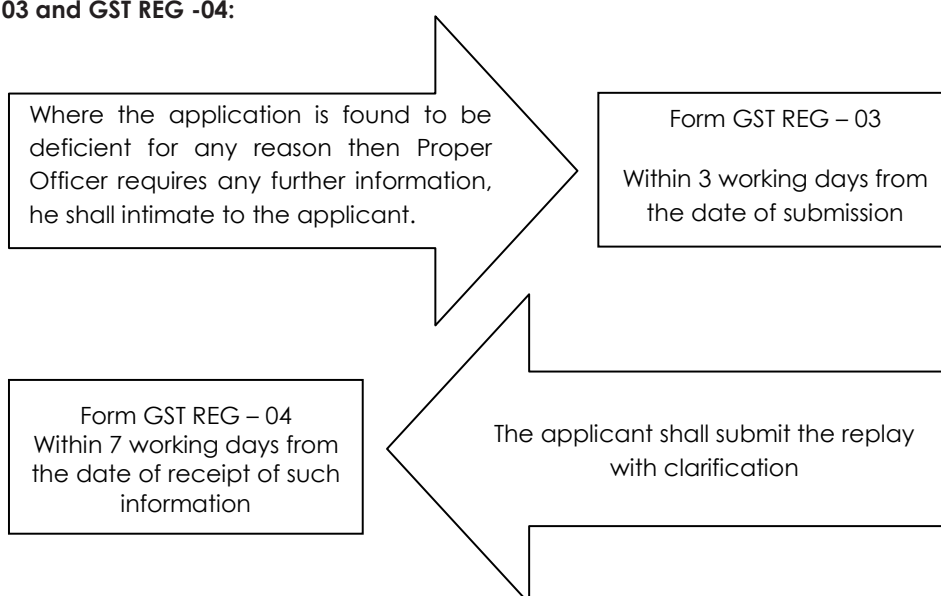
For example: If person has one place of business in Maharashtra for which registration is obtained and another place of business of the same person in Gujarat for which registration is obtained then such place of businesses will be considered as distinct person.

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

5.6 DEEMED REGISTRATION

If the Proper Officer fails to take action in 3 working days from the date of submission, the registration is deemed to have been approved.

Form GST REG -03 and GST REG -04:



The Proper Officer is satisfied with the clarification; he may approve the grant of registration to the applicant within 7 working days on receipt of such clarification.

If no reply is furnished by applicant in response to notice issued or Proper Officer is not satisfied with the clarification, he shall reject such application with reasons in writing and inform the applicant in Form GST REG-05.

Where no action is taken in 7 working days on the clarification received from the applicant, the registration is deemed to have been granted.

Certificate of Registration:

Certificate of registration shall be granted in Form GST REG-06.

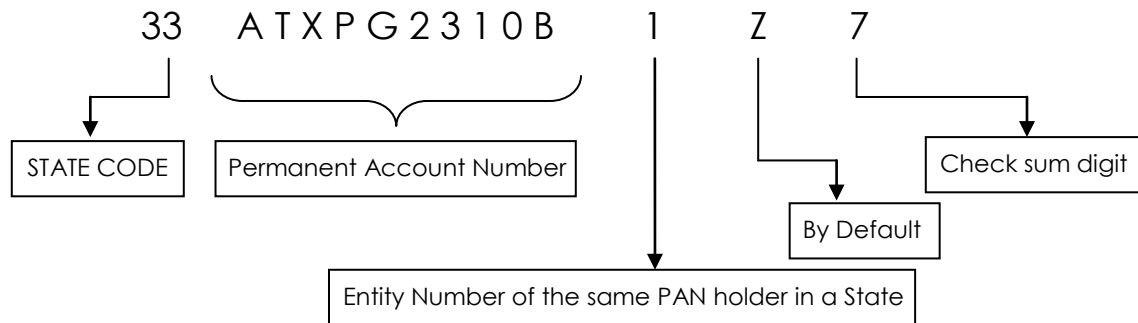
Certification of registration contains Goods and Service Tax Identification Number (GSTIN):

- Two characters for the State code
- Ten characters for the PAN
- Two characters for the entity code; and
- One checksum character



Structure of GSTIN

Each taxpayer is assigned a state-wise PAN-based 15 - digit Goods and Services Taxpayer Identification Number (GSTIN).



5.7 CANCELLATION OF REGISTRATION

Cancellation of GST Registration [Section 29 of the CGST Act, 2017]:

The following persons are allowed to cancel GST registration:

- 1) The registered person himself
- 2) By a GST officer
- 3) The legal heir of the registered person

The above mentioned section has been amended vide CGST (Amendment Act), 2018 wherein the word after the word "CANCELLATION", the words "OR SUSPENSION" shall be inserted.

However, the purpose to amend Sec 29 of the Act so as to insert a provision for temporary suspension of registration while cancellation of registration is under process.

1) Cancellation by the registered person taxpayer [Sec. 29(1)]:

Registered person under GST can himself/herself cancel their registration in any one of the following cases:

- Business has been discontinued.
- The business has been sold or transferred to some other party. That other party needs to register under GST.
- There is any change in the constitution of the business (like Partnership firm now converted into Private Limited company and so on).
- Turnover is not more than ₹ 20 lakh (₹ 10 lakh in the case of special category States except J&K).

The following proviso has been inserted namely, vide CGST (Amendment) Act, 2018:

"Provided that during pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed."



Clarification on issues relating to Cancellation of Registration- Under GST Law

The above mentioned issue has been clarified vide Circular No. 69/43/2018 –GST dated 26.10.2018:

The clarification on the same are as below:

1. The Circular clarified that in cases where it is difficult to exactly identify or pinpoint the day on which occurrence of the event warranting cancellation of registration occurs, 30-days deadline may be liberally interpreted and taxpayers application for cancellation of registration may not be rejected because of possible violation of deadline.
2. It has also directed the proper officers to accept all applications within 30 days (except where application is incomplete or in case of transfer, merger or amalgamation where new entity is unregistered) since cancellation of registration has no effect on liability of taxpayer for any acts of commission/omission committed before or after date of cancellation
3. Person whose registration has been cancelled shall file a final return in Form GSTR-10, failing which notice in Form GSTR-3A has to be issued and in case the failure continues, assessment order in Form GST ASMT-13 under section 62 shall be issued to determine liability of taxpayer.

2) Cancellation by a GST officer [Section 29(2)]:

GST registration of a person or business can be cancelled by a proper GST officer in one of the following cases:

- If the registered person has violated any of GST provisions or laws.
- A composition registered person has not filed tax returns for three consecutive quarters.
- A normal registered person who has not filed returns consecutively for six months.
- A voluntarily registered person who has not commenced any business in the six months from the registration date.
- If the registration is obtained by fraud methods, the proper officer has the right to cancel the registration with retrospective effect.

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.

The following proviso of the Sec 22(1) of CGST Act has been inserted, vide CGST (Amendment) Act, 2018:

“Provided further that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed;”

Note : The above paragraph inserted vide the CGST (Amendment) Act, 2018 :

In rule 22, in sub-rule (4), the following proviso shall be inserted, namely:-

“Provided that where the person instead of replying to the notice served under sub-rule (1) for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29, furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order in FORM GST-REG 20.

Section 29(3) of the CGST Act, 2017, the cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

Section 29(4) of the CGST Act, 2017, the cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.



Section 29 (5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.

(3) The legal heir of the registered person:

The legal heir of the registered person can request cancellation through an application, in case of death of the person.

Procedure for Cancellation of Registration under GST:

GST registration can be cancelled by using the forms below.

Particulars	Relevant Form
Application for cancellation Note: The voluntary registrations can only be cancelled after one year or more from the date of GST registration.	GST REG 16
A proper officer can send the show cause / cancellation notice to a registered person	GST REG 17
The concerned person must reply back in this form within 7 days of notice explaining why his/her registration should not be cancelled	GST REG 18
This form will be used by the proper officer to issue a formal order for cancellation of registration. The order is to be sent within 30 days from the application date or from the date of response in GST REG 18 form.	GST REG 19
If the proper officer is satisfied with the explanation, he can use this form to drop the cancellation proceeding and pass a formal order.	GST REG 20

5.8 REVOCATION OF REGISTRATION

Revocation of cancellation of registration [Section 30 of the CGST Act, 2017]:

As per section 30(1) of the CGST Act, 2017, subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within 30 days from the date of service of the cancellation order.

As per section 30(2) of the CGST Act, 2017, the proper officer may, in such manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application:

Provided that the application for revocation of cancellation of registration shall not be rejected unless the applicant has been given an opportunity of being heard.

As per Section 30(3) of the CGST Act, 2017, the revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.

**Procedure for Revocation of Cancellation of Registration as per Rule 23 of the CGST Rules, 2017:**

Particulars	Relevant Form
Application for revocation of cancellation of registration within 30 days from the date of service of the order of cancellation of registration	GST REG-21 Note: Application for revocation cannot be filed if cancellation is on account of failure to furnish returns or failure to pay liability unless such return is filed / liabilities are discharged.
For justified reasons, proper officer shall revoke cancellation of registration within 30 days of application or receipt of clarification by passing an order	GST REG-22
For unjustified reasons, proper officer shall issue show cause notice	GST REG-23
Reply shall be filed in within 7 days.	GST REG-24
For justified reasons, proper officer shall revoke cancellation of registration within 30 days of application or receipt of clarification by passing an order.	GST REG-22
For unjustified reasons, proper officer shall reject the application for revocation of cancellation of registration by passing an order.	GST REG-05

Note: Notification No. 56/2018 – Central Tax, dated 23.10.2018 seeks to exempt a person making inter-state taxable supplies of handicrafts goods from the requirement to obtain registration.

Provided that the aggregate value of such supplies, to be computed on all India basis, does not exceed the amount of aggregate turnover above which a supplier is liable to be registered in the State or Union territory in accordance with sub-section (1) of section 22 of the said Act, read with clause (iii) of the Explanation to that section.

Such persons making inter-State taxable supplies shall be required to obtain a Permanent Account Number and generate an e-way bill in accordance with the provisions of rule 138 of the Central Goods and Services Tax Rules, 2017

Note: NOTIFICATION No. 58/2018 – Central Tax, dated 26.10.2018 notifies the persons whose registration under the CST Act has been cancelled by the proper officer on or before the 30th September, 2018, as the class of persons who shall furnish the Final Return in **FORM GSTR-10** of the said rules till the 31st December, 2018.



Study Note - 6

TAX INVOICE, CREDIT AND DEBIT NOTES AND OTHER DOCUMENTS UNDER GST



This Study Note includes

- 6.1 Tax Invoice
- 6.2 Credit and Debit Notes

6.1 TAX INVOICE

Under the GST regime, a "tax invoice" means the tax invoice referred to in Section 31 of the CGST Act, 2017.

For example, if a registered person is making or receiving supplies (from unregistered persons), then a tax invoice needs to be issued by such registered person.

However, if a registered person is dealing only in exempted supplies or is availing the composition scheme (composition dealer), then such a registered person needs to issue a bill of supply in lieu of tax invoice.

An invoice or a bill of supply need not be issued if the value of the supply is less than ₹ 200/-, subject to specified conditions provisos to sub section (3) of Section 31 of the CGST Act, 2017.

Importance of Tax Invoice under GST:

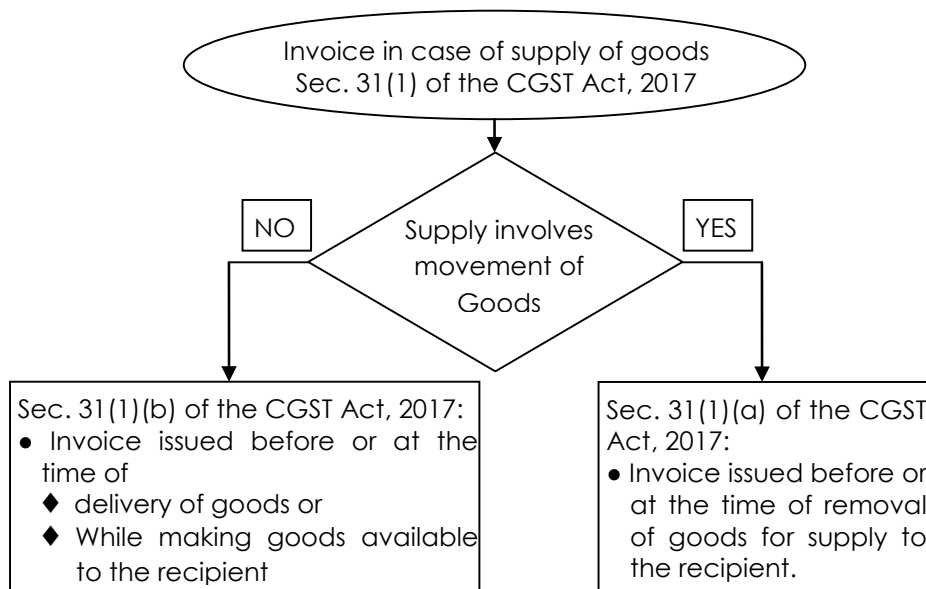
Under GST, a tax invoice is an essential document for the recipient to avail Input Tax Credit (ITC).

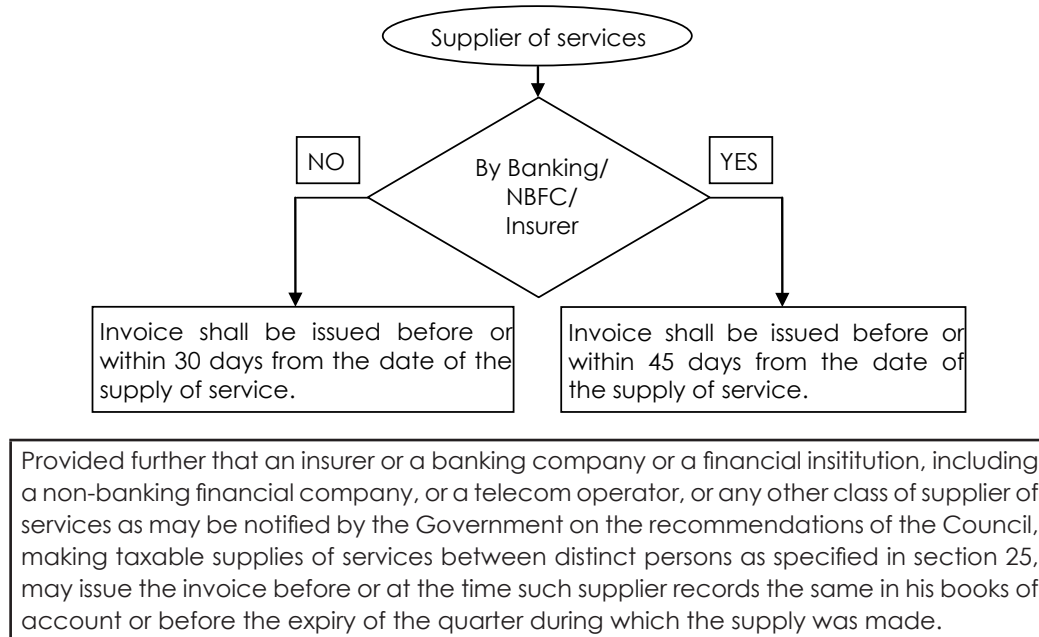
A registered person cannot avail Input Tax Credit unless he is in possession of a tax invoice or a debit note.

GST is chargeable at the time of supply. Invoice is an important indicator of the time of supply.

When should a tax invoice or a bill of supply be issued by a registered person:

Time limit for issuing tax invoice in case of supply of goods [Section 31(1) of the CGST Act, 2017]:



**Time Limit for Issuing Tax Invoice in case of Supply of Service: [Sec. 31(2) of the CGST Act, 2017 read with Rule 47 of the CGST Rules, 2017]****Advance Payment:**

Section 31(3)(d) of the CGST Act, 2017 a registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a receipt voucher or any other document, containing such particulars as may be prescribed, evidencing receipt of such payment;

Contents of Tax Invoice:

[Subject to rule 54 (i.e. other than input service Distributor, Banking or NBFC and so on) Section 31 read with Rule 46 of the CGST Rules, 2017]

There is no format prescribed for an invoice, however, invoice rules makes it mandatory for an invoice to have the following fields (only applicable field are to be filled):

- (a) Name, address and GSTIN of the supplier
- (b) A consecutive serial number, in one or multiple series, containing alphabets or numerals or special characters like hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year
- (c) Date of its issue
- (d) Name, address and GSTIN or UIN, if registered, of the recipient.
- (e) Name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered and where the value of taxable supply is fifty thousand rupees or more
- (f) HSN code of goods or Accounting Code of Services

Unique Identity Number (UIN):

The GST Act states that any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries and any other persons notified by the Commissioner can be granted a GST Unique Identity Number. GST Unique Identity Number can be used for the purposes of claiming GST refund on notified supplies of goods or services and other purposes as notified by the GST authorities.



- (g) Description of goods or services
- (h) Quantity in case of goods and unit or Unique Quantity Code there of
- (i) Total value of supply of goods or services or both
- (j) Taxable value of supply of goods or services or both, taking into account the discount or abatement, if any
- (k) Rate of tax (Central tax, State tax, Integrated tax, union territory tax or cess)
- (l) Amount of tax charged in respect of taxable goods or services (Central tax, State tax, Integrated tax, union territory tax or cess)
- (m) Place of supply along with the name of State, in case of a supply in the course of inter-State trade or commerce
- (n) Address of delivery where the same is different from the place of supply
- (o) Whether the tax is payable on reverse charge basis
- (p) Signature or digital signature of the supplier or his authorized representative

Bill of Supply [Section 31(3)(c) of the CGST Act, 2017 read with Rule 49 of the CGST Rules 2017]:

A bill of supply is similar to a GST invoice except that bill of supply does not contain any tax amount as the seller cannot charge GST to the buyer.

A bill of supply is issued in cases where tax cannot be charged:

- Registered person is selling exempted goods/ services,
- Registered person has opted for composition scheme

Invoice-cum-bill of supply:

As per Notification No. 45/2017 - Central Tax dated 13th October 2017 -

If a registered person is supplying taxable as well as exempted goods/services to an unregistered person, then he can issue a single "invoice-cum-bill of supply" for all such supplies.

Contents of Bill of supply:

A bill of supply shall be issued by the supplier containing the following details:

- (a) Name, address and GSTIN of the supplier
- (b) A consecutive serial number, in one or multiple series, containing alphabets or numerals or special characters like hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination there of, unique for a financial year
- (c) Date of its issue
- (d) Name, address and GSTIN or UIN, if registered, of the recipient
- (e) HSN Code of goods or Accounting Code for Services
- (f) Description of goods or services or both
- (g) Value of supply of goods or services or both taking into account discount or abatement, if any
- (h) Signature or digital signature of the supplier or his authorized representative

Manner of Issuing Invoice [Rule 48 of the CGST Act, 2017]:

- (1) The invoice shall be prepared in triplicate, in the case of supply of goods, in the following manner, namely,- by marking on face of the invoice
 - (a) Original for Recipient;



- (b) Duplicate for Transporter; and
- (c) Triplicate for Supplier.
- (2) The invoice shall be prepared in duplicate, in the case of the supply of services, in the following manner, namely,-
 - (a) Original for recipient; and
 - (b) Duplicate for supplier.
- (3) The serial number of invoices issued during a tax period shall be furnished electronically through the common portal in FORM GSTR-1.

Revised Invoice [Section 31(3)(a) of the CGST Act, 2017]:

A registered person may, within one month from the date of issuance of certificate of registration and in such manner as prescribed in the Invoice Rules, issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him.

This provision is necessary, as a person who becomes liable for registration has to apply for registration within 30 days of becoming liable for registration. When such an application is made within the time period and registration is granted, the effective date of registration is the date on which the person became liable for registration. Thus there would be a time lag between the date of grant of certificate of registration and the effective date of registration.

For supplies made by such person during this intervening period, the law enables the issuance of a revised invoice, so that ITC can be availed by the recipient on such supplies.

Receipt Voucher on Receipt of Advance Payment [section 31(3)(d) of the CGST Act, 2017]:

Whenever a registered person receives an advance payment with respect to any supply of goods or services or both, he has to issue a receipt voucher or any other document, containing such particulars as per Rule 50 of the CGST Rules, 2017 evidencing the receipt of such payment.

Proviso to Rule 50 of the CGST Rules, 2017, if at the time of receipt of advance,

- (i) The rate of tax is not determinable, the tax may be paid@18%;
- (ii) The nature of supply is not determinable, the same shall be treated as inter-State supply.

Refund Voucher [section 31(3)(e) of the CGST Act, 2017]:

Where any such receipt voucher is issued, but subsequently no supply is made and no tax invoice is issued, the registered person who has received the advance payment can issue a refund voucher against such payment as per Rule 51 of the CGST Rules, 2017.

Invoice and Payment Voucher by a Person liable to pay Tax under Reverse Charge [section 31(3)(f)&(g) of the CGST Act, 2017]:

A registered person liable to pay tax under reverse charge (both for supplies on which the tax is payable under reverse charge mechanism and "supplies received from unregistered persons suspended till 31st March 2018") has to issue an invoice in respect of goods or service or both received by him. Such a registered person in respect of such supplies also has to issue a payment voucher at the time of making payment to the supplier.

Continuous Supply of Goods:

Section 31(4) of the CGST Act, 2017: In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.



Section 31(5) of the CGST Act, 2017: Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,—

- (a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;
- (b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;
- (c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

Supply of Services Ceases under a Contract before the Completion of the Supply:

Section 31(6) of the CGST Act, 2017: In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.

Goods being sent or taken on Approval for Sale or Return:

Section 31(7) of the CGST Act, 2017: Notwithstanding anything contained in sub-section (1), where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.

Explanation.—For the purposes of this section, the expression “tax invoice” shall include any revised invoice issued by the supplier in respect of a supply made earlier.

6.2 CREDIT AND DEBIT NOTES

Credit and Debit Notes (Section 34 of the CGST Act, 2017):

Credit Note (Sec 34(1)&(2) of CGST Act): In cases where tax invoice has been issued for a supply and subsequently it is found that the value or tax charged in that invoice is more than what is actually payable/ chargeable or where the recipient has returned the goods, the supplier can issue a credit note to the recipient.

A registered person who issues such a credit note has to declare details of such credit note in the return for the month during which such credit note has been issued but not later than

- September following the end of the financial year in which such supply was made
- or
- The date of furnishing of the relevant annual return, whichever is earlier.

The tax liability of the registered person will be adjusted in accordance with the credit note issued, however no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

Note: The above mentioned Section has been amended vide CGST Amendment Act, 2018, wherein A Dealer may Issue One Credit note for multiple Invoices.

However, the main objective to amend 34(1) of the CGST Act, is to ease the procedural matter which was causing great hardship to dealers where specific Credit notes were required to be made for each invoice.

Debit Note (Sec 34 (3) & (4) of CGST Act) : In cases where tax invoice has been issued for a supply and subsequently it is found that the value or tax charged in that invoice is less than what is actually payable/ chargeable, the supplier can issue a debit note to the recipient. Any registered person who issues a debit note in relation to a



supply of goods or services or both, shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.

Amendment

The following paragraph was inserted vide CGST Amendment Act, 2018 to amend Sec 34(1) and Sec 34(3) of CGST Act, 2017:

Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient one or more debit notes for supplies made in a financial year containing such particulars as may be prescribed.

A Dealer may Issue One Credit note for multiple Invoices. A change has to be made in the GST Portal also. It may be noted here that this is a procedural matter which was causing great hardship to dealers where specific Credit notes were required to be made for each invoice. However a practice was followed by the dealers to tag the last invoice only with the credit note in addition to providing an annexure of all invoices linked thereto in the hard copy. Such procedure followed for removal of difficulties till date should also be considered leniently by the field officers.

Contents of a revised tax invoice and credit or debit note:

- (a) The word "Revised Invoice", wherever applicable, indicated prominently
- (b) Name, address and GSTIN of the supplier
- (c) Nature of the document
- (d) A consecutive serial number containing alphabets or numerals or special characters like hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year
- (e) Date of issue of the document
- (f) Name, address and GSTIN or UIN, if registered, of the recipient
- (g) Name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered
- (h) Serial number and date of the corresponding tax invoice or, as the case may be, bill of supply
- (i) Value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient.
- (j) Signature or digital signature of the supplier or his authorized representative.

As per Notification No. 39/2018 – Central Tax, dt 04.09.2018 – It amends Rule 36(2) of the CGST Rules, 2017 which further clarifies that even if all specified particulars stipulated by Invoice rules is not satisfied, yet the invoice contains the amount of tax charged, description of supplies, total value of supply, GSTIN of the supplier & recipient and place of supply in case of inter-state supply, then the ITC can be availed by registered taxpayers. This is a very important amendment and hence ITC cannot be denied due to certain clerical mistakes in the invoice by the supplier.

As per Notification No. 39/2018 – Central Tax, dt 04.09.2018 - With regards to transport of goods without the tax invoice as laid down in Rule 55, the same procedure of transport of goods through delivery challans as applicable on Transportation of goods in a semi knocked down or completely knocked down condition, shall also apply to the transportation of goods in batches or lots, i.e. –

(a) the supplier shall issue the complete invoice before dispatch of the first consignment;



- (b) the supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice;**
- (c) each consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice; and**
- (d) the original copy of the invoice shall be sent along with the last consignment.**

As per Circular No. 64/38/2018 -GST dt 14.09.2018- Modification of the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances, as clarified in Circular Nos. 41/15/2018-GST dated 13.04.2018 and 49/23/2018-GST dated 21.06.2018

The GST Council clarifies issues regarding the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances.

It has been clarified that if a consignment of goods is accompanied with an invoice or any other specified document and an e-way bill then the proceedings may not be initiated in the following situations :

- 1. Spelling mistakes in the name of the consignor or the consignee but the GSTIN, whichever is applicable, is correct.**
- 2. Error in the address of the consignee to the extent that the locality and other details of the consignee are correct.**
- 3. Error in one or two digits of the document number mentioned in the e-way bill.**
- 4. Error in one or two digits of the vehicle number.**
- 5. Error in 4 or 6 digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct.**
- 6. Error in the pin-code but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill. A penalty of ₹ 1,000 under IGST act will be levied in Form GST DRC -07 for every consignment which is incomplete or erroneous in above terms. Also, a record of all these consignments will have to be sent to the proper officer to his controlling officer on a weekly basis.**



Study Note - 7

ACCOUNTS AND RECORDS UNDER GST



This Study Note includes

- 7.1 Accounts & Records**
- 7.2 Compulsorily Audit**
- 7.3 Period for Retention of Accounts**

7.1 ACCOUNTS & RECORDS

Every registered person is required to self-assess the taxes payable and furnish a return for each tax period (i.e. the period for which return is required to be filed).

The compliance verification is done by the department through scrutiny of returns, audit and/or investigation. Thus the compliance verification is to be done through documentary checks rather than physical controls. This requires certain obligations to be cast on the taxpayer for keeping and maintaining accounts and records.

As per Section 35(1) of the CGST Act, 2017:

Every registered person is required maintain a true and correct account of the following:

- (a) Production or manufacture of goods
- (b) Inward and outward supply of goods or services, or both
- (c) Stock of goods
- (d) Input tax credit availed
- (e) Output tax payable and paid
- (f) Any other particulars deemed necessary

The above records must be maintained at each place of business registered under GST.

In addition, the rules (i.e. Rule 56(1) of the CGST Rules, 2017) also provide that the registered person shall keep and maintain records of-

- (a) goods or services imported or exported or
- (b) supplies attracting payment of tax on reverse charge along with the relevant documents, including invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers, refund vouchers and e-way bills

Rule 56(2) of the CGST Rules, 2017, every registered person, other than a person paying tax under section 10, shall maintain the accounts of stock in respect of goods received and supplied by him, and such accounts shall contain particulars of the

- opening balance,
- receipt,
- supply,
- goods lost, stolen, destroyed,
- written off or disposed of by way of gift or
- free sample and
- the balance of stock including raw materials, finished goods, scrap and wastage thereof.



It means the above records not required to be maintained by a supplier opting for composition levy.

Rule 56(3) of the CGST Rules, 2017, every registered person shall keep and maintain a separate account of advances received, paid and adjustments made thereto.

Rule 56(4) of the CGST Rules, 2017, every registered person, other than a person paying tax under section 10, shall keep and maintain an account, containing the details of tax payable (including tax payable in accordance with the provisions of sub-section (3) and sub-section (4) of section 9), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.

It means the above records not required to be maintained by a supplier opting for composition levy.

Rule 56(5) of the CGST Rules, 2017, every registered person shall keep the particulars of -

- (a) names and complete addresses of suppliers from whom he has received the goods or services chargeable to tax under the Act;
- (b) names and complete addresses of the persons to whom he has supplied goods or services, where required under the provisions of this Chapter;
- (c) the complete address of the premises where goods are stored by him, including goods stored during transit along with the particulars of the stock stored therein.

Rule 56(6) of the CGST Rules, 2017, if any taxable goods are found to be stored at any place(s) other than those declared under sub-rule (5) without the cover of any valid documents, the proper officer shall determine the amount of tax payable on such goods as if such goods have been supplied by the registered person.

Rule 56(7) of the CGST Rules, 2017, every registered person shall keep the books of account at the principal place of business and books of account relating to additional place of business mentioned in his certificate of registration and such books of account shall include any electronic form of data stored on any electronic device.

Rule 56(8) of the CGST Rules, 2017, any entry in registers, accounts and documents shall not be erased, effaced or overwritten, and all incorrect entries, otherwise than those of clerical nature, shall be scored out under attestation and thereafter, the correct entry shall be recorded and where the registers and other documents are maintained electronically, a log of every entry edited or deleted shall be maintained.

Rule 56(9) of the CGST Rules, 2017, each volume of books of account maintained manually by the registered person shall be serially numbered.

Rule 56(10) of the CGST Rules, 2017, unless proved otherwise, if any documents, registers, or any books of account belonging to a registered person are found at any premises other than those mentioned in the certificate of registration, they shall be presumed to be maintained by the said registered person.

Rule 56(11) of the CGST Rules, 2017, every agent referred to in clause (5) of section 2 shall maintain accounts depicting the,-

- (a) particulars of authorisation received by him from each principal to receive or supply goods or services on behalf of such principal separately;
- (b) particulars including description, value and quantity (wherever applicable) of goods or services received on behalf of every principal;
- (c) particulars including description, value and quantity (wherever applicable) of goods or services supplied on behalf of every principal;
- (d) details of accounts furnished to every principal; and



- (e) tax paid on receipts or on supply of goods or services effected on behalf of every principal.

Rule 56(12) of the CGST Rules, 2017, every registered person manufacturing goods shall maintain monthly production accounts showing quantitative details of raw materials or services used in the manufacture and quantitative details of the goods so manufactured including the waste and by products thereof.

Rule 56(13) of the CGST Rules, 2017, every registered person supplying services shall maintain the accounts showing quantitative details of goods used in the provision of services, details of input services utilised and the services supplied.

Rule 56(14) of the CGST Rules, 2017, every registered person executing works contract shall keep separate accounts for works contract showing –

- (a) the names and addresses of the persons on whose behalf the works contract is executed;
- (b) description, value and quantity (wherever applicable) of goods or services received for the execution of works contract;
- (c) description, value and quantity (wherever applicable) of goods or services utilized in the execution of works contract;
- (d) the details of payment received in respect of each works contract; and
- (e) the names and addresses of suppliers from whom he received goods or services.

Rule 56(15) of the CGST Rules, 2017, the records under the provisions of this Chapter may be maintained in electronic form and the record so maintained shall be authenticated by means of a digital signature.

Rule 56(16) of the CGST Rules, 2017, accounts maintained by the registered person together with all the invoices, bills of supply, credit and debit notes, and delivery challans relating to stocks, deliveries, inward supply and outward supply shall be preserved for the period as provided in section 36 and shall, where such accounts and documents are maintained manually, be kept at every related place of business mentioned in the certificate of registration and shall be accessible at every related place of business where such accounts and documents are maintained digitally.

Rule 56(17) of the CGST Rules, 2017, any person having custody over the goods in the capacity of a carrier or a clearing and forwarding agent for delivery or dispatch thereof to a recipient on behalf of any registered person shall maintain true and correct records in respect of such goods handled by him on behalf of such registered person and shall produce the details thereof as and when required by the proper officer.

Rule 56(18) of the CGST Rules, 2017, Every registered person shall, on demand, produce the books of accounts which he is required to maintain under any law for the time being in force.

As per Notification No. 28/2018 – Central Tax, dt 19.6.2018 - Sub-rule (1A) has been inserted in rule 58 (Records to be maintained by owner or operator of godown or warehouse and transporters) so that a transporter who is registered in more than one state/union territory having the same PAN can apply for an unique common enrolment number by submitting the details in FORM GST ENR-02 using any one of his GSTINs. However, once he has received this Enrolment No., he cannot use any GSTIN for the purposes of any liability.

As per Circular No. 61/35/2018-GST dt 04.09.2018 - Clarification on E-way bill in case of storing of goods in godown of transporter

The GST Council clarifies issue regarding the textile sector and problems being faced by weavers & artisans regarding storage of their goods in the warehouse of the transporter. It clarify that in case the consignee/ recipient taxpayer stores his goods in the godown of the transporter, then the transporter's godown has to be declared as an additional place of business by the recipient taxpayer. In such cases, mere declaration by the recipient taxpayer to this effect with the concurrence of the transporter in the said declaration will suffice. Where the transporter's



godown has been declared as the additional place of business by the recipient taxpayer, the transportation under the e-way bill shall be deemed to be concluded once the goods have reached the transporter's godown (recipient taxpayer's additional place of business). Hence, e-way bill validity in such cases will not be required to be extended. Further, whenever the goods are transported from the transporters' godown, which has been declared as the additional place of business of the recipient taxpayer, to any other premises of the recipient taxpayer then, the relevant provisions of the e-way bill rules shall apply. Hence, whenever the goods move from the transporter's godown (i.e., recipient taxpayer's additional place of business) to the recipient taxpayer's any other place of business, a valid e-way bill shall be required, as per the extant State-specific e-way bill rules.

Synopsis.

1. Place of business now also includes a warehouse, a godown, or any other place where a taxable person stores in goods, supplies or receives goods or services or both.
2. In case, the goods have reached the transporter's godown i.e. additional place of business then the transportation under the e-way bill will be deemed to be concluded. There will be no need of an extension of e-way bill's validity.
3. The recipient will be required to maintain books of accounts in relation to the goods stored at the godown of the transporters.

7.2 COMPULSORILY AUDIT

Compulsorily Audit [Section 35(5) of the CGST Act, 2017 read with rule 80(3) of the CGST Rules, 2017]:

Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a Chartered Accountant or a Cost Accountant.

As per Rule 80(3) of the CGST Rules, 2017 every registered person whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

Note: Any department of the Central or State Government / local authority which is subject to audit by CAG need not get their books of account audited by a CA/ CMA. – CGST (AMENDMENT) ACT, 2018.

As per Notification No. 49/2018 – Central Tax, dt 13.09.2018 - In terms of Rule 80(3) of CGST Rules, every registered person whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

7.3 PERIOD FOR RETENTION OF ACCOUNTS

Period for Retention of Accounts under GST (Section 36 of the CGST Act, 2017)

As per section 36 of the CGST Act, 2017 every registered taxable person must maintain the accounts books and records for at least 72 months (6 years) from the due date of furnishing of annual return for the year pertaining to such accounts and records. The period will be counted from the last date of filing of Annual Return for that year.

The last date of filing the Annual return is 31st December of the following year.

**Example : 1**

For the year 2017-2018, the due date of filing the annual return is 31.12.2018. The books & records of 2017-2018 must be maintained for 6 years, i.e., 31.12.2024.

If the taxpayer is a part of any proceedings before any authority (First Appellate) or is under investigation then he must maintain the books for 1 year after the order of such proceedings/appeal has been passed.

Clarification of certain issues Under GST Law Regarding Accounts And Records to be maintained by Principal And auctioneer in case of auction of tea , coffee, rubber etc

The above mentioned issue is clarified vide **Circular No. 47/21/2018-GST dated 08.06.2018:**

The clarification on the same are as below:

Books of accounts will be maintained at the principal place of business and additional place(s) of business as follow-

- The principal and the auctioneer may declare the warehouses, where such goods are stored, as their additional place of business.
- The buyer is also required to disclose such warehouse as his additional place of business if he wants to store the goods purchased through auction in such warehouses.

(For the purpose of supply of tea through a private treaty, the principal and an auctioneer may also comply with the said provisions) The principal and the auctioneer are required to maintain the books of accounts relating to each and every place of business in that place it.

However, in case of any difficulty, they may maintain the books of accounts relating to the additional place(s) of business at their principal place of business. (Principal and the auctioneer are required to intimate their jurisdictional officer in writing about the same.)

Principal and the auctioneer shall be eligible to avail input tax credit subject to the fulfillment of other provisions of the CGST Act read with the rules made there under.



Study Note - 8

PAYMENT OF TAX



This Study Note includes

- 8.1 Computation of Tax Liability and Payment of Tax
- 8.2 Interest on Delayed Payment of Tax
- 8.3 Refund of Tax

8.1 COMPUTATION OF TAX LIABILITY AND PAYMENT OF TAX

Payments to be made:

Under GST, the tax to be paid is mainly divided into 3 heads – IGST, CGST and SGST.

A registered person is required to make GST payment –

- A Registered dealer is required to make GST payment if GST liability exists.
- Registered dealer required to pay tax under Reverse Charge Mechanism(RCM).
- E-commerce operator is required to collect and pay TCS
- Dealers required deducting TDS

The amount of tax, interest, penalty etc. payable by the person is required to be paid either by utilizing balance available in electronic cash ledger or electronic credit ledger. The amount utilized for payment from the balance in electronic credit or cash ledger will be shown in GST PMT-1.

Utilization of input tax credit:

Payment of tax, interest, penalty and other amounts [Section 49 of the CGST Act, 2017]:

Section 49(1) of the CGST Act, 2017 every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.

Section 49(2) of the CGST Act, 2017 the input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.

Electronic Ledgers in GST:

There are three types of Ledgers maintained to discharge tax liability under CGST Act, 2017 which are as follows:



S. No.	Ledger name	Amount to be credited	Amount Utilization
(1)	Electronic cash ledger	Every deposit made towards • tax, • interest, • penalty, • fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.	As per Section 49(3) of the CGST Act, 2017: The amount available in the electronic cash ledger may be used for making any payment towards • tax, • interest, • penalty, • fees or any other amount payable under the provisions of this Act or the rules made there under in such manner and subject to such conditions and within such time as may be prescribed.
(2)	Electronic credit ledger	The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.	As per Section 49(4) of the CGST Act, 2017: The amount available in the electronic credit ledger may be used for making any payment towards • output tax under this Act or • under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.
(3)	Electronic Liability ledger	All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.	

Section 49(5) of the CGST Act, 2017:

Sec. 49(5)	Input	Offset option available against	Not available	Order of Set off
(a)	IGST	√ IGST √ CGST √ SGST √ UTGST	---	1. IGST 2. CGST 3. SGST 4. UTGST
(b)	CGST	√ CGST √ IGST	× SGST × UTGST	1. CGST 2. IGST
(c)	SGST	√ SGST √ IGST	× CGST × UTGST	1. SGST 2. IGST
(d)	UTGST	√ UTGST √ IGST	× CGST × SGST	1. UTGST 2. IGST



[Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;

Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax] - CGST (Amendment) Act, 2018

Section 49(5) (e) of the CGST Act, 2017 the central tax shall not be utilised towards payment of State tax or Union territory tax; and

Section 49(5)(f) of the CGST Act, 2017 the State tax or Union territory tax shall not be utilised towards payment of central tax.

Example : 1

M/s X Ltd. being a registered person supplying taxable goods in the following manner:

Particulars	₹
Intra-State supply of goods	18,00,000
Inter-State supply of goods	13,00,000
Intra-State purchases	13,00,000
Inter-State purchases	1,50,000
ITC at the beginning of the relevant tax period:	
CGST	1,30,000
SGST	1,30,000
IGST	1,70,000

(i) Rate of CGST, SGST and IGST to be 9%, 9% and 18% respectively.

(ii) Inward and outward supplies are exclusive of taxes.

(iii) All the conditions necessary for availing the input tax credit have been fulfilled.

Compute the net GST payable by M/s X Ltd during the tax period. Make suitable assumptions.

Answer:

Statement showing input tax credit (i.e. Electronic Credit Ledger)

Particulars	CGST ₹	SGST ₹	IGST ₹
Opening balance	1,30,000	1,30,000	1,70,000
Add: ITC for the tax period	1,17,000	1,17,000	27,000
Total credit	2,47,000	2,47,000	1,97,000

Statement showing Net GST payable by M/s X Ltd for the tax period

Particulars	CGST ₹	SGST ₹	IGST ₹
Output tax	1,62,000	1,62,000	2,34,000
Less: ITC allowed	-2,47,000	-2,47,000	-1,97,000
Sub-total	-85,000	-85,000	37,000
Less: CGST credit adjusted against IGST	37,000	Nil	-37,000
Net GST liability	Nil	Nil	Nil
Excess ITC c/f	48,000	85,000	Nil

**Example : 2**

Mr. A has output Tax Liability of ₹ 1,00,000/- towards CGST & SGST/UGST and ₹ 20,000 towards IGST and also interest payable of ₹1800/-. Explain the manner of discharge tax liability by Mr. A in the following two independent cases:

1. Input tax credit available of CGST & SGST is ₹ 25,000/- each & IGST is ₹ 25,000/-
2. Input tax credit not available.

Answer:

Case 1:

In case Input Tax credit available-

Ledger	Particulars	CGST	SGST	IGST	Interest payable	Total
Electronic liability ledger	Output tax payable	50,000	50,000	20,000	1,800	1,21,800
Electronic credit ledger	Input Tax Credit	25,000	25,000	25,000		75,000
	Net output tax liability	25,000	25,000	-		50,000
	IGST Credit set off	5,000 (Note-1)				5,000
Electronic cash ledger	Cash to be deposited	20,000	25,000	-	1800 (Note-2)	46,800

Note-

1. IGST Credit can be adjusted against CGST & SGST.
2. Interest cannot be adjusted with Input Tax credit

Case 2:

In case Input Tax credit is not available-

Ledger	Particulars	CGST	SGST	IGST	Interest payable	Total
Electronic liability ledger	Output tax payable	50,000	50,000	20,000	1,800	1,21,800
Electronic Cash ledger	Amount to be deposited	50,000	50,000	20,000	1,800	1,21,800

Order of claiming input tax credit is as follows-

Example : 3

Y Ltd. is operating in two states Andhra Pradesh and Tamil Nadu. The tax liability for the month of August 2017 is as follows-

S.No	Tax Liability	Andhra Pradesh(₹)	Tamil Nadu(₹)
1.	Output CGST Payable	25,000	10,000
2.	Output SGST Payable	10,000	5,000
3.	Output IGST payable	3,000	2,500
4.	Input CGST	8,000	13,000
5.	Input SGST	15,000	1,500
6.	Input IGST	12,000	16,000

Calculate the tax payable for the month of August 2017.

Answer:

Net Tax payable for the month of August is as follows-



Particulars	Andhra Pradesh			Tamil Nadu		
	CGST	SGST	IGST	CGST	SGST	IGST
Output tax	25,000	10,000	3,000	10,000	5,000	2,500
Input credit available for setoff	8,000	15,000	12,000	13,000	1,500	16,000
Input credit adjusted	8,000	10,000	3,000	10,000	1,500	2,500
Tax payable after setting of ITC	17,000	-	-	-	3,500	-
Input Tax available for further set-off	-	5,000	9,000	3,000	-	13,500
Inter Adjustment of ITC	9,000	-	(9,000) (Note-1)	-	3,500	(3,500)
Net Tax payable in cash	8,000	-	-	-	-	-
Input credit carry forwarded to next month	-	5,000	-	3,000	-	10,000

Notes-

1. IGST Input tax credit can be adjusted against Output tax of liability of IGST, CGST, SGST, UTGST (set off can be done in same Order)
2. SGST Input tax credit cannot be adjusted against output CGST & Vice-Versa.
3. CGST & SGST Input tax credit of one State cannot be adjusted against Output CGST & SGST of other state (same principle is applicable to IGST credit also).

As per section 49(6) of the CGST Act, 2017 the balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54.

As per section 49(7) of the CGST Act, 2017 all liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.

As per section 49(8) of the CGST Act, 2017 every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:-

The following order shall be maintained while settling the tax liability:

Step 1	First self-assessed tax, and other dues related to returns of previous tax periods
Step 2	Self-assessed tax, and other dues related to the return of the current tax period;
Step 3	Any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74.

As per section 49(9) of the CGST Act, 2017 Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.

Explanation. — For the purposes of this section,—

- (a) the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;
- (b) the expression,-
 - (i) "tax dues" means the tax payable under this Act and does not include interest, fee and penalty; and
 - (ii) "other dues" means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder.

**Example : 4**

X Ltd. has following tax liabilities under the provisions of Act-

S.No	Particulars	Amount (₹)
1.	Tax liability of CGST, SGST/UGST, IGST for supplies made during August 2017	1,00,000
2.	Interest & Penalty on delayed payment and filing of returns belonging to August 2017	20,000
3.	Tax liability of CGST, SGST/UGST, IGST for supplies made during September 2017	1,20,000
4.	Interest & Penalty on delayed payment and filing of returns belonging to September 2017	20,000
5.	Demand raised as per section 73 or section 74 under CGST Act, 2017 belonging to July 2017	8,00,000
6.	Demand raised as per the old provisions of Indirect Taxes	1,00,000

X Ltd. has ₹ 5,00,000 in Electronic cash ledger. Suggest X Ltd. in discharging the tax liability.

Answer:

Balance in Electronic cash ledger can be used in the following manner to discharge tax liability by X Ltd.-

Particulars	Amount (₹)
Balance available in Electronic cash ledger	5,00,000
Less-	
Tax liability of CGST, SGST/UGST, IGST for supplies made during August 2017	(1,00,000)
Interest & Penalty on delayed payment and filing of returns belonging to August 2017	(20,000)
Tax liability of CGST, SGST/UGST, IGST for supplies made during September 2017	(1,20,000)
Interest & Penalty on delayed payment and filing of returns belonging to September 2017	(20,000)
Demand raised as per section 73 or section 74 under CGST Act, 2017	(2,40,000)
Balance in electronic cash ledger	Nil

The balance amount of ₹ 5,60,000 towards demand raised under section 73 or section 74 under CGST Act, 2017 to be discharged before discharging liability of demand rose under old provisions of Indirect Taxes.

Section 49A and 49B inserted vide CGST (Amendment) Act, 2018 –

49A - Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.

49B - Notwithstanding anything contained in this Chapter and subject to the provisions of clause (e) and clause (f) of sub-section (5) of section 49, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the input tax credit on account of integrated tax, central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax.

8.2 INTEREST ON DELAYED PAYMENT OF TAX

Under GST, interest is liable to be paid when there is a delay in payment. Provisions have been made for interest to be paid, when there is a lapse by the tax payer as well as by the Department.

Interest on late payment of tax by tax payer Section 50 of the CGST Act, 2017:

The two scenarios where a tax payer will be liable to pay interest are:

1. Delayed payment of tax



2. Input tax credit has been claimed in excess or where it was not eligible to be claimed/ Tax liability has been shown to be less than the actual

Interest rates Notification No. 13/2017 – Central Tax dt. 28th June 2017:

Section	Scenario	Interest rate w.e.f. 1-7-2017
50(1) of the CGST Act, 2017	Delayed payment of tax	18% per annum
50(3) of the CGST Act, 2017	A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 of the CGST Act, 2017 or undue or excess reduction in output tax liability under sub-section (10) of section 43 of the CGST Act, 2017, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be,	24% per annum

As per Section 50(2) of the CGST Act, 2017 the interest under sub-section 50(1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to paid.

Online payments even made after 8 pm will be credited on the same day to the taxpayer's account. While there will be no physical challan accepted for the GST payment while the challans will be generated from the gst.gov. in only for all the payments of taxes, fees, penalty, interest

For the payment of challan under the 10000 rupees limit, it can be done over the counter with cash, cheques, demand draft through authorised banks while for the payments exceeding the amount of ₹ 10000 will be collected through digital mode only.

Example 5:

M/s Rajendra Dyeing Pvt. Ltd. supplied goods worth ₹ 10,00,000 to M/s Y Ltd in the month of September, 2017 plus GST 12%. M/s Rajendra Dyeing Pvt. Ltd. paid the GST on 5th December 2018. The amount of input tax credit is 70,000 is available in the books. Calculation of interest payment if any under section 50 of the CGST Act, 2017.

Answer:

Tax	= ₹1,20,000
Less: ITC	= ₹ (70,000)
Tax payable	= ₹ 50,000

Interest shall be calculated from the next day of the due date of payment from 21st October 2017 to the actual date of payment i.e. 5th December 2018.

*Interest is ₹ 50,000*18%*411/365 = ₹10,134/-*

Example : 6

M/s Nose Ltd. reduced the amount of ₹ 2,25,000 from the output tax liability in contravention of the provisions of section 42(10) of the CGST Act, 2017 in the month of January 2018 (vide invoice date 12.01.2018), which is ineligible credit at invoice level. As a result a show cause notice issued Central Tax Department under section 74 of the CGST Act, 2017 along with interest. M/s Nose Ltd paid the tax and interest on 5th March 2018. Find the interest liability if any?

Note: ignore the penalty.

**Answer:**

As per section 42(10) read with section 50(3) of the CGST Act, 2017 amount reduced from the output tax liability in contravention of the provisions of section 42(7) shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable to pay interest on the amount so added at the rate specified in section 50(3) of the CGST Act, 2017.

Therefore, applicable rate of interest is @24% per annum.

January month return due date is 20th of February 2018.

Interest = ₹ 1,923/- (₹ 2,25,000 x 24% x 13/365)

Note: from 21st February 2018 to 5th March 2018 = 13 days

Case Law 1:

- (1) Jeevan Diesels & Electricals Ltd. v. Commissioner of Central Excise, Pondichery (2016) 68 [taxmann.com](#) 325 (Chennai-CESTAT):

Hon'ble Tribunal held that interest under Section 50 of the CGST Act, 2017 should be computed in accordance with interest rate in force during the period of delay.

- (2) Interest payable for actual period of delay, not for whole month (BPL Mobile v. CCE (2005) 1 STT 140 (CESTAT)).
- (3) Interest is payable even if duty is paid before issue of show cause notice **[(CC v. Toyota Kirloskar Motors (2015) 52 GST 1208 (SC))]**

Interest is not applicable in the following cases:

- (1) No interest is payable if excise duty is paid voluntarily by assessee before show cause notice, even when demand was time barred [CCE v Gujarat Narmada Fertilizers Co. Ltd. (2012) 285 ELT 336 (Guj HC DB)]
- (2) No interest is payable if there was delay in payment of duty by one department of Government to other, because it is only adjustment from one account to other [CCE v. General Manager, Telecom (2012) 37 STT 433 (CESTAT)]

Interest to be paid by the department

The three scenarios where the Department is liable to pay interest on delayed payment to a tax payer are

- Section 54(12) of the CGST Act, 2017: Refund of tax has been withheld from a person on account of an appeal or proceeding but which is later found to be eligible to be paid.
- Section 56 of the CGST Act, 2017: Refund of tax has not been given to a person within 60 days from the date of receipt of application for refund
- Provision to section 56 of the CGST Act, 2017: Refund ordered by an adjudicating authority or Appellate Authority or Appellate Tribunal or court has not been paid to a person within 60 days from the date of receipt of application for refund.

Interest rates:

Section	Scenario	Interest rate per annum
Section 54(12) of the CGST Act, 2017	Refund of tax has been withheld from a person on account of an appeal or proceeding but which is later found to be eligible to be paid.	6%



Section 56 of the CGST Act, 2017	Refund of tax has not been given to a person within 60 days from the date of receipt of application for refund	6%
Proviso to Section 56 of the CGST Act, 2017	Refund ordered by an adjudicating authority or Appellate Authority or Appellate Tribunal or court has not been paid to a person within 60 days from the date of receipt of application for refund.	9%

Note: As per Section 54(14) of the CGST ACT, 2017 no refund shall be granted if refund amount is less than ₹ 1,000/-. Since, no refund is granted under Section 54(14) of the CGST Act, 2017, no interest is payable by the Department .

Interest on refund

Example 7:

X Ltd. manufactured and cleared taxable goods on 1st August 2017 for ₹ 20,00,000 plus GST 12%. After payment of GST on or before the due date, it is noticed that these goods are exempted from GST and applied for want refund of GST on 15th November 2017. Department acknowledged the receipt on 15th December November 2017. Department granted the refund on 23rd January 2018.

Find the interest if any on delay refund.

Note: X Ltd. not passed ITC to recipient of supply.

Answer:

From 15th November 2017 to 22nd January 2018 = 69 days

Less: from 15th November 2017 to 13th Jan 2018 = (60) days

No. of days delay = 9 days

Interest = ₹ 355/- (i.e. 2,40,000 x 6% x 9/365)

Case Law 2:

Kanyaka Parameshwari Engineering Ltd. v. Comm. Of Cus. & Cx 2012 (26) STR 380 (A.P.)

Facts of the case:

Whether the interest on delayed refund u/s 56 of the CGST Act, 2017 would be payable from the date of deposit of duty or after expiry of 60 days from the date of receipt of application for refund?

Decision:

The interest shall be paid on such tax from the date immediately after expiry of 60 days from the date of receipt of such application till the date of the refund of such tax.

Case Law 3:

Ranbaxy Laboratories Ltd. v. UOI 2011 (273) E.L.T. 3 (S.C.)

Facts of the case:

Whether the interest on delayed refund u/s 56 of the CGST Act, 2017 would be payable from the date on which order of refund is made by the judiciary or after expiry of 60 days from the date of receipt of application for refund?

Decision:

Sec. 54 of the CGST Act, 2017 (i.e. refund of tax) comes into play only after an order for refund has been made under Sec. 54(12) of the CGST Act, 2017. However, the liability to pay interest under proviso to Sec. 56 commences from the date of expiry of 60 days from the date of receipt of application for refund and not on the expiry of the said period from the date on which order of refund is made.



8.3 REFUND OF TAX

As per section 54(1) of the CGST Act, any person claiming refund of any tax and interest, if any paid on such tax or any other amount paid by him, may make an application before the expiry of 2 Years from the relevant date in such form and manner as may be prescribed.

Explanation (2), to section 54 of the CGST Act, 2017 "relevant date" means—

- (a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,—
 - (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or
 - (ii) if the goods are exported by land, the date on which such goods pass the frontier; or
 - (iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;
- (b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;
- (c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of—
 - (i) receipt of payment in convertible foreign exchange, where the supply of services had been completed prior to the receipt of such payment; or
 - (ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;
- (d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;
- (e) in the case of refund of unutilised input tax credit under sub-section (3), the end of the financial year in which such claim for refund arises;
- (f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;
- (g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and
- (h) in any other case, the date of payment of tax.

Study Note - 9

TDS & TCS UNDER GST



This Study Note includes

9.1 Tax Deduction at Source (TDS)

9.2 Collection of Tax at Source (TCS)

9.1 TAX DEDUCTION AT SOURCE (TDS)

Section 51 (1), refers to TDS related mandating by Central/State Government. Such mandating shall be for the following persons -

- a. Department or Establishment of Central Government or State Government
- b. Local Authority.
- c. Government Agencies.
- d. Persons or category of persons notified by the Central Government on recommendation of the Council. Notification No. 50/2018 – Central Tax dated 13.09.2018 notifies the following persons under Section 51(1)(d) as liable for TDS;
 - (a) an authority or a board or any other body, -
 - (i) set up by an Act of Parliament or a State Legislature; or
 - (ii) established by any Government,with fifty-one percent or more participation by way of equity or control, to carry out any function;
 - (b) society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);
 - (c) public sector undertakings:

Post audit authorities under Ministry of Defence exempted from TDS compliance vide Notification No 57/2018 – Central Tax dated 23-10-2018

Supply of goods and/or services from a PSU to another PSU, whether a distinct person or not, is exempt from TDS provisions vide Notification No 61/2018 – Central Tax dated 05-11-2018

The Central Government has appointed 01.10.2018 as the date on which the provisions of Section 51 (TDS) shall come into force.

1. The above 'persons' are referred to as deductors.
2. The deductors have to deduct tax at the rate of 2% from the payment made or credited to the supplier of taxable goods and/or services, notified by the Central Government or State Government on the recommendations of the Council. Deduction is required where the total value of supply under 'a contract' exceeds INR 2.5 lakhs. Value of supply shall exclude the tax indicated in the invoice. No deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.
3. The amount deducted shall be paid to the Central Government within ten days after the end of the month in which such deduction is made.

Sub Rule 9 of rule 87 of the CGST rules provides) that payment shall be made by debiting the electronic cash ledger and crediting the electronic tax liability register.



4. As per Rule 66, the deductor shall furnish a TDS certificate in Form GSTR-7A to the deductee mentioning therein the following:
 - (a) contract value
 - (b) rate of deduction
 - (c) Amount deducted
 - (d) Amount paid to the appropriate Government
 - (e) Any other particulars as may be prescribed
5. This certificate has to be furnished within five days of remittance as mentioned above.
6. Certificate not furnished by the deductor: - If the deductor does not furnish the certificate of deduction-cum-remittance within five days of the remittance, the deductor has to pay a late fee of INR 100 per day from the 6th day until the day he furnishes the certificate. The maximum late fee is prescribed as INR 5000.
7. Non-remittance by the deductor: If the deductor does not remit the amount deducted as TDS, he is liable to pay penal interest under Section 50 in addition to the amount of tax deducted.
8. The amount of tax deducted reflected in Electronic Cash Ledger of deductee in the return in Form GSTR-7 filed by deductor shall be claimed as credit. This provision enables the Government to cross-check whether the amount deducted by the deductor is correct and that there is no mis-match between the amount reflected in the Electronic Cash Ledger as reflected in the return filed by deductor. One may draw easy analogy from existing practice in income tax related E-TDS returns filed by deductor and 26AS statement available for viewing the TDS remitted in respect of his transactions by deductee.
9. Refund on excess collection: The deductor or the deductee can claim refund of excess deduction or erroneous deduction. The provisions of section 54 relating to refunds would apply in such cases. However, if the amount deducted has been credited to the Electronic Cash Ledger of the deductee, the deductor cannot claim refund (only deductee can claim).
10. Illustrative List of various Supplies on which TDS may or may not require to be deducted –

Supply in GST covers both supply of goods as well as supply of services by vendors/suppliers to the Government Departments, local authorities and other recipients.

Examples of supply of goods and services to Government/local authorities:

Procurement of stationery items, toilet articles, towels, furniture, air-conditioning machines, electrical goods, books and periodicals & medicines, food and beverage for employees or other stakeholders, computers and printers, books, Procurement of security services, car rental services, generator rental services, consultants services, legal services, rental services like office building/land taken on rent, maintenance services, rental of machinery, Works Contract services such as road, bridge, building development/renovation/repairing/maintenance services, etc

As per Sec 2(108) of The CGST Act 2017 Taxable Supply means supply of goods or services or both which is leviable to tax under GST

As per Sec 2(47) of The CGST Act 2017 Exempt supply means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11 of the CGST/SGST Acts or under section 6 of the IGST Act, and includes non-taxable supply.

It is to be noted that TDS is not required to be deducted on supply of exempt goods or services. For example, incase a PSU/ GovtDept receives GST books for all its employees, no TDS is required to be deducted since GST books are exempt supplies.

Similarly incase a PSU/ GovtDept avails the services of a medical practitioner, no TDS is required to be deducted.
11. When tax deduction is required to be made in GST and at what rate:

The deductors have to deduct tax at the rate of 2% from the payment made or credited to the supplier of taxable goods and/or services, notified by the Central Government or State Government on the recommendations of the Council. Deduction is required where the total value of supply under 'a contract' exceeds INR 2.5 lakhs.



Value of supply shall exclude the tax indicated in the invoice. No deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.

Hence, Tax deduction is required if all the following conditions are satisfied –

- (a) Total value of taxable supply > ₹ 2.5 Lakh under a single contract. This value shall exclude taxes & cess leviable under GST.

Eg.– Incase the value of 1 contract for printing material is ₹ 3 Lakhs plus GST and the same is received vide 6 invoices of ₹ 50,000/- plus GST each in 18-19 and 19-20. TDS is required to be deducted on each bill

Eg.– Incase the value of 6 contracts for printing material from the same vendor A is ₹ 50,000/- plus GST each and the same is received vide 6 invoices of ₹ 50,000/- plus each. TDS is not required to be deducted on any bill

Eg. – Incase the value of 1 contract for printing material from a vendor A is ₹ 2,75,000/- inclusive of 18% GST. TDS is not required to be deducted as the value of contract exclusive of GST is less than ₹ 2,50,000/-

- (b) If the contract is made for both taxable supply and exempted supply, deduction will be made if the total value of taxable supply in the contract > ₹ 2.5 Lakh. This value shall exclude taxes & cess leviable under GST.

Eg. – Incase the value of 1 contract for printing material and books from a vendor A is ₹ 3,50,000/- plus GST as applicable. Value of books is ₹ 1,00,000/- (GST is exempt) and Value of printing material is ₹ 2,50,000/- (GST chargeable). TDS is not required to be deducted as the value of contract of taxable goods (printing material) is not exceeding ₹ 2,50,000/-.

Eg. – Incase the value of 1 contract for printing material and books from a vendor A is ₹ 4,00,000/- plus GST as applicable. Value of books is ₹ 1,00,000/- (GST is exempt) and Value of printing material is ₹ 3,00,000/- (GST chargeable). TDS is required to be deducted on only the value of contract of taxable goods (printing material) of ₹ 3,00,000/-

- (c) Where the location of the supplier and the place of supply are in the same State/UT, it is an intra-State supply and TDS @ 1% each under CGST Act and SGST/UTGST Act is to be deducted if the deductor is registered in that State or Union territory without legislature

Eg.– Incase material is purchased by A (WB) from B (WB) where value of contract of taxable goods (printing material) of ₹ 3,00,000/- plus GST, GST is liable to be deducted as follows –

1% CGST on ₹ 3,00,000/- = ₹ 3,000/-

1% SGST on ₹ 3,00,000/- = ₹ 3,000/-

- (d) Where the location of the supplier is in State A and the recipient of supply is in another State or Union territory B. However, if the customer is in the same state A, then it is intra-State supply and TDS @ 1% under CGST Act and @ 1% under SGST Act is to be deducted as the deductor is registered in State or Union territory A.

Where the location of the supplier is in State A and the recipient of supply is in another State or Union territory B. However, if the customer is in the yet another state C, then it is inter-State supply and TDS @ 2% under IGST Act is to be deducted as the deductor is not registered in State or Union territory A.

Eg.– Incase material is purchased by B (WB) from A (WB) but to be delivered to C(TN) and where value of contract of taxable goods (printing material) of ₹ 3,00,000/- plus GST, GST is liable to be deducted as follows –

1% CGST on ₹ 3,00,000/- = ₹ 3,000/-

1% WB SGST on ₹ 3,00,000/- = ₹ 3,000/-

Eg.– Incase material is purchased by B (WB) from A (Bihar) but to be delivered to C(TN) and where value of contract of taxable goods (printing material) of ₹ 3,00,000/- plus GST, GST is liable to be deducted as follows –

2% IGST on ₹ 3,00,000/- = ₹ 6,000/-



- (e) When advance is paid to a supplier on or after 01.10.2018 to a supplier for supply of taxable goods or services or both

Eg.—In case contract of ₹ 3,00,000/- plus GST is made on 30th September 2018 but neither supply of goods nor payment is made on that day. Thereafter advance is made on 1st October 2018 of ₹10,000/- plus GST. Herein TDS will be deducted on the advance of ₹10,000/- made on 1st October 2018.

- (f) When The contract value is revised

Eg.—A contract with a supplier ABC was entered into where the value of taxable supply is ₹ 2 Lakh and payment of ₹ 1 Lakh has been made on 15.10.2018. Now, on 20.10.2018 the contract value is revised from ₹ 2 Lakh to ₹6 Lakh. In this case TDS shall have to be deducted on entire amount i.e. ₹ 6 lakhs while making remaining payment of ₹ 5 Lakh. In other words, 12,000/- would be deducted when remaining payment of ₹ 5 Lakh is made.

Guidelines for Deductions and Deposits of TDS by the DDO under GST

The GST Council provides Guidelines for Deductions and Deposits of TDS by the DDO under GST.

For the process of deduction and deposit of TDS, the DDO can follow any of the following two options :

- i. Individual Bill-wise deduction and its deposit to the Government by DDO
- ii. Bunching of deductions and its deposit by DDO

The DDO has to file GSTR -7 by 10th of next month and must generate TDS certificate through the GSTN portal in GSTR-7A. The process flow for Option I and Option II are described as under:

Option I - Individual Bill-wise Deduction and its Deposit by the DDO

In this option, the DDO will have to deduct as well as deposit the GST TDS for each bill individually by generating a CPIN (Challan) and mentioning it in the Bill itself.

Following process shall be followed by the DDO in this regard:

- (i) The DDO shall prepare the Bill based on the Expenditure Sanction. The Expenditure Sanction shall contain the (a) Total amount, (b) net amount payable to the Contractor/Supplier/Vendor and (c) the 2% TDS amount of GST.
- (ii) The DDO shall login into the GSTN Portal (using his GSTIN) and generate the CPIN (Challan). In the CPIN he shall have to fill in the desired amount of payment against one/many Major Head(s) (CGST/SGST/UTGST/IGST) and the relevant component (e.g. Tax) under each of the Major Head.
- (iii) While generating the CPIN, the DDO will have to select mode of payment as either (a) NEFT/RTGS or (b) OTC. In the OTC mode, the DDO will have to select the Bank where the payment will be deposited through OTC mode.
- (iv) The DDO shall prepare the bill on PFMS (in case of Central Civil Ministries of Govt), similar payment portals of other Ministries/Departments of Govt or of State Governments for submission to the respective payment authorities.
- (v) In the Bill,
 - (a) the net amount payable to the Contractor; and
 - (b) 2% as TDSwill be specified
- (vi) In case of NEFT/RTGS mode, the DDO will have to mention the CPIN Number (as beneficiary's account number), RBI (as beneficiary) and the IFSC Code of RBI with the request to payment authority to make payment in favour of RBI with these credentials.
- (vii) In case of the OTC mode, the DDO will have to request the payment authority to issue 'A' Category



Government Cheque in favour of one of the 25 authorized Banks. The Cheque may then be deposited along with the CPIN with any of branch of the authorized Bank so selected by the DDO.

- (viii) Upon successful payment, a CIN will be generated by the RBI/Authorized Bank and will be shared electronically with the GSTN Portal. This will get credited in the electronic Cash Ledger of the concerned DDO in the GSTN Portal. This can be viewed and the details of CIN can be noted by the DDO anytime on GSTN portal using his Login credentials.
- (ix) The DDO should maintain a Register as per proforma given in Annexure 'A' to keep record of all TDS deductions made by him during the month. This Record will be helpful at the time of filing Monthly Return (FORM GSTR-7) by the DDO. The DDO may also make use of the offline utility available on the GSTN Portal for this purpose.
- (x) The DDO shall generate TDS Certificate through the GST Portal in FORM GSTR-7A after filing of Monthly Return.

Option II - Bunching of deductions and its deposit by the DDO

Option-I may not be suitable for DDOs who make large number of payments in a month as it would require them to make large number of challans during the month. Such DDOs may exercise this option wherein the DDO will have to deduct the TDS from each bill, for keeping it under the Suspense Head. However, deposit of this bunched amount from the Suspense Head can be made on a weekly, monthly or any other periodic basis.

Following process shall be followed by the DDO in this regard:

- (i) The DDO shall prepare the Bill based on the Expenditure Sanction. The Expenditure Sanction shall contain the (a) Total amount, (b) net amount payable to the Contractor/Supplier/Vendor and (c) the 2% TDS amount of GST.
- (ii) The DDO shall prepare the bill on PFMS (in case of Central Civil Ministries of GoI), similar payment portals of other Ministries/Departments of GoI or of State Governments for submission to the respective payment authorities.
- (iii) In the Bill, it will be specified
 - (a) the net amount payable to the Contractor; and
 - (b) 2% as TDS
- (iv) The TDS amount shall be mentioned in the Bill for booking in the Suspense Head (8658 - Suspense; 00.101 - PAO Suspense; xx – GST TDS)
- (v) The DDO will require to maintain the Record of the TDS so being booked under the Suspense Head so that at the time of preparing the CPIN for making payment on weekly/monthly or any other periodic basis, the total amount could be easily worked out.
- (vi) At any periodic interval, when DDO needs to deposit the TDS amount, he will prepare the CPIN on the GSTN Portal for the amount (already booked under the Suspense Head).
- (vii) While generating the CPIN, the DDO will have to select mode of payment as either (a) NEFT/RTGS or (b) OTC. In the OTC mode, the DDO will have to select the Bank where the payment will be deposited through OTC mode.
- (viii) The DDO shall prepare the bill for the bunched TDS amount for payment through the concerned payment authority. In the Bill, the DDO will give reference of all the earlier paid bills from which 2% TDS was deducted and kept in the suspense head. The DDO may also attach a certified copy of the record maintained by him in this regard.
- (ix) The payment authority will pass the bill by clearing the Suspense Head operated against that particular DDO after exercising necessary checks.
- (x) In case of NEFT/RTGS mode, the DDO will have to mention the CPIN Number (as beneficiary's account number), RBI (as beneficiary) and the IFSC Code of RBI with the request to payment authority to make payment in favour of RBI with these credentials.



- (xi) In case of the OTC mode, the DDO will have to request the payment authority to issue 'A' Category Government Cheque in favour of one of the 25 authorized Banks. The Cheque may then be deposited along with the CPIN with any of branch of the authorized Bank so selected by the DDO.
- (xii) Upon successful payment, a CIN will be generated by the RBI/Authorized Bank and will be shared electronically with the GSTN Portal. This will get credited in the electronic Cash Ledger of the concerned DDO in the GSTN Portal. This can be viewed and the details of CIN can be noted by the DDO anytime on GSTN portal using his Login credentials.
- (xiii) The DDO should maintain a Register as per proforma given in Annexure 'A' to keep record of all TDS deductions made by him during the month. This Record will be helpful at the time of filing Monthly Return (FORM GSTR-7) by the DDO. The DDO may also make use of the offline utility available on the GSTN Portal for this purpose.
- (xiv) The DDO shall file the Return in FORM GSTR-7 by 10th of the following month
- (xv) The DDO shall generate TDS Certificate through the GSTN Portal in FORM GSTR-7A.

Further, the above circular has been amended by **Circular No67/41/2018 dated 28/09/2018** - Guidelines for deductions and deposits of TDS by the DDO under GST have been modified. DDOs can now account TDS bunched together below the Head 8658.00.101-PAO where a suspense account has been opened.

12.2 COLLECTION OF TAX AT SOURCE (TCS)

After deferring the provisions related to TDS & TCS since the implementation of GST, Government has, vide **Notification No. 50/2018 – Central Tax dated September 13, 2018 and Notification No. 51/2018 – Central Tax dated September 13, 2018**, appointed 1st October, 2018 as the date from which the said provisions shall be made applicable. Here are the Salient features of TCS with examples -

1. TCS stands for the tax collection at source. It is a concept borrowed from the Income Tax. Basically the payer (viz. collector) is required to collect some amount as tax while making the payment to the supplier. Such amount shall be collected separately over and above the invoice value. Hence let us say INR 1180 is the invoice value (Basic amount is INR 1000 plus tax is INR 180). Then the payer shall collect 1% (i.e. INR 10) and make the payment of such tax to the Government. Net amount of INR 1170 (i.e. 1180-10) shall be paid to the concerned supplier.

On the other hand, supplier can claim credit of the tax so collected while discharging his liabilities. It acts as a powerful instrument to prevent tax evasion and expands the tax net, as it provides for the creation of an audit trail
2. Only companies who are in the business of providing such platform for electronic commerce shall be regarded as electronic commerce operators. Hence companies like Amazon, Flipkart, etc. which displays/lists on their portal products as well as services which are actually supplied by some other person to the consumer are electronic commerce operator. On placing the order for a particular product/ services the actual supplier supplies the selected product/services to the consumer. The price/consideration for the product/services is collected by the Operator from the consumer and passed on to the actual supplier after deducting his commission by the Operator. Such Operator is only required to collect the tax at source.
3. Every E-Commerce Operator, other than an agent, shall collect TCS at a rate not exceeding 1% on the net value of transaction in which he collects consideration of the supply.
4. The "net value of taxable supplies" means the aggregate value of taxable supplies of goods or services or both, other than the services on which entire tax is payable by the e-commerce operator, made during any month by a registered supplier through such operator reduced by the aggregate value of taxable supplies returned to such supplier during the said month.

An e-commerce company is required to collect tax only on the net value of taxable supplies made through it. In other words, value of the supplies which are returned (supply return) may be adjusted from the aggregate value of taxable supplies made by each supplier (i.e. on GSTIN basis). In other words, if two suppliers "A" and "B" are making supplies through an ecommerce operator, the "net value of taxable supplies" would be calculated separately in respect of "A" and "B". If the value of returned supplies is more than supplies made on behalf of any of such supplier during any tax period, the same would be ignored in his case. If returns are



more than the supplies made during any tax period, the same would be ignored in current as well as future tax period(s).

The value of net taxable supplies is calculated at GSTIN level.

Please note that if there is returning of supplies to Suppliers, then the same shall be reduced from the gross value; TCS shall be worked on such net figure only (after such reduction).

5. Net Value of Taxable Supplies = [(Aggregate Value of Taxable Supplies of Goods + Services) – (Section 9(5) Services)] – (Aggregate Value of Returned Taxable Supplies + Goods)]

Let us take an example to understand. Gross taxable value of supplies made by a particular supplier in a month is let us say INR 10 lakhs. During the said month, the aggregate value of supplies returned (original supply might have been done during the same month or even before) is INR 1 lakhs. Then, as per the above definition, "net value of taxable supplies" shall be INR 9 lakhs on which TCS is to be collected for that particular month.

It may be noted that the "value of taxable supplies" shall not include the GST since Sec. 15(2)(a) of the CGST Act, 2017 clearly excludes the same.

It may also be noted that the value of services notified u/s 9(5) are to be excluded. As per **Notification No. 17/2017-Central Tax (Rate) dated 28.06.2017** following supplies have been notified u/s 9(5):

- (a) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle
- (b) services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the said Central Goods and Services Tax Act
- (c) services by way of house-keeping, such as plumbing, carpentering etc., except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the said Central Goods and Services Tax Act

In all the above three cases, since the electronic commerce operator has been made liable to pay the tax as if he is the supplier u/s 9(5), there is no requirement to collect TCS.

6. It is pertinent to note the following definitions here –

Section 2 (44), – "electronic commerce" means the supply of goods or services or both, including digital products over digital or electronic network;

Section 2 (45), – "electronic commerce operator" means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce

7. Every e-commerce operator is required to collect tax where the supplier is supplying goods or services through e-commerce operator and consideration with respect to the supply is to be collected by the said e-commerce operator.

There is no threshold exemption from TCS once the above cited conditions are fulfilled. However, the supplies made by the electronic commerce operator on its own account are not subject to TCS requirements since the above stated conditions are not fulfilled.

8. Rate of TCS is 0.5% under each Act (i.e. the CGST Act, 2017 and the respective SGST Act/UTGST Act respectively) and the same is 1% under the IGST Act, 2017. Notifications No. 52/2018 – Central Tax and 02/2018-Integrated Tax both dated 20th September, 2018 have been issued in this regard. Similar notifications have been issued by the respective State Governments also.
9. TCS is not required to be collected on exempt supplies.
10. TCS is not required to be collected on supplies on which the recipient is required to pay tax on reverse charge basis.
11. TCS is not liable to be collected on any supplies on which the recipient is required to pay tax on reverse charge basis. As far as import of goods is concerned since same would fall within the domain of Customs Act, 1962, it would be outside the purview of TCS. Thus, TCS is not liable to be collected on import of goods or services.



12. As per section 10(2)(d) of the CGST Act, 2017, a composition taxpayer cannot make supplies through e-commerce operator.
13. TCS is to be collected once supply has been made through the e-commerce operator and where the business model is that the consideration is to be collected by the ecommerce operator irrespective of the actual collection of the consideration. For example, if the supply has taken place through the ecommerce operator on 30th November, 2018 but the consideration for the same has been collected in the month of December, 2018, then TCS for such supply has to be collected and reported in the statement for the month of November, 2018.
16. The amount collected so shall be paid to the Central/State Government respectively within ten days after the end of the month in which such collection is made.
Payment of TCS is not allowed through Input Tax Credit of e-Commerce operator
17. TCS collected is to be deposited by the ecommerce operator separately under the respective tax head (i.e. Central tax/State tax/Union territory tax/Integrated tax). Based on the statement (FORM GSTR-8) filed by the ecommerce operator, the same would be credited to the electronic cash ledger of the actual supplier in the respective tax head. If the supplier is not able to use the amount lying in the said cash ledger, the actual supplier may claim refund of the excess balance lying in his electronic cash ledger in accordance with the provisions contained in section 54(1) of the CGST Act, 2017.
18. In case the E-commerce operator fails to collect tax under sub-section 1 of section 52 or collects an amount which is less than the amount required to be collected under said sub-section or where he fails to pay to the government the amount collected as tax under sub-section 3 of section 52, he shall be liable to penalty under clause (vi) of subsection 1 of section 122 of the Act which may extend to twenty five thousand along with penalty under of i.e. ₹10,000 or the amount of TCS involved, whichever is higher.
19. As per section 24(x) of the CGST Act, 2017, every electronic commerce operator has to obtain compulsory registration irrespective of the value of supply made by him.
20. As per Section 24(ix) of the CGST Act, 2017, every person supplying goods through an ecommerce operator shall be mandatorily required to register irrespective of the value of supply made by him. However, a person supplying services, other than supplier of services under section 9(5) of the CGST Act, 2017, through an e-commerce platform are exempted from obtaining compulsory registration provided their aggregate turnover does not exceed INR 20 lakhs (or INR 10 lakhs in case of specified special category States) in a financial year. Government has issued the notification No. 65/2017 – Central Tax dated 15th November, 2017 in this regard.
21. As per the extant law, registration for TCS would be required in each State/UT as the obligation for collecting TCS would be there for every intra-State or inter-State supply. In order to facilitate the obtaining of registration in each State/UT, the e-commerce operator may declare the Head Office as its place of business for obtaining registration in that State/UT where it does not have physical presence.
22. Where registered supplier is supplying goods or services through a foreign e-commerce operator to a customer in India, such foreign ecommerce operator would be liable to collect TCS on such supply and would be required to obtain registration in each State/UT. If the foreign e-commerce operator does not have physical presence in a particular State/UT, he may appoint an agent on his behalf.
23. E-Commerce operator has to obtain separate registration for TCS irrespective of the fact whether e-Commerce operator is already registered under GST as a supplier or otherwise and has GSTIN.
24. E-Commerce operator shall furnish details of outward supplies of goods or services or both made through it, including the supplies returned through it and the amount collected by it in sub-section 1, in Form GSTR-8 within the 10 days after end of the month in which supplies are made.
25. As per Rule 46 of the CGST Rules, 2017 there is no requirement to indicate TCS on the invoice issued by the concerned supplier.
26. The details of tax collected at source furnished by an E-commerce operator under section 52 in Form GSTR-8 shall be made available to the supplier in Part D of FORM GSTR - 2A electronically through the Common



Portal and such taxable person may include the same in FORM GSTR-2."

27. Section 52(5) of CGST Act requires filing of Annual Statement by E-Commerce operator on or before 31st December following the year end (31st March of relevant year).
28. The amount of tax collected is reflected in Electronic Cash Ledger of supplier since related monthly return is filed by E-Commerce Operator.
29. As on date there is no concept of TCS certificate.
30. Any mismatch between the data submitted by the E-Commerce operator in his monthly returns and that of suppliers making supplies through him shall cause due 'mismatch enquiry' from the proper officer; and either party may rectify the erroneous data. If rectification is not carried out by supplier his offences get confirmed. Short remittance, if any, identified thus will have to be paid by erring supplier (who under reported the turnover) with interest calculated as per Section 50.
31. Any authority, in the rank of Deputy Commissioner or above it can issue a notice – during, or before a proceeding under this Act - to E Commerce Operator seeking information on –
 - (a) supplies of goods or services or both effected through such operator during any period; or
 - (b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.

This shall be a notice which need to be responded within 15 days from the date of receipt by the E Commerce Operator. Failure to submit the required details will cause penalty under Section 52 (14) of the Act which may extend to ₹ 25,000.

32. Consequences of not complying with the TCS provisions -

Sr.No.	Event	Consequence
1	TCS not collected	As per Sec. 122(1)(vi) of the CGST Act, 2017 failure to collect the tax as per Sec. 52(1) can invite penalty of INR 10,000/- or the amount not collected or short collected, whichever is higher.
2	TCS collected but not paid to the Government	Sec. 76 of the CGST Act, 2017 may be invoked by the officer to recover such TCS along with interest. Penalty u/s 122(1)(vi) may also be imposed subject to principles of natural justice.
3	Late filing of TCS returns	Provisions of Sec. 47 of the CGST Act, 2017 imposing late fees shall not apply to the TCS return since the same is to be filed u/s 52(4) of the said Act (which is not covered u/s 47). However general penalty up to INR 25,000/- can be imposed u/s 125. It must however be noted that unless the return is filed, the concerned supplier shall not get the credit in his electronic cash ledger.

33. The operator is also required to file an annual statement by 31st day of December following the end of the financial year in which the tax was collected in FORM GSTR-9B.
34. As per section 12(11) of the IGST Act, 2017, the address on record of the customer with the supplier of services is the place of supply, for ecommerce operator for recharge of talk time of the Telecom Operator/recharge of DTH/in relation to convenience fee charged from the customers on booking of air tickets, rail supplied through its online platform
35. Under multiple ecommerce model, Customer books a Hotel via ECO-1 who in turn is integrated with ECO-2 who has agreement with the hotelier. In this case, ECO-1 will not have any GST information of the hotelier. TCS is to be collected by that e-Commerce operator who is making payment to the supplier for the particular supply happening through it, which is in this case will be ECO-2.
36. How shall the amount collected in excess be refunded -



As per Sec. 52(6) of the CGST Act, 2017 any errors or omissions in the return filed can be corrected subject to certain time limit. However there is no specific provision to seek refund of the tax collected in excess. Hence the concerned supplier can claim the credit of such excess tax in his cash ledger and utilize the same.

37. There are cases in which the ECO does not provide invoicing solution to the seller. In such cases, invoice is generated by the seller and received by the buyer without ECO getting to know about it. The payment flows through the ECO. In such cases, on what value is TCS to be collected? Can TCS be collected on the entire value of the transaction -

Section 52(1) of the CGST Act, 2017 mandates that TCS is to be collected on the net taxable value of such supplies in respect of which the ECO collects the consideration. The amount collected should be duly reported in GSTR-8 and remitted to the Government. Any such amount collected will be available to the concerned supplier as credit in his electronic cash ledger.

38. There are sellers who are selling exempted or zero-tax goods like books through ECOs. Will marketplaces be required to collect TCS on such supplies -

As per Section 52(1) of the CGST Act, 2017 TCS is to be collected on "the net value of taxable supplies" made through an ECO. When the supply itself is not taxable, the question of TCS does not arise.

39. I am a supplier selling my own products through a web site hosted by me. Do I fall under the definition of an "electronic commerce operator"? Am I required to collect TCS on such supplies

As per the definitions in Section 2 (44) and 2(45) of the CGST Act, 2017, you will come under the definition of an "electronic commerce operator". However, according to Section 52 of the Act *ibid*, TCS is required to be collected on the net value of taxable supplies made through it by other suppliers where the consideration is to be collected by the ECO. In cases where someone is selling their own products through a website, there is no requirement to collect tax at source as per the provisions of this Section. These transactions will be liable to GST at the prevailing rates.

40. We purchase goods from different vendors and are selling them on our website under our own billing. Is TCS required to be collected on such supplies -

No. According to Section 52 of the CGST Act, 2017, TCS is required to be collected on the net value of taxable supplies made through it by other suppliers where the consideration is to be collected by the ECO. In this case, there are two transactions - where you purchase the goods from the vendors, and where you sell it through your website. For the first transaction, GST is leviable, and will need to be paid to your vendor, on which credit is available for you. The second transaction is a supply on your own account, and not by other suppliers and there is no requirement to collect tax at source. The transaction will attract GST at the prevailing rates

Collection of tax at source by Tea Board of India

The GST council clarifies issue regarding Tea Board of India (hereinafter referred to as the, "Tea Board"), being the operator of the electronic auction system for trading of tea across the country including for collection and settlement of payments, admittedly falls under the category of electronic commerce operator liable to collect Tax at Source (hereinafter referred to as, "TCS") in accordance with the provisions of section 52 of the Central Goods and Service Tax Act, 2017- whether they should collect TCS under section 52 of the CGST Act from the sellers of tea (i.e. the tea producers), or from the auctioneers of tea or from both.

Accordingly, it is clarified, that TCS at the notified rate, in terms of section 52 of the CGST Act, shall be collected by Tea Board respectively from the -

- (i) sellers (i.e. tea producers) on the net value of supply of goods i.e. tea; and
- (ii) auctioneers on the net value of supply of services (i.e. brokerage).

Study Note - 10

RETURNS UNDER GST



This Study Note includes

- 10.1 Furnishing of Returns
- 10.2 First Return
- 10.3 Revision of Returns
- 10.4 Penalty/Late Fee
- 10.5 Highlights of Proposed New Returns

GENERAL PROVISION RELATING TO RETURNS UNDER GST.

What is Return.?

"Return" means any return prescribed or otherwise required to be furnished by or under this Act or the rules made thereunder [Section 2(97)].

A return is a document containing details of income which a taxpayer is required to file with the tax administrative authorities.

This is used by tax authorities to calculate tax liability.

Under GST, a registered dealer has to file GST returns that include:

- Purchases
- Sales
- Output GST (On sales)
- Input tax credit (GST paid on purchases)

Who should file GST Returns?

In the GST regime, any regular business has to file two monthly returns and one annual return. This amounts to 26 returns in a year.

The beauty of the system is that one has to manually enter details of one monthly return – GSTR-1.

The other return GSTR 3B will get auto-populated by deriving information from GSTR-1 filed by you and your vendors.

There are separate returns required to be filed by special cases such as composition dealers.

10.1 FURNISHING OF RETURNS

To meet the concept of digital India, the Government of India made it mandatory to file all returns electronically.

Moreover, one of the basic features of the returns mechanism in GST include electronic filing of returns, uploading of invoice level information and auto-population of information relating to Input Tax Credit (ITC) from returns of supplier to that of recipient, invoice-level information matching and autoreversal of Input Tax Credit in case of mismatch.

The returns mechanism is designed to assist the taxpayer to file returns and avail ITC.

Under GST, a regular taxpayer needs to furnish monthly returns and one annual return. There are separate returns for a taxpayer registered under the composition scheme, non-resident taxpayer, taxpayer registered as an Input Service Distributor, a person liable to deduct or collect the tax (TDS/TCS) and a person granted Unique Identification Number.

It is important to note that a taxpayer is not required to file all types of returns. In fact, taxpayers are required to file returns depending on the activities they undertake.



Returns can be filed using any of the following methods:

1. GSTN portal (www.gst.gov.in)
2. Offline utilities provided by GSTN
3. GST Suvidha Providers (GSPs)

Following table lists the various types of returns under GST Law:

Return Form	Particulars	Frequency	Due Date
GSTR-1	Details of outward supplies of taxable goods and/or services effected (Section 37 of the CGST Act, 2017).	Monthly	10th of the next month
GSTR-2	Details of inward supplies of taxable goods and/or services effected claiming input tax credit (Section 38 of the CGST Act, 2017).	Monthly	15th of the next month
GSTR-3	Monthly return on the basis of finalization of details of outward supplies and inward supplies along with the payment of amount of tax (Section 39(1) of the CGST Act, 2017).	Monthly	20th of the next month
GSTR-3B	Simple return for Jul 2017- Mar 2018	Monthly	20th of the next month
GSTR-4	Return for compounding taxable person (Section 39(2) of the CGST Act, 2017)	Quarterly	18th of the month succeeding quarter
GSTR-5	Return for Non-Resident foreign taxable person (Section 39(5) of the CGST Act, 2017)	Monthly	20th of the next month or within 7 days after the last day of the period of registration specified u/s 27(1), whichever is earlier
GSTR-6	Return for Input Service Distributor (Section 39(4) of the CGST Act, 2017)	Monthly	13th of the next month
GSTR-7	Return for authorities deducting tax at source (Section 39(3) of the CGST Act, 2017)	Monthly	10th of the next month
GSTR-8	Details of supplies effected through e-commerce operator and the amount of tax collected	Monthly	10th of the next month
GSTR-9	Annual Return (section 44 of the CGST Act, 2017) (a) Who Files: Registered Person other than an ISD, TDS/TCS Taxpayer, Casual Taxable Person and Non-resident Taxpayer. (b) In this return, the taxpayer needs to furnish details of expenditure and details of income for the entire Financial Year.	Annually	31st December of next financial year
GSTR-10	Final Return (Section 45 of the CGST Act, 2017)	Once. When registration is cancelled or surrendered	Within three months of the date of cancellation or date of cancellation order, whichever is later.
GSTR-11	Details of inward supplies to be furnished by a person having UIN and claiming refund.	Monthly	28th of the month following the month for which statement is filed



GSTR 1 - FURNISHING DETAILS OF OUTWARD SUPPLIES

1. Section 37 relates to furnishing of details of outward supplies by the supplier
 - (a) A return of Outward supplies under this Section should be furnished by every registered taxable person except for the following persons namely
 - (i) Input service distributor
 - (ii) A non-resident taxable person
 - (iii) A person paying tax under the provisions of section 10 (composition levy)
 - (iv) A person paying tax under the provisions of section 51 (TDS)
 - (v) A person paying tax under the provisions of section 52 (TCS)
 - (vi) A person referred to in Section 14 of IGST Act – Person providing Online Information and Data Access & Retrieval Services
 - (b) A monthly return GSTR-1 needs to be filed by the taxable persons, except input service provider and persons under composition scheme u/s 10 or TDS Deductor u/s 51 giving details of outward supplies including zero rated supplies, Inter State supplies, return of inward supplies & export made along with relevant debit/ credit notes or supplementary invoices for the month by 10th of succeeding month.

2. The details about outward supplies along with debit/credit notes issued shall be communicated to the corresponding purchasing taxpayer within prescribed time so as to enable them to file return for inward supplies.
3. In case of any error relating to output tax or input tax credit that remains unmatched with monthly return GSTR-3B, the same must be rectified in the month it comes to the notice, and the payment of interest on short payment or refund claim must be made accordingly. However, no rectification is allowed after filing the return for the month of September following the end of the relevant financial year to which such details pertain or filing of the relevant annual return, whichever is earlier.

It is pertinent to mention here that ITC should be matched with GSTR 2A available on GST Portal. In case mismatch, the department may raise demands going forward. However, many a times it is seen that there are various constraints in the Portal which must be taken care of by The Dept.

4. Rectification due to error/omission in return is possible only before filing the return of September of the following FY or before filing the annual return whichever is earlier.
5. Details of invoice: The GSTR require every details of every invoice in case of B2B Transaction. Similar provision prevails in the VAT return of various States. Some idea can be drawn from this existing provision.
6. Mismatch of details: The GST law seeks matching of documents between supplier and receiver for allowing input tax credit (ITC). In case of a mismatch and where the supplier has not made the tax payment, the ITC shall not be allowed to the other party. However, this provision does not exist in the current regime.
7. Such returns shall be for supply of goods or services or both as effected during a tax period and shall be filed electronically
8. The registered person shall not be allowed to furnish any details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period. This implies that the filing portal may not be available for the person filing the return of outward supplies during the above said dates.
9. In case of late filing of the above details, the person who defaults shall pay a sum of rupees One hundred for every day of continuing default subject to a maximum to Rupees five thousand only.
10. The Commissioner is empowered to notify any extension of due date of filing, for any class of persons, beyond the tenth of the succeeding month, with reasons to be recorded in writing.



11. The present process of return filing envisages that the recipient of the supply shall be Provided an opportunity to accept, reject, amend or delete the details in a two-way communication process. The details Provided by the supplier shall be auto – populated and available electronically to the recipient, for matching purposes, in accordance with the provision of Rule 60 in a FORM GSTR-2A.
12. In case any error or omission is discovered in the course of matching as specified in the Act and discussed under Section 42 and 43, rectifications of the same shall be effected and tax and interest, if any as applicable shall be paid on such corrections by the person responsible for filing the return of outward supplies.
13. Such rectification, however, is not permitted after filing of annual return or the return for the month of September of the following financial year to which the details pertain whichever is earlier.

GSTR 2 - FURNISHING DETAILS OF INWARD SUPPLIES

Section 38 relates to furnishing of details of inward supplies by the recipient.

1. The monthly return of GSTR-2 will be required to be filed by the taxpayer giving details of inward supplies and relevant debit/ credit notes. The details of GSTR-2 will mostly be auto-populated from the GSTR-1 of counterparty making supplies. The auto-populated details can be modified, validated, deleted and additional invoices or debit/credit can also be added in case such details are missed out by the supplier. The taxable person shall file the details of inward supply, including those under reverse charge and IGST with relevant debit/credit notes within 15th of succeeding month, unless extended by Board/Commissioner.

GSTR - 3B

1. GSTR-3B is a monthly self-declaration that has to be filed a registered dealer from July 2017 till March 2018. Points to Note:
 - You must file a separate GSTR-3B for each GSTIN you have
 - Tax liability of GSTR-3B must be paid by the last date of filing GSTR-3B for that month
 - GSTR-3B cannot be revised
2. Every person who has registered for GST must file the return GSTR-3B including nil returns. However, the following registrants do not have to file GSTR-3B
 - Input Service Distributors & Composition Dealers
 - Suppliers of OIDAR
 - Non-resident taxable person

10.2 FIRST RETURN

As per section 40 of the CGST Act, 2017 every registered person who has made outward supplies in the period between the date on which he became liable to registration till the date on which registration has been granted shall declare the same in the first return furnished by him after grant of registration.

ANNUAL RETRUN

1. As per Section 44 of CGST ACT, 2017 an annual return is required to be furnished by every taxpayer GSTR-9, excluding input service distributor, TDS deductor, casual taxable persons and non-resident taxable persons, in GSTR-9 within 31st December of succeeding financial year.
2. A reconciliation statement of supplies declared in other returns, i.e. GSTR-1, and GSTR-3B as well as audited financial statement must be submitted along with annual return, copy of audited accounts and other prescribed documents. It shall be noted here that while annual accounts would reflect the sales of goods or services, the GST returns would reflect supplies.
3. Filing of annual return already exists in the prevailing laws. This return covers the minutest details of income and expenditure of the taxpayer, and thus the profit/ loss according to such return must tally with that in the audited financial statement. The return provides for reconciliation of monthly tax payments and details of refunds or pending arrears along with their current status.



4. Annual Return has to be filed by every registered taxable person paying tax as a normal or a compounding taxpayer. Final Return has to be filed only by those registered taxable persons who have applied for cancellation of registration. This has to be filed within three months of the date of cancellation or the date of cancellation order.
5. Due date for filing Annual Return is on or before 31st December following the end of the financial year for which Annual return to be submitted. Every taxable person shall file annual return in FORM GSTR-9 (FORM GSTR-9A in case of person opted to pay tax under composition scheme under section 10) for every financial year electronically on or before 31st December following the end of such financial year
However, this provision shall not apply to,
 - (i) Input Service Distributor
 - (ii) A person paying tax under Section 51 (TDS)
 - (iii) A person paying tax under Section 52 (TCS)
 - (iv) A casual tax Taxable person
 - (v) Non-resident taxable person
6. In case the registered person is required to get his accounts audited in accordance with the provisions of Section 35 (5) (whose aggregate turnover during the financial year exceeds Rs. One crores) shall file annual return FORM GSTR-9B electronically along with,
 - (i) A copy of audited annual accounts
 - (ii) Reconciliation statement reconciling the value of supplies as per annual return and as per audited financial statement
7. Every registered person whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C, electronically.

As per **Notification No. 49/2018 – Central Tax, dt 13.09.2018** - In terms of Rule 80(3) of CGST Rules, every registered person whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

10.3 REVISION OF RETURNS

The mechanism of filing revised returns for any correction of errors/ omissions has been done away with. The rectification of errors/ omissions is allowed in the subsequent returns. However, no rectification is allowed after furnishing the return for the month of September following the end of the financial year to which, such details pertain, or furnishing of the relevant annual return, whichever is earlier.

10.4 PENALTY/LATE FEE

- As per GST Act Late fee is ₹ 100 per day per Act. So it is 100 under CGST & 100 under SGST. Total will be ₹ 200/ day. Maximum is ₹ 5,000. There is no late fee on IGST.
- Interest is 18% per annum. It has to be calculated by the tax payer on the amount of outstanding tax to be paid. Time period will be from the next day of filing to the date of payment.
- Late Fee for filing GSTR-1, GSTR-3B, GSTR-4, GSTR-5 & GSTR-6 after the due date has been reduced to ₹ 50 per day of delay.
- Late fee for filing NIL returns have been reduced to ₹ 20 per day of delay for taxpayers (i.e. having Nil tax liability for the month) for GSTR-1, GSTR-3B and GSTR-4 & GSTR-5.

Note : If the GSTR is not filed for a given quarter/month, then the taxpayer cannot file the next quarter's return either.



10.5 HIGHLIGHTS OF PROPOSED NEW RETURNS

Background: GST Council in its 27th meeting held on 4th May, 2018 had approved the basic principles of GST return design. Now in its 28th meeting held on 21st July, 2018, GST Council approved the key features and new format of the GST returns. This brief note lists the salient features of the new return format.

Monthly Return and due-date:

All taxpayers excluding a few exceptions like small taxpayers, composition dealer, Input Service Distributor (ISD), Non resident registered person, persons liable to deduct tax at source under section 51 of CGST Act, 2017, persons liable to collect tax at source under section 52 of CGST Act, 2017, shall file one monthly return. Return filing dates shall be staggered based on the turnover of the taxpayer which shall be calculated based on the reported turnover in the last year i.e. 2017-18, annualized for the full year. It shall be possible for the taxpayer to check on the common portal whether he falls in the category of a small taxpayer. A newly registered taxpayer shall be classified on the basis of self-declaration of the estimated turnover. The due date for filing of return by a large taxpayer shall be 20th of the next month.

Nil return:

Taxpayers who have no purchases, no output tax liability and no input tax credit to avail in any quarter of the financial year shall file one NIL return for the entire quarter. In month one and two of the quarter, such taxpayer shall report NIL transaction by sending a SMS. Facility for filing quarterly return shall also be available by an SMS.

Small taxpayers:

Taxpayers who have a turnover upto ₹ 5 Cr. in the last financial year shall be considered small calculated in the manner explained in para 1 above. These small taxpayers shall have facility to file quarterly return with monthly payment of taxes on self-declaration basis. However, the facility would be optional and small taxpayer can also file monthly return like a large taxpayer. The scheme of filing of quarterly return is explained later.

Profile based return:

There are many kinds of supplies which can be made under GST and also there are many types of inputs using which input tax credit can be availed. Most of the taxpayers have only a few types of supplies to make and few types of inputs to report. Therefore, a questionnaire shall be used to profile the taxpayer and only such part of return shall be shown to him which are relevant to his profile. For example, a small manufacturer or trader, buying and selling locally may need to file a return consisting of only a few lines. Profiling would allow fields like export, supplies to and from SEZ to be blocked from return and make return adequate for his purpose.

Suspension of registration:

Concept of suspension of registration would be introduced when a registered person has applied for cancellation of registration or when the conditions in law for cancellation of registration are satisfied. From the date of suspension to the date of cancellation of registration, return would not be required to be filed and also invoice uploading shall not be allowed for the period beyond the date of suspension.

Study Note - 11

MATCHING CONCEPT UNDER GST



This Study Note includes

11.1 Matching, Reversal and Reclaim of Input Tax Credit

11.2 Matching, Reversal and Reclaim of Reduction in Output Tax Liability

11.1 MATCHING, REVERSAL AND RECLAIM OF INPUT TAX CREDIT

Matching, reversal and reclaim of input tax credit (Section 42 of the CGST Act, 2017):

Matching of input tax credit:

Section 42(1) of the CGST Act, 2017 the details of every inward supply furnished by a registered person (hereafter in this section referred to as the "recipient") for a tax period shall, in such manner and within such time as may be prescribed, be matched—

- (a) with the corresponding details of outward supply furnished by the corresponding registered person (hereafter in this section referred to as the "supplier") in his valid return for the same tax period or any preceding tax period;
- (b) with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him; and
- (c) for duplication of claims of input tax credit.

As per Rule 69 of the CGST Rules, 2017 the following details relating to the claim of input tax credit on inward supplies including imports, provisionally allowed under section 41, shall be matched under section 42 after the due date for furnishing the return in FORM GSTR-3

- (a) GSTIN of the supplier;
- (b) GSTIN of the recipient;
- (c) invoice or debit note number;
- (d) invoice or debit note date; and
- (e) tax amount;

Provided that where the time limit for furnishing FORM GSTR-1 specified under section 37 and FORM GSTR-2 specified under section 38 has been extended, the date of matching relating to claim of input tax credit shall also be extended accordingly:

Provided further that the Commissioner may, on the recommendations of the Council, by order, extend the date of matching relating to claim of input tax credit to such date as may be specified therein.

Explanation 1: The claim of input tax credit in respect of invoices and debit notes in FORM GSTR-2 that were accepted by the recipient on the basis of FORM GSTR-2A without amendment shall be treated as matched if the corresponding supplier has furnished a valid return.

Explanation 2: The claim of input tax credit shall be considered as matched where the amount of input tax credit claimed is equal to or less than the output tax paid on such tax invoice or debit note by the corresponding supplier.



Thus, where the amount of input tax credit is equal or less than the output tax paid on such tax invoices it shall be considered as matched.

The mismatch can be of the following nature

Situation	Remarks
All Transactions where Input credit details of recipient are matched for output tax as stated by supplier and recipient	The transaction is treated as matched
Transactions where the input tax credit is duplicated by the recipient	Shall be communicated to the registered person in FORM GST MIS 1
Transactions where the claim for input tax credit is higher than the output tax as declared by the supplier	Shall be added to the output tax liability of the recipient
Transactions where the claim for input tax credit is higher than the output tax as declared by the supplier because the supplier has not furnished a particular transaction	Shall be added to the output tax liability of the recipient

Matched Transactions

- (i) The details in a return of inward supplies of a recipient should be matched in prescribed time and manner
 - With Outward supplies furnished by corresponding taxable person in his return (supplier)
 - With IGST paid on goods imported under Section 3 of the Customs Tariff Act 1975 which represents the Additional Duty of Customs (for which Credit was available under the erstwhile Central Excise Act)
 - To identify any duplicate claims of input tax credit
- (ii) When the claim for input tax credit in respect of inward supplies matches with the corresponding outward supply or IGST in respect of goods imported, the same shall be finally accepted and communicated to the recipient in the prescribed manner.
- (iii) Matching of claim of input tax credit

The following details relating to the claim of input tax credit on inward supplies including IGST claimed on imports shall be matched after the due date for furnishing the return in FORM GSTR-3B (Return with payment of tax to be filed on or before 20th of the following month). The matching is done for the following parameters based on the GSTIN of the Supplier and the recipient

- (a) GSTIN of the supplier;
- (b) GSTIN of the recipient;
- (c) Invoice/ or debit note number;
- (d) Invoice/ or debit note date;
- (e) taxable value; and
- (f) tax amount:

It may be noted that if the supplier has not paid the tax and/or not filed the return on or before the due date (or extended due date, if any), the return filed by him shall not be treated as a valid return for the purposes of the above matching exercise. The transactions between the parties interest, will be treated as unmatched

The rule provides for two specific circumstances, where the claims for input tax credit are treated as Matched

- (a) Where the claim of input tax credit in respect of invoices and debit notes in FORM GSTR-2 that were accepted by the recipient on the basis of **FORM GSTR-2A** without amendment, if the corresponding supplier has furnished a valid return.
- (b) Where the amount of input tax credit claimed is equal to or less than the output tax paid on such tax invoice or debit note by the corresponding supplier.

- (iv) Final acceptance of input tax credit and communication thereof

The final acceptance of claim of input tax credit in respect of any tax period, shall be made available electronically in FORM GST MIS -1 through the Common Portal.



The claim of input tax credit in respect of any tax period which had been communicated as mismatched but is found to be matched after rectification by the supplier or recipient shall be finally accepted and made available electronically to the person making such claim in **FORM GST MIS - 1** through the Common Portal.

Form GSTR 2A: GSTR 2A is an auto-generated read only document which is for information purpose only. It will reflect the information as available in GSTR-2, but GSTR-2A cannot be edited. It takes information of goods and/or services which have been purchased in a given month from the returns filed by the suppliers.

For example - When a seller files his GSTR-1, the information is captured in purchaser's GSTR-2A.

Communication of discrepancy in the claim of input tax credit [Section 42(3) of the CGST Act, 2017 read with CGST Rules]:

As per Rule 71(1) of the CGST Rules, 2017 any discrepancy in the claim of input tax credit and addition to output tax liability on account of continuation of discrepancy in respect of tax period shall be communicated to person making claim in the form GST MIS-1 through common portal on or before the last date of the month in which the matching has been carried out. The discrepancies shall be communicated to the supplier in Form GST MIS-2.

Example 1

M/s X Ltd., being a registered person submitted the GSTR-3 for the month of January 2018 by 20th February 2018. After the last date of filing return (i.e. GSTR-3), matching of information will be made with the information furnished in GSTR-2 (i.e. by the recipient of supplies) on or before 15th February 2018. Discrepancy in matching will be communicated to persons in GST MIS-1 and/ GST MIS-2.

Ratification of Discrepancy:

As per Rule 71(2) of the CGST Rules, 2017 a supplier to whom any discrepancy is made available under sub-rule (1) of rule 71 may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.

As per Rule 71(3) of the CGST Rules, 2017 a recipient to whom any discrepancy is made available under sub-rule (1) of rule 71 may make suitable rectifications in the statement of inward supplies to be furnished for the month in which the discrepancy is made available.

If the recipient or the supplier has rectified the error, the inward supply and outward supply will match and credit will be finally accepted.

Discrepancy not rectified [section 42(5) of the CSGT Act, 2017 read with CGST Rules, 2017]:

As per Rule 71(4) of the CGST Rules, 2017 if the supplier or recipient does not rectify the discrepancy, the amount to the extent of discrepancy shall be added to the output tax liability of the recipient in his return to be furnished in FORM GSTR-3 for the month succeeding the month in which the discrepancy is made available.

Explanation.-For the purposes of this rule, it is hereby declared that -

- (i) Rectification by a supplier means adding or correcting the details of an outward supply in his valid return so as to match the details of corresponding inward supply declared by the recipient;
- (ii) Rectification by the recipient means deleting or correcting the details of an inward supply so as to match the details of corresponding outward supply declared by the supplier.

Claim of input tax credit on the same invoice more than once [Section 42(4) of the CGST Act, 2017 read rule 72 of the CGST Rules, 2017]:

It means that the recipient has claimed credit second time. As per Rule 72 of the CGST Rules, 2017 duplication of claims of input tax credit in the details of inward supplies shall be communicated to the registered person in FORM GST MIS-1 electronically through the common portal.

Final acceptance of input tax credit and communication thereof [section 42(2) of the CGST Act, 2017]:

As per Rule 70 of the CGST Rules, 2017 the claim of input tax credit in respect of invoices or debit notes relating to inward supply received by the recipient is matched with the details of corresponding outward supply declared by supplier, the input tax credit is finally accepted and report shall be communicated electronically to the registered person making such claim in FORM GST MIS-1 through the Common Portal.



Section 42(6) of the CGST Act, 2017 the amount claimed as input tax credit that is found to be in excess on account of duplication of claims shall be added to the output tax liability of the recipient in his return for the month in which the duplication is communicated.

Section 42(7) of the CGST Act, 2017 the recipient shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5), if the supplier declares the details of the invoice or debit note in his valid return within the time specified in sub-section (9) of section 39.

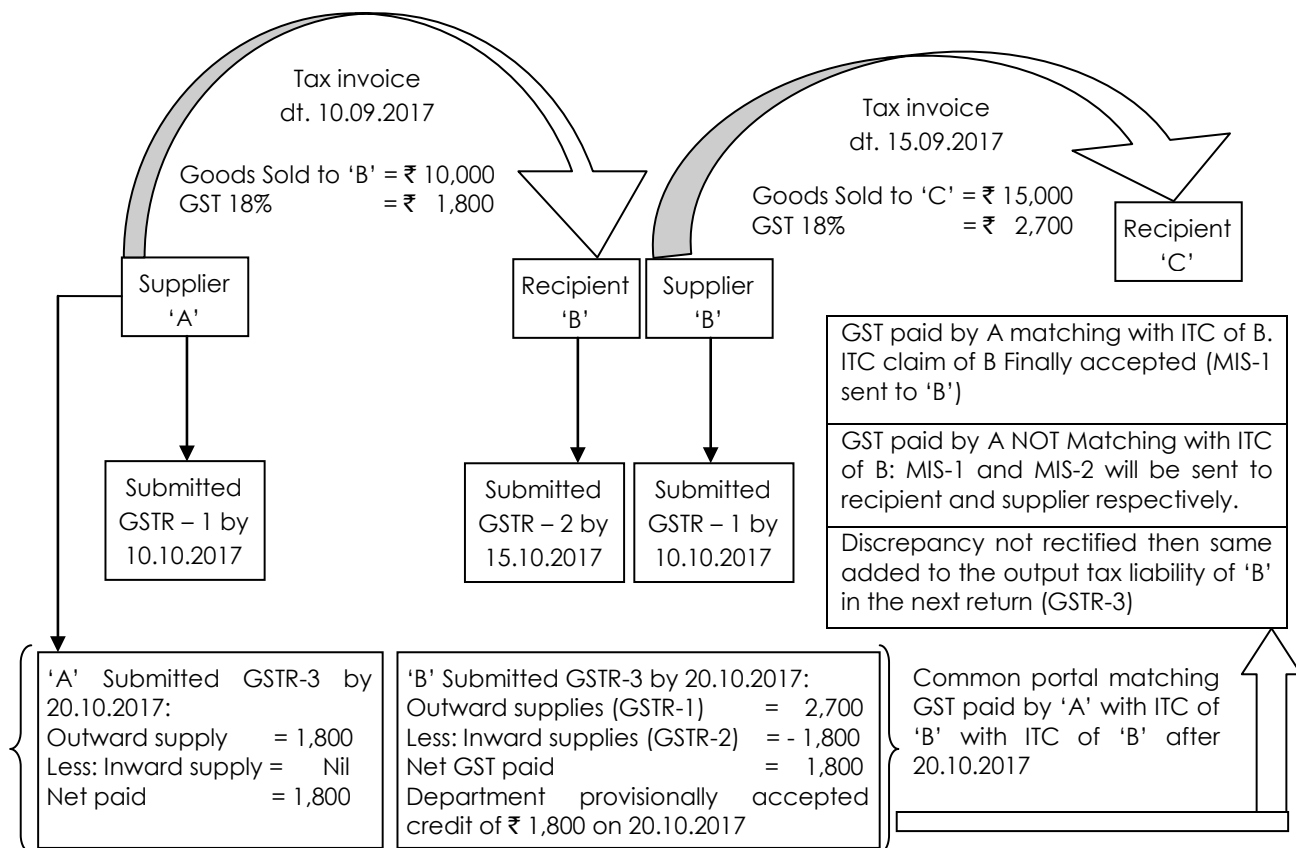
Section 42(8) of the CGST Act, 2017 a recipient in whose output tax liability any amount has been added under sub-section (5) or sub-section (6), shall be liable to pay interest at the rate specified under sub-section (1) of section 50 on the amount so added from the date of availing of credit till the corresponding additions are made under the said sub-sections.

Section 42(9) of the CGST Act, 2017 where any reduction in output tax liability is accepted under sub-section (7), the interest paid under sub-section (8) shall be refunded to the recipient by crediting the amount in the corresponding head of his electronic cash ledger in such manner as may be prescribed:

Provided that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the supplier.

Section 42(10) of the CGST Act, 2017 the amount reduced from the output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50.

Simplified approach:





Duplicate Transactions

The duplication of claims of input tax credit shall be communicated to the recipient in such manner as stated below. Further, the amount claimed as input tax credit that is found to be in excess on account of such duplication of claims shall be added to the output tax liability of the recipient in his return for the month in which the duplication is communicated.

Input tax claim is higher than output tax for a tax period as declared

Where the credit claimed in respect of inward supplies is in excess when compared to the tax declared by the supplier or where the supplier has not at all declared the outward supply in his return, the discrepancies will be communicated to both parties

When discrepancies communicated to the outward supplier are not rectified by supplier in a valid return for the month (not by revision of return for the month in which the discrepancy occurred within 17th), the tax amount involved will be added to the output liability of the recipient for the month succeeding the month in which the discrepancy is communicated

The recipient shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5), if the supplier declares the details of the invoice or debit note in his valid return furnished for the month during which such omission or incorrect particulars are noticed and interest is paid as required under this Act

Interest on mismatched transactions

Recipient will be liable to payment of interest in every case when discrepancy is added for the period starting from the date of availing the credit till the corresponding additions are made.

If the supplier declares the details of invoice or debit note in his valid return filed within the time specified u/s 39(9) i.e. before the due date of filing of the return for the month of September of the subsequent financial year or filing of annual return whichever is earlier the recipient is eligible to reduce from his output tax liability the amount so added earlier.

In case of such reduction in output tax liability, he is entitled for refund of interest paid as per above. However this interest shall not exceed the amount of interest paid by the supplier.

11.2 MATCHING, REVERSAL AND RECLAIM OF REDUCTION IN OUTPUT TAX LIABILITY

1. The details of every credit note relating to outward supply furnished by a taxable person is to be matched with the corresponding reduction in the claim for ITC by the corresponding taxable person in his return for the same/subsequent tax period, and also for duplication of claims for reduction in output tax liability.
 - (a) Where the output tax is reduced by outward supplier by issuing a credit note, details of every such credit note issued should be matched with the corresponding reduction in the credit by the recipient of the amount involved in the credit note in his valid return filed for the current or subsequent tax period. For example, a sale invoice at ₹ 1,50,000 was overstated by ₹ 50,000 for which a credit note was issued. This credit note should be accounted by the recipient in a valid return filed for the current or subsequent tax period
 - (b) Similarly where the supplier has raised say, two invoices and has paid out put tax twice, where a credit note has been raised, the same shall also be accounted by the recipient. However if the recipient has accounted for the invoice only once, he need not account for the credit note
2. The matching/ mismatch of the details have to be communicated. If the recipient accepts the discrepancy and rectifies the same by filing a valid return subsequently, then the tax amount involved will be excluded from the output liability of the supplier for the month in which the discrepancy is communicated.

In other words, as soon as discrepancy is communicated, the tax involved will be recovered from the supplier which will be readily reversed when the recipient admits and rectifies the discrepancy.

Discrepancies relating to duplicate claims for reduction of output tax liability will be added to the output liability of the supplier for the month in which the discrepancy is communicated.



3. The amount of discrepancy, which is communicated and not rectified by the recipient in his valid return for the month in which discrepancy is communicated, shall be added to the output tax liability of the supplier as prescribed, in the return for the month succeeding the month in which the discrepancy is communicated.
4. The supplier shall be eligible to reduce, from his output tax liability, the amount added for non-ratification and the recipient declares the details of the credit note in his valid return later on within the time specified.
5. Interest shall be chargeable for the amount added back for amount not ratification u/s 50.
6. Where any reduction in output tax liability is accepted for ratification, the interest paid initially shall be refunded by crediting the electronic ledger.
7. Assessee applying for cancellation of his registration shall furnish a final return within 3 months of the date of cancellation or date of cancellation order whichever is later.
8. Matching of claim of reduction in the output tax liability
The following details relating to the claim of reduction in output tax liability shall be matched under section 43 after the due date for furnishing the return in FORM GSTR-3B–
 - (a) GSTIN of the supplier;
 - (b) GSTIN of the recipient;
 - (c) credit note number;
 - (d) credit note date;
 - (e) taxable value; and
 - (f) tax amount;
9. Final acceptance of reduction in output tax liability and communication thereof
 - (1) The final acceptance of claim of reduction in output tax liability in respect of any tax period, specified in sub-section (2) of section 43, shall be made available electronically to the person making such claim in FORM GST MIS-3 through the Common Portal.
 - (2) The claim of reduction in output tax liability in respect of any tax period which had been communicated as mis-matched but is found to be matched after rectification by the supplier or recipient shall be finally accepted and made available electronically to the person making such claim in FORM GST MIS-3 through the Common Portal.
10. Communication and rectification of discrepancy in reduction in output tax liability and reversal of claim of reduction.
 - (1) Any discrepancy in claim of reduction in output tax liability, specified in sub-section (3) of section 43, and the details of output tax liability to be added under sub-section (5) of the said section on account of continuation of such discrepancy shall be made available to the registered person making such claim electronically in FORM GST MIS-3 and the recipient electronically in FORM GST MIS-4 through the Common Portal on or before the last date of the month in which the matching has been carried out.
 - (2) A supplier to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.
 - (3) A recipient to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of inward supplies to be furnished for the month in which the discrepancy is made available.
 - (4) Where the discrepancy is not rectified under sub-rule (2) or sub-rule (3), an amount to the extent of discrepancy shall be added to the output tax liability of the supplier and debited to tax liability register and also shown in his return in FORM GSTR-3 for the month succeeding the month in which the discrepancy is made available.

Explanation 1.—Rectification by a supplier means deleting or correcting the details of an outward supply in his valid return so as to match the details of corresponding inward supply declared by the recipient.



Explanation 2.-Rectification by the recipient means adding or correcting the details of an inward supply so as to match the details of corresponding outward supply declared by the supplier.

11. Claim of reduction in output tax liability more than once

Duplication of claims for reduction in output tax liability in the details of outward supplies shall be communicated to the registered person in FORM GST MIS – 3 electronically through the Common Portal.

12. Refund of interest paid on reclaim of reversals

The interest to be refunded under sub-section (9) of section 42 or sub-section (9) of section 43 shall be claimed by the registered person in his return in FORM GSTR-3 and shall be credited to his electronic cash ledger in FORM GST PMT-3 and the amount credited shall be available for payment of any future liability towards interest or the taxable person may claim refund of the amount under section 54.

13. Transactions through E-commerce Operators

Rule 78 deals with the matching of details furnished by the e-Commerce operator with the details furnished by the supplier

The following details relating to the supplies made through an e-Commerce operator, as declared in FORM GSTR-8, shall be matched with the corresponding details declared by the supplier in FORM GSTR-1-

- (a) GSTIN of the supplier;
- (b) GSTIN or UIN of the recipient, if the recipient is a registered person;
- (c) State of place of supply;
- (d) invoice number of the supplier;
- (e) date of invoice of the supplier;
- (f) taxable value; and
- (g) tax amount:

Provided that for all supplies where the supplier is not required to furnish the details separately for each supply, the following details relating to such supplies made through an e-Commerce operator, as declared in FORM GSTR-8, shall be matched with the corresponding details declared by the supplier in FORM GSTR-1

- (a) GSTIN of the supplier;
- (b) State of place of supply;
- (c) total taxable value of all supplies made in the State through e-commerce portal; and
- (d) tax amount on all supplies made in the State:

ILLUSTRATION :

- 1) Matching of ITC: Mr. A, a registered supplier, supplies goods valuing ₹ 10,00,000 plus GST @ 12% to Mr. B on 09-07-2017, incorporating these supplies in the details of outward supplies for the month of July 2017 furnished by him on 10-08-2017. However, Mr. B claimed input tax credit @ 18% in respect of the said supplies and furnished his return for the said month. On matching being carried out the discrepancy was noticed and the same was communicated to both the parties on 31-08-2017. Mr. B did not rectify the same in the return for the month of August, 2017 i.e. upto 20-9-2017. In whose tax liability this mismatch will be added?

Solution :

As per provisions of section 42(5) of CGST ACT, 2017, the amount in respect of which any discrepancy is communicated under section 42(3) and which is not rectified by the supplier in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the recipient in his return for the month succeeding the month in which discrepancy is communicated.



Thus, the amount of ₹ 60,000 [₹ 1,80,000 - ₹1,20,000] will be added to the output tax liability of Mr. B in the return for the month of September, 2017. The return for the month of September 2017 is to be filled on 20-10-2017. Thus, he will be liable to pay the said amount along with interest @ 18% p.a for the period from the date of availing the credit till the date of furnishing the return for the month of September, 2017 i.e 20-10-2017.

- 2) ABC tea co. supplied 1000 bags to XYZ co. GST paid on such supply was ₹ 1,80,000,. Subsequently, XYZ Co. returned 400 bags. Resultantly, ABC Co. issued a credit note to XYZ Co. and disclosed it in GSTR – 1.

Accordingly, ABC Co. claimed reduction in output tax liability of ₹72,000 based on such credit note. Thus, there must be a corresponding reduction of ITC Claim by XYZ Co. also. In this Case, if XYZ Co. has claimed an ITC in respect of purchased from ABC Co. of (₹ 1,80,000- ₹72,000) ₹ 1,08,000 in his GSTR-2 for the said month, claim for reduction in output tax liability of ABC Ltd. Shall be considered as "MATCHED".

- 3) Mr. H returns the goods supplied by Mr. R on which GST of ₹ 18,000 is paid. Mr.R – the supplier – issues a credit note and furnishes the same in his FORM GSTR-1. Mr.H – the recipient reduces the corresponding amount of ITC Claim in his GSTR-2 by ₹16,000. Both the parties furnish their return GSTR -3 after which the mismatch was reported and the discrepancy to the effect that Mr.H has claimed excess input tax credit of ₹2000 is communicated to Mr. R and Mr. H in Form GST MIS-1 and Form GST MIS-2 respectively.

In this case, discrepancy has to rectified by the recipient – Mr.H in his return for the month in which said discrepancy is made available.

- 4) Rectification of mistakes: Mr. X filed the return for outward supplies for the month of August, 2017 on 20-09-2017. Subsequently, while furnishing the return for December 2017, he noticed that he had omitted to consider certain transactions corresponding to the supplies of August, 2017. Can he rectify the return for August 2017 now? What remedial action can be taken by him?

Solution :

As per Section 39(9) of the GST Act, 2017, subject to the provisions of Section 37 and 28, if any registered person, after furnishing the return under section 39(1)/(2)/(3)/(4)/(5) discovers any omission or any incorrect particulars therein, he shall rectify the same in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed.

Thus, there is no scope for filing of revised return but the rectification can be made in the month in which it is discovered. Herein, the rectification can be made in the return for the month of December.

However, time limit has been prescribed within which the rectification can be made, being earlier of –

- Due date for furnishing of return for the month of September or second quarter following the end of the financial year i.e. 20th October or
- The actual date of furnishing of relevant annual return

Here, the rectification can be made by 20-10-2018 being the due date for filing of the return for September 2018 or the date of filing of the annual return, whichever is earlier.

- 5) **Deemed match transactions :** The output tax liability of Mr.A, a registered supplier in respect of supplies made to Mr.B, for the month of July 2017 is ₹35,000 after considering his claim for reduction in his output tax liability on account of issuance of a credit note of ₹ 10,000. Whereas the corresponding input tax credit claimed by Mr.B in his valid return (after considering the reduction in ITC admitted and discharged on such credit note) is ₹ 32,000. What shall be impact of such transactions.

**Solution :**

As per Explanation (ii) to Rule 69 of CGST Rule, 2017, claim of reduction in the output tax liability shall be considered as matched, where the amount of reduction claimed is equal to or less than the claim of reduction in ITC admitted and discharged on such credit note by the corresponding recipient in his valid return.

In the given case net output tax liability of Mr. A is ₹ 35,000 after taking into accounting the reduction claimed which is more than input tax credit by Mr. B in respect of same supply i.e ₹ 32,000 so, no output tax liability shall be added to the account of Mr.A as a result of such Mismatch.

- 6) Matching of Output tax liability : Mr. X, a registered supplier, supplied services valuing ₹ 10,00,000 plus GST @12% to Mr.Y on 09-10-2017, incorporating these supplies in the details of outward supplies furnished for the month of October 2017 on 10-11-2017. Mr.Y recorded the said supplies as his inward supplies and accordingly, claimed ITC on said inward supplies and furnished his return. There was disagreement regarding the quality of service and Mr.X issued a credit note on 15-12-2017 in favour of Mr.Y amounting ₹ 2,00,000 and reduced his output tax liability amounting to ₹ 24,000 in the return furnished for the month of December 2017 on 20th January 2018. However, Mr.Y did not reverse his ITC amounting to ₹ 24,000 in the return furnished for the month of December 2017. On matching being carried out the discrepancy was noticed and the same was communicated to both the parties on 31-01-2018. The said discrepancy was not corrected by Mr. Y in the return furnished for the month of January 2018, In whose tax liability this mismatch will be added ?

Solution :

As per provision of Section 43(3) of CGST Act, 2017, where the reduction of output tax liability in respect of outward supplies exceeds the corresponding reduction in the claim for ITC or the corresponding credit note is not declared by the recipient in his valid return, the discrepancy shall be communicate to both such parties upto the end of the month in which such matching si carried out i.e 31st January 2018.

A recipient to whom any discrepancy is communicated may make suitable rectifications in the statement of inward supplies to be furnished for the month in which discrepancy is made available i.e upto 20th February 2018.

Where the discrepancy is not rectified by the recipient, an amount to the extend of discrepancy shall be added to the output tax liability of the supplier debited to the electronic liability register and also shown in his return in FORM GSTR-3 for the month succeeding the month in which the discrepancy is made available.

Thus, in this case since Mr. Y has not rectified the discrepancy in the retrun filed for the month of January 2018, i.e upto 20th February 201, therefore the said amount of ₹ 2,40,000 shall be added to the output tax liability of the supplier i.e. Mr.X in the return of the month of February 2018 which is filed on 20th March 2018.

In this case Mr.X will be liable to pay interest from 20th January 2018 to 20th March 2018 i.e. $\text{₹ } 24,000 \times 18\% \times 59/365 = \text{₹ } 698.3$

- 7) Mr. A supplied goods to Mr. B for ₹ 2,00,000 plus GST 18%, vide Invoice No. 99 dated 5th November 2017. Mr. B availed the ITC of ₹ 36,000 and confirmed in GSTR-2. However, invoice no. 99 dated 5th November 2017 not reflected in GSTR-1, of Mr. A.

You are required to answer the following:

- When matching will takes through common portal of GSTN.
- To whom discrepancy will be informed.
- Time limit for rectification of discrepancy



- (d) Whether ITC is allowed to Mr. B, if Mr. A is not paid tax till 20th January 2018.
- (e) Mr. B communicated the problem to Mr. A, who looks into the issue and rectified the discrepancy and included invoice no. 99 in his GSTR-3 for January 2018 accordingly he paid tax on 20th Feb 2018. If so Mr. B can reduce his liability?

Answer:

- (a) Matching will take place only after the due date of GSTR-3 for the month of November 2017. In the given case matching will take place after 20th December 2017.
- (b) Discrepancy is to be communicated by the common portal GSTN to supplier (i.e. Mr. A) in the Form GST MIS-2.
- (c) Time limit for rectification is 20th January 2018 (i.e. Due date of filing FORM GSTR-3 for the month succeeding the month in which the discrepancy is made available). Mr. A should pay tax on it (as per Rule 71(4) of the CGST Rules, 2017).
- (d) Input tax credit of ₹ 36,000 shall be added to the output tax liability of Mr. B in his return to be furnished in

FORM GSTR-3 for the month succeeding the month in which the discrepancy is made available (i.e. 20th Feb 2018) with interest @18%.
- (e) As per section 42(7) of the CGST Act, 2017 Mr. B can reduce the amount from his output tax liability and the interest paid will be refunded to his electronic cash ledger account under section 42(9) of the CGST Act, 2017.

Study Note - 12

AUDIT UNDER GST



This Study Note includes

12.1 Meaning

12.2 Types of Audit

12.1 MEANING

"Audit" has been defined in section 2(13) of the CGST Act, 2017 and it means the examination of records, returns and other documents maintained or furnished by the registered person under the GST Acts or the rules made there under or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of the GST Acts or the rules made thereunder.

12.2 TYPES OF AUDIT

GST envisages three types of Audit.

1. **By a Chartered Accountant or a Cost Accountant** - The first type of audit is to be done by a chartered accountant or a cost accountant u/s 35(5) where turnover exceeds certain threshold specified in Rule 80(3) i.e. 2 crores;
2. **By Tax Authorities** - Second type of audit is to be done by the commissioner or any officer authorised by him in terms of Section 65 of the CGST Act, 2017 read with Section 20(xiv) of the IGST Act, 2017 and Section 21 (xv) of UTGST Act, 2017.
3. **Special Audit** - The third type of audit is called the Special Audit and is to be conducted under the mandate of Section 66 of CGST Act, 2017 read with Rule 102 of CGST Rules, 2017

1. Audit by Chartered Accountant or a Cost Accountant:

Every registered person, whose turnover during the financial year exceeds the prescribed "GST audit turnover limit" i.e., 2 crore rupees, shall get the accounts audited by a Chartered Accountant (CA) or a Cost and Management Accountant (CMA). Registered person who is required to get his accounts audited in accordance with section 35(5) shall submit electronically the Annual Return as per Section 44 along with a copy of the audited statement of accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year. He shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in Form GSTR-9C along with annual return.

Every registered person, for facilitating the audit, shall keep and maintain his accounts to show the correct value in regards to:

- Production or manufacture of goods
- Inward supply of goods or services or both
- Outward supply of goods or services or both
- Stock of goods



- Input tax credit availed
- Output tax payable and paid
- Books of accounts point can be added

AMENDMENT

The section 35(5) OF CGST Act, 2017 has been amended vide THE CENTRAL GOODS AND SERVICES TAX (AMENDMENT) ACT, 2018 which states that any department of the Central or State Government / local authority which is subject to audit by CAG need not get their books of account audited by a CA/CMA

2. Audit by Tax Authorities (section 65 of the CGST Act, 2017):

The Commissioner or any officer authorised by him, can undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.

Section 65(3) of the CGST Act, 2017 the registered person shall be informed by way of a notice not less than fifteen working days prior to the conduct of audit in such manner as may be prescribed.

Section 65(4) of the CGST Act, 2017 the audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit:

Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.

Explanation.—For the purposes of this sub-section, the expression “commencement of audit” shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

Section 65(5) of the CGST Act, 2017 during the course of audit, the authorised officer may require the registered person,—

- (i) to afford him the necessary facility to verify the books of account or other documents as he may require;
- (ii) to furnish such information as he may require and render assistance for timely completion of the audit

Section 65(6) of the CGST Act, 2017 on conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.

Section 65(7) of the CGST Act, 2017 where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilized, the proper officer may initiate action under section 73 or section 74.

Explanation

The Commissioner or any officer authorised by him, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed in a general or a specific order (Section 65 of CGST Act). The officers may conduct audit at the place of business of the registered person or in their office. The registered person shall be informed by way of a notice of not less than fifteen working days before the conduct of audit in Form GST ADT-01. The audit shall be completed within a period of three months from the date of commencement of the audit and can be further extended by a period not exceeding six months, by the Commissioner if he has a reason to believe that the audit cannot be completed in the given duration.

During the course of audit, the authorised officer may require the registered person,—

- to provide him the necessary facility to verify the books of account or other documents as he may require
- to furnish such information as he may require and render assistance for timely completion of the audit



On conclusion of audit, the proper officer will inform, the registered person, within 30 days, about the findings, his rights and obligations and the reasons for such findings in Form ADT-02.

The officer along with his team will verify:

- Documents on the basis of which the books of account are maintained and the returns and statements furnished under the provisions of the Act and the rules made there under
- Correctness of the turnover
- Exemptions and deductions claimed
- Rate of tax applied in respect of the supply of goods or services or both
- Input tax credit availed and utilised
- Refund claimed
- Other relevant issues.

In cases where tax liability is identified during the audit or input tax credit wrongly availed or utilized by the auditee, the procedure laid down under Section 73 or 74 is to be followed. Audit cannot conclude automatically resulting in a demand. Independent application of mind is necessary for a valid demand to be raised.

The term 'commencement of audit' is important because audit has to be completed within a given time frame in reference to this date of commencement. Commencement of audit means the later of the following:

- (a) the date on which the records/accounts called for by the audit authorities are made available to them, or
- (b) the actual institution of audit at the place of business of the taxpayer. Example: A notice for audit was served to M/s. X Ltd, on 06.07.2019. The required information was furnished by M/s. ABC Ltd, on 22.08.2019. The audit officers visited the place of business on 15.09.2019. What is the last date within which the audit is to be completed?

Audit is to be completed within 3 months from 22.08.2019, viz., 21.11.2019 or within an extended period of 6 months, if extended by the Proper Officer. The extended period would be 21.02.2020.

The law provides that audit may be directed irrespective of any other audit under any other provision of this Act or any other law for the time being in force or otherwise. It may mean that if an audit has been conducted by tax authorities under section 65 of CGST Act, special audit under section 66 of CGST Act can still be directed.

If at any stage of scrutiny, inquiry, investigation or any other proceedings, any officer not below the rank of Assistant Commissioner, is of the opinion that

- the value has not been correctly declared or
- the credit availed is not within the normal limits,

He may, with the prior approval of the Commissioner, direct such registered person to get his records including books of account examined and audited by a Chartered Accountant or a cost accountant as may be nominated by the Commissioner. The officer will issue direction in Form GST ADT-03 to the registered person in this regard. The Chartered Accountant or Cost Accountant so nominated shall submit a report of such audit duly signed and certified by him to the said Assistant Commissioner, within the period of ninety days, which can be further extended by ninety days. Special audit can be conducted even if accounts of the registered person have been audited under any other provisions of this Act or any other law for the time being in force. The expenses of the examination and audit of records, including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner. On conclusion of the special audit, the registered person shall be informed of the findings of the special audit in FORM GST ADT-04.

As in the case of audit under section 65, no demand of tax, even ad interim, is permitted on completion of the special audit under this section. In case any possible tax liability is identified during the audit, procedure under section 73 or 74 as the case may be is to be followed.



Based on the findings/observations of the special audit, action can be initiated under Section 51 of the GST act.

Departmental Audit can be undertaken even if a taxable person is not registered. As there is no condition specifically mentioned for audit of registered or unregistered taxable person under section 65.

The Deputy/ Assistant Commissioner can direct the taxable person to get his books of accounts audited u/s 65 by a nominated Chartered Accountant or Cost Accountant, only after the approval of the Commissioner.

However, the taxable person will be given an opportunity of being heard for the use of any information, document or any relevant material obtained during Special Audit in any further proceedings.

Section 2(91) defines proper officer in relation to any function to be performed under this Act, means the officer of goods and services tax who is assigned that function by the Commissioner in the Board.

3. Special Audit [Section 66 of the CGST Act, 2017]:

The law provides that Special audit under section 66 may be directed irrespective of any other audit have been conducted under any other provision of this Act or any other law for the time being in force or otherwise.

Example: If an audit has been conducted by tax authorities under section 65 of The GST act, special audit under section 66 can still be directed irrespective of any Audit covered under any provisions of this Act or under any Act. The audit of accounts under any other provision or law will not have any relevance in conduct of special audit.

Example: Suppose Tax Audit of a Company u/s 44AB of the Income Tax Act, 1961 was concluded. But if Assistant/ Deputy Commissioner during the course of scrutiny or investigation comes across any doubt regarding the nature and complexity of the case in respect to the Interest of Revenue, then also irrespective of any Audit covered under any provisions of this Act or under any Act, Special Audit u/s 66 of the CGST Act can be directed.

Difference between Section 65 and Section 66:-

Components	Section 65	Section 66
Nature of Audit	In this section, we have a departmental audit	In this section, we have a special audit
Conducted by	It is conducted by officers of the department authorised by the commissioner	It is conducted by Chartered accountant/cost accountant nominated by the commissioner
Prior Notice	Prior notice of 15 days is required	No such notice/intimation is required
Time for conclusion of the audit	The conclusion of the audit is given in 3 months, further extension of 6 months is allowed	The conclusion of the audit is given in 90 days, further extension of 90 days is allowed
Audit Findings/ Report	Audit reports should be intimated soon upon completion of the audit	Audit reports should be shown to deputy/ assistant commissioner
The opportunity of being heard	No specific provision	Yes, where material gathered during the audit is to be used in any proceedings against the auditee
Action based on a report	Yes, under section 73 by the issuance of SCN (Show Cause Notice)	Yes, under section 73 by the issuance of SCN (Show Cause Notice)

Study Note - 13

E-WAYBILLS UNDER GST



This Study Note includes

13.1 E-waybills

13.1 E-WAYBILLS

E-way bill will be generated when there is a movement of goods in a vehicle/ conveyance of value more than ₹ 50,000 (either each Invoice or in (aggregate of all Invoices in a vehicle/ Conveyance) –

- In relation to a 'supply'
- For reasons other than a 'supply' (say a return)
- Due to inward 'supply' from an unregistered person

For this purpose, a supply may be either of the following:

- A supply made for a consideration (payment) in the course of business
- A supply made for a consideration (payment) which may not be in the course of business
- A supply without consideration (without payment) In simpler terms, the term 'supply' usually means a:
 1. Sale – sale of goods and payment made
 2. Transfer – branch transfers for instance
 3. Barter/Exchange – where the payment is by goods instead of in money

Therefore, eWay Bills must be generated on the common portal for all these types of movements. For certain specified Goods, the eWay bill needs to be generated mandatorily even if the Value of the consignment of Goods is less than ₹ 50,000:

1. Inter-State movement of Goods by the Principal to the Job-worker by Principal/ registered Job-worker,
2. Inter-State Transport of Handicraft goods by a dealer exempted from GST registration.

2. Generation of eWaybill -

- i. **Registered Person** – Eway bill must be generated when there is a movement of goods of more than ₹ 50,000 in value to or from a Registered Person. A Registered person or the transporter may choose to generate and carry eWay bill even if the value of goods is less than ₹ 50,000.
- ii. **Unregistered Persons** – Unregistered persons are also required to generate e-Way Bill. However, where a supply is made by an unregistered person to a registered person, the receiver will have to ensure all the compliances are met as if they were the supplier.
- iii. **Transporter** – Transporters carrying goods by road, air, rail, etc. also need to generate e-Way Bill if the supplier has not generated an e-Way Bill.



Who	When	Part	Form
Every Registered person under GST	Before movement of goods	Fill Part A	Form GST EWB-01
Registered person is consignor or consignee (mode of transport may be owned or hired) OR is recipient of goods	Before movement of goods	Fill Part B	Form GST EWB-01
Registered person is consignor or consignee and goods are handed over to transporter of goods	Before movement of goods	Fill Part B	The registered person shall furnish the information relating to the transporter in Part B of FORM GST EWB-01
Transporter of goods	Before movement of goods		Generate e-way bill on basis of information shared by the registered person in Part A of FORM GST EWB-01
An unregistered person under GST and recipient is registered	Compliance to be done by Recipient as if he is the Supplier.		1. If the goods are transported for a distance of fifty kilometers or less, within the same State/ Union territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01. 2. If supply is made by air, ship or railways, then the information in Part A of FORM GST EWB-01 has to be filled in by the consignor or the recipient

Note: If a transporter is transporting multiple consignments in a single conveyance, they can use the form GST EWB-02 to produce a consolidated e-way bill, by providing the e-way bill numbers of each consignment. If both the consignor and the consignee have not created an e-way bill, then the transporter can do so * by filling out PART A of FORM GST EWB-01 on the basis of the invoice/bill of supply/delivery challan given to them.

Documents or Details required to generate e-way bill-

- Invoice/Bill of Supply/Challan related to the consignment of goods
- Transport by road – Transporter ID or Vehicle number
- Transport by rail, air, or ship – Transporter ID, Transport document number, and date on the document.

Documents and devices to be carried by a person-in-charge of a conveyance.[Rule 138(A)]-

(1) The person in charge of a conveyance shall carry-

- (a) the invoice or bill of supply or delivery challan, as the case may be; and
- (b) a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner:

Provided that nothing contained in clause (b) of this sub-rule shall apply in case of movement of goods by rail or by air or vessel.

(2) A registered person may obtain an Invoice Reference Number from the common portal by uploading, on the said portal, a tax invoice issued by him in FORM GST INV-1 and produce the same for verification by the proper officer in lieu of the tax invoice and such number shall be valid for a period of thirty days from the date of uploading.



- (3) Where the registered person uploads the invoice under sub-rule (2), the information in Part A of FORM GST EWB-01 shall be auto-populated by the common portal on the basis of the information furnished in FORM GST INV-1.
- (4) The Commissioner may, by notification, require a class of transporters to obtain a unique Radio Frequency Identification Device and get the said device embedded on to the conveyance and map the e-way bill to the Radio Frequency Identification Device prior to the movement of goods.
- (5) Notwithstanding anything contained in clause (b) of sub-rule (1), where circumstances so warrant, the Commissioner may, by notification, require the person-in-charge of the conveyance to carry the following documents instead of the e-way bill
 - (a) tax invoice or bill of supply or bill of entry; or
 - (b) a delivery challan, where the goods are transported for reasons other than by way of supply.

As per Notification No. 39/2018 – Central Tax, dt 04.09.2018- the person in-charge of the conveyance shall also carry a copy of the bill of entry in case of imported goods but the date and document number must be mentioned in Part A of GST EWB-01.

Example: Goods imported from China arrive at Mumbai port. These goods are transported from Mumbai port to factory in Pune. This is an inter-State supply from China to Pune, but it is an intra-State movement from Mumbai to Pune – Requirement of EWB to be determined under the State GST Law.

Example: Goods are sold from Lucknow by Supplier to Customer in Delhi with instructions for these goods to be delivered to job-worker in Noida. This is an inter- State supply from Lucknow to Delhi but an intra-State movement within UP – Requirement of EWB to be determined under the State GST Law.

Example: Generator installed in basement of building being sold to Landlord on termination of lease agreement. EWB will NOT BE REQUIRED as there is 'no movement' in this supply.

Example: Contractor carrying portable crane to customer site, both located in same State, is intra-State movement – Requirement of EWB to be determined under the State GST Law.

Example: Laptop carried by an employee of a Company in Delhi, having no other branches, to client-location in Bangalore on business. This movement is not supply but is incidental to 'services of employee to employer' under schedule III.

EWB will NOT BE REQUIRED for this movement. Contract-staff carrying company laptop not excluded from EWB requirement.

Example: LPG cylinders transported from dealership to bottling plant of Oil Company, is 'excluded' from requirement. EWB will NOT BE REQUIRED for this movement. But EWB will be required for movement of cylinders supplied by fabricator to Oil Company.

3. 'Bill-to-Ship-to' Transactions - Although bill-to-ship-to transactions could sometimes result in twin-supply transactions, they require a single EWB since the movement is singular. In the e-way bill form, there are two portions under the 'TO' section.

- In the left-hand-side: 'Billing To' GSTIN and trade name is entered; and
- In the right-hand-side: 'Ship to' address of the destination of the movement is entered.
- The other details are entered as per the invoice.

In case ship-to State is different from the Bill-to State, the tax components are entered as per the details of the bill-to person (Bill-to State). i.e., if the Bill-to location is inter- State for the supplier, IGST is entered and if the Bill-to person is located in the same State as the supplier, then SGST and CGST are entered irrespective of the place of delivery (whether within the State or outside the State).

In a typical "Bill To Ship To" model of supply, there are three persons involved in a transaction, namely:



- 'A' is the person who has ordered 'B' to send goods directly to 'C'.
- 'B' is the person who is sending goods directly to 'C' on behalf of 'A'.
- 'C' is the recipient of goods.

In this complete scenario two supplies are involved and accordingly two tax invoices are required to be issued:

- Invoice -1, which would be issued by 'B' to 'A'.
- Invoice -2 which would be issued by 'A' to 'C'.

It is clarified that as per the CGST Rules, 2017 either 'A' or 'B' can generate the e-Way Bill but it may be noted that only one e-Way Bill is required to be generated as per the following procedure:

Case -1: Where e-Way Bill is generated by 'B', the following fields shall be filled in Part A of GST FORM EWB-01:

Bill From	Bill From: In this field details of 'B' are supposed to be filled.
Dispatch From	Dispatch From: This is the place from where goods are actually dispatched. It may be the principal or additional place of business of 'B'.
Bill To	Bill To: In this field details of 'A' are supposed to be filled.
Ship To	Ship to: In this field address of 'C' is supposed to be filled.
Invoice Details	Invoice Details: Details of Invoice-1 are supposed to be filled

Case -2: Where e-Way Bill is generated by 'A', the following fields shall be filled in Part A of GST FORM EWB-01:

Bill From	In this field details of 'A' are supposed to be filled.
Dispatch From	This is the place from where goods are actually dispatched. It may be the principal or additional place of business of 'B'.
Bill To	In this field details of 'C' are supposed to be filled.
Ship To	In this field address of 'C' is supposed to be filled.
Invoice Details	Details of Invoice-2 are supposed to be filled

Example : Goods supplied from Baroda to intermediate in Chennai but directly delivered to Kolkata. EWB to be generated 'before' commencement of movement with 'bill to Chennai' and 'ship to Kolkata' and the GSTIN of original supplier (Baroda) and intermediate (Chennai).

Example : Car sold by Dealer in Bangalore to Bank in Mumbai but delivered to Lessee in Bangalore. EWB to be issued 'before' commencement of movement with 'bill to Mumbai' and 'ship to Bangalore'.

4. In the following cases it is not necessary to generate e-Way Bill:

1. The mode of transport is non-motor vehicle
2. Goods transported from Customs port, airport, air cargo complex or land customs station to Inland Container Depot (ICD) or Container Freight Station (CFS) for clearance by Customs.
3. Goods transported under Customs supervision or under customs seal
4. Goods transported under Customs Bond from ICD to Customs port or from one custom station to another.
5. Transit cargo transported to or from Nepal or Bhutan
6. Movement of goods caused by defence formation under Ministry of defence as a consignor or consignee
7. Empty Cargo containers are being transported



8. Consignor transporting goods to or from between place of business and a weighbridge for weighment at a distance of 20 kms, accompanied by a Delivery challan.
9. Goods being transported by rail where the Consignor of goods is the Central Government, State Governments or a local authority.
10. Goods specified as exempt from E-Way bill requirements in the respective State/Union territory GST Rules.
11. Transport of certain specified goods- Includes the list of exempt supply of goods, Annexure to Rule 138(14), goods treated as no supply as per Schedule III, Certain schedule to Central tax Rate notifications.

Note: Part B of e-Way Bill is not required to be filled where the distance between the consigner or consignee and the transporter is less than 50 Kms and transport is within the same state.

As per Notification No. 26/2018 – Central Tax, dt 13.6.2018- A new clause (o) has been inserted to the list of specified goods on which no e-way bill is required to be generated. For movement of empty cylinders for packing of liquefied petroleum gas other than supply, No E-Waybill will be required.

5. An e-way bill is valid for periods as listed below, which is based on the distance travelled by the goods. Validity is calculated from the date and time of generation of e-way bill-

Type of conveyance	Distance	Validity of EWB
Other than Over dimensional cargo	Less Than 100 Kms	1 Day
	For every additional 100 Kms or part thereof	additional 1 Day
For Over dimensional cargo	Less Than 20 Kms	1 Day
	For every additional 20 Kms or part thereof	additional 1 Day

Validity of Eway bill can be extended also. The generator of such Eway bill has to either four hours before expiry or within four hours after its expiry can extend Eway bill validity.

Verification of documents and conveyances.-[Rule 138B]-

- (1) The Commissioner or an officer empowered by him in this behalf may authorize the proper officer to intercept any conveyance to verify the e-way bill in physical or electronic form for all inter-State and intra-State movement of goods.
- (2) The Commissioner shall get Radio Frequency Identification Device readers installed at places where the verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the e-way bill has been mapped with the said device.
- (3) The physical verification of conveyances shall be carried out by the proper officer as authorised by the Commissioner or an officer empowered by him in this behalf:

Provided that on receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any other officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.

As per Notification No. 28/2018 – Central Tax, dt 19.6.2018 - After interception of the vehicle, the officer had 3 days time to prepare and submit summary report of inspection in Part B of Form EWB-03. Such period now can be extended by another 3 days by the Commissioner or any other officer authorized by him.



GST CIRCULAR RELATING TO E-WAY BILL

A) Circular No. 47/21/2018-GST dt 08.06.2018 - Clarifications of certain issues under GST

1. In case of transportation of goods by railways, whether goods can be delivered even if the e-way bill is not produced at the time of delivery?

As per proviso to rule 138(2A) of the Central Goods and Services Tax Rules, 2017 (CGST Rules for short), the railways shall not deliver the goods unless the e-way bill is produced at the time of delivery.

2. Whether e-way bill is required in the following cases-

- (i) Where goods transit through another State while moving from one area in a State to another area in the same State.
- (ii) Where goods move from a DTA unit to a SEZ unit or vice versa located in the same State.

Where goods move from a DTA unit to a SEZ unit or vice versa located in the same State, there is no requirement to generate an e-way bill (this exemption is applicable only if state has exempted the same.)

B) Circular No. 61/35/2018-GST dt 04.09.2018-E-way bill in case of storing of goods in godown of transporter-

The GST Council clarifies issue regarding the textile sector and problems being faced by weavers & artisans regarding storage of their goods in the warehouse of the transporter. It clarify that in case the consignee/ recipient taxpayer stores his goods in the godown of the transporter, then the transporter's godown has to be declared as an additional place of business by the recipient taxpayer. In such cases, mere declaration by the recipient taxpayer to this effect with the concurrence of the transporter in the said declaration will suffice. Where the transporter's godown has been declared as the additional place of business by the recipient taxpayer, the transportation under the e-way bill shall be deemed to be concluded once the goods have reached the transporter's godown (recipient taxpayer' additional place of business). Hence, e-way bill validity in such cases will not be required to be extended. Further, whenever the goods are transported from the transporters' godown , which has been declared as the additional place of business of the recipient taxpayer, to any other premises of the recipient taxpayer then, the relevant provisions of the e-way bill rules shall apply. Hence, whenever the goods move from the transporter's godown (i.e, recipient taxpayer's additional place of business) to the recipient taxpayer's any other place of business, a valid e-way bill shall be required, as per the extant State-specific e-way bill rules.

Synopsis.

1. Place of business now also includes a warehouse, a godown, or any other place where a taxable person stores in goods, supplies or receives goods or services or both.
2. In case, the goods have reached the transporter's godown i.e additional place of business then the transportation under the e-way bill will be deemed to be concluded. There will be no need of an extension of e-way bill's validity.
3. The recipient will be required to maintain books of accounts in relation to the goods stored at the godown of the transporters.



SECTION - B

CUSTOMS LAW



Study Note - 1

CUSTOMS LAW - BASIC CONCEPTS



This Study Note includes

- 1.1 Introduction
- 1.2 Definitions
- 1.3 Circumstances of Levy of Customs Duties
- 1.4 Duty Liability in Certain Special Circumstances
- 1.5 Circumstances under which No Duty will be Levied

1.1 INTRODUCTION

Kautiliya's Arthashastra also refers to 'shulka' consisting of import duty and export duty that was collected at the city gates on goods coming in and going out respectively.

Subsequently, the levy of customs duty was organised through legislation during the British period.

Constitutional Provision:

Entry 83 of the Union List of the Seventh Schedule to the Constitution of India is empowered to levy the customs duty by the Central Government of India.

The term customs is not new for us. It was customary for a trader who brings the goods to a particular kingdom to offer gifts to the king for allowing him to sell his goods in that kingdom. The gifts given by the dealer to the king was nothing but a customary practice in those days. In the modern days, these gifts are collected by the Government of India in the form of Customs Duty from the importer who imports the goods from a country outside India and from an exporter who exports the goods to a country outside India.

The Customs Act, was enacted by the Parliament in the year 1962, as per the List I of the Union List Parliament has an exclusive right to make laws. The Customs Act regulates import and export, protecting the Indigenous industry from other countries and so on. The Central Government of India has power to make rules under section 156 of Customs Act, 1962, and also has the power to issue Notifications from time to time for the purpose of smooth functioning and effective administration of the Act.

As per section 157 of the Custom Act, 1962, the Central Board of Excise and Customs (CBE&C), now renamed to Central Board of Indirect Tax and Custos (CBIC), has been empowered to make regulations, consistent with provisions of the Act. The Commissioner of Customs has the power to issue the Public notices which are also called trade notices.

1.2 DEFINITIONS

(1) Adjudicating Authority:

As per section 2(1) of the Customs Act, 1962, adjudicating authority means any authority competent to pass any order or decision under this Act, but does not include:

- The Central Board of Excise and Customs (CBE&C),
- Commissioner of Customs (Appeals) or
- Customs, Excise and Service Tax Appellate Tribunal (CESTAT)

(2) Assessment:

As per section 2(2) of the Customs Act, assessment means process of determining the tax liability in accordance with the provisions of the Act, which includes

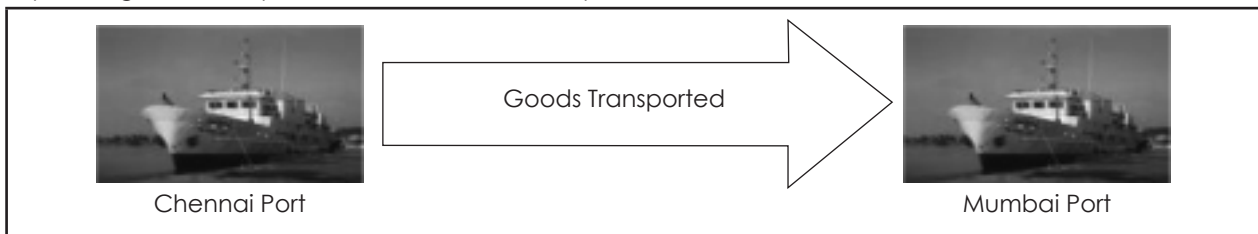
- provisional assessment,
- self-assessment,
- reassessment and
- any assessment in which the duty assessed is nil.

(3) **Bill of Export:** As per Section 2(5) of the Customs Act, 1962, the exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported by land, a bill of export in the prescribed form.

Shipping bill in case of goods exported in a vessel or air craft

(4) **Board:** means As per section 2(6) of the Customs Act, board means the Central Board of Indirect Taxes and Customs constituted under the Central Boards of Revenue Act, 1963.

(5) **Coastal Goods:** As per section 2(7) of the Customs Act, the term coastal goods means goods, other than imported goods, transported in a vessel from one port in India to another.



(6) **Conveyance:** As per section 2(9) of the Customs Act Defines, 'Conveyance includes a Vessel, an Aircraft and a Vehicle'. The specific terms are vessel (by sea), aircraft (by air) and vehicle (by land).

		
Vessel	Aircraft	Vehicle

(7) **Customs Area:** As per section 2(11) of the Customs Act, customs area means the area of a customs station and includes any area in which imported goods or exported goods are ordinarily kept before clearance by Customs Authorities.

(8) **Customs port:** As per section 2(12) of the Customs Act, customs port means any port appointed under section 7(a) of the Customs Act, to be a customs port and includes a place appointed under section 7(aa) of the Customs Act, to be an inland container depot (ICD).

Customs Airport under section 7(a) means any airport and includes a place appointed under section 7(aa) (w.e.f. 28-5-2012) to be an air freight station.

(9) **Customs Station:** As per section 2(13) of the Customs Act, customs station means any customs port, customs airport or land customs station.

Customs Airport U/S 7(a) means any airport and includes a place appointed u/s 7(aa) (w.e.f. 28-5-2012) to be an air freight station.



W.e.f. 10-5-2013: CBIC empowered to permit landing of vessels and aircrafts at any place other than customs port or customs airport [Section 29(1)]:

The Finance Act, 2013 has amended section 29(1) to empower CBIC to permit landing of vessels and aircrafts at any place other than customs port or customs airport.

- (10) **Dutiable Goods:** As per section 2(14) of the Customs Act, the term is defined to mean any goods which are chargeable to duty and on which duty has not been paid. It means to say that the name of the product or goods should find a mention in the Customs Tariff Act,
- (11) **Foreign Going Vessel or Aircraft:** As per section 2(21) of the Customs Act, the foreign going vessel or aircraft from any port or airport in India to any port or airport outside India,

The following are also included in the definition:

- (i) A foreign naval vessel doing naval exercises in Indian waters
 - (ii) A vessel engaged in fishing or any other operation (like oil drilling by domestic vessel or foreign vessel) outside territorial waters
 - (iii) A vessel going to a place outside India for any purpose whatsoever.
- (12) **Goods:** As per section 2(22) of the Customs Act, the term goods includes
- (a) Vessels, aircrafts and vehicles
 - (b) stores
 - (c) baggage
 - (d) currency and negotiable instruments and
- any other kind of movable property

Case Law: 1

Associated Cement Companies Ltd. v. CC 2001 (128) ELT 21 (SC).

Facts of the Case: RST Ltd. imported drawings and designs in paper form through professional courier and post parcels.

However, the Assistant Commissioner of Customs valued these drawings and designs and levied duty on them.

RST Ltd. Contended that customs duty cannot be levied on drawings and designs as they do not fall in the definition of goods under the Customs Act, 1962.

Do you feel the stand taken by the RST Ltd. is tenable in law? Support your answer with a decided case law, if any.

Decision: The Apex Court observed that though technical advice or information technology are intangible assets, but the moment they are put on a media, whether paper or cassettes or diskettes or any other thing, they become movable and are thus, goods.

Therefore, the Supreme Court held that drawings, designs, manuals and technical material are goods liable to customs duty.

Therefore, the stand taken by the RST Ltd. is not correct in law.

- (13) **Import Report:** As per Section 2(24) of the Customs Act, 1962, the person-in-charge of a vehicle carrying imported goods; deliver to the proper officer an import report within twelve hours after its arrival in the customs station, in the prescribed form.

In case of vessel or air craft person-in-charge, deliver to the proper officer import general manifest (electronic filing mandatory w.e.f. 10-5-2013).



As per Finance Act, Import Manifest Report – Amendment to IGM – Procedure:-

On receipt of representation from the Trade that owing to tedious process of IGM amendment, there is reluctance to avail the facility of advance/prior Bill of Entry, the Department of Revenue prescribing revised procedure has clarified that the responsibility of amendment in the IGM rest solely with Shipping Line/ Agent, as they file IGM with Customs under section 30 of the Customs Act, 1962, the fine/penalty impose, if any, upon adjudication in such cases, shall be payable by the Shipping Line only or such other person as specified; No fine/penalty is required to be imposed on the consignee or otherwise; and No request for any amendment in the IGM from Customs Broker/ Importer will be entertained (M.F circular No. 14/2017-Cus, dated 11-4-2017)

- (14) Imported Goods:** As per section 2(25) of the Customs Act, the term imported goods means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.

w.e.f. 10-5-2013: Clause (n) of section 11(2) provided that importation/exportation of goods may be prohibited for the protection of patents, trademarks and copyrights.

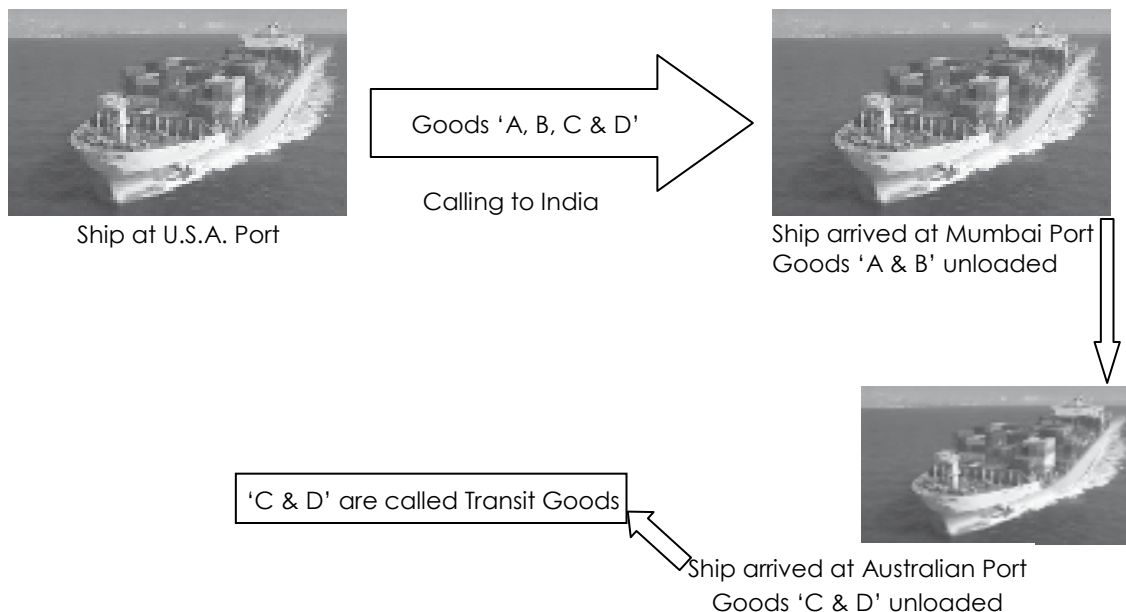
The Finance Act, 2013 has expanded the scope of clause (n) to include designs and geographical indications so as to provide for protection of these legal rights also. Consequently, Central Government can now prohibit the import/export of specified goods for protection of designs and geographical indications also apart from patents, trademarks and copyrights.

- (15) India:** As per section 2(27) of the Customs Act, "India includes the territorial waters of India.

The term India is an inclusive definition and includes not only the land mass of India but also territorial waters of India. The territorial waters extend to 12 nautical miles into the sea from the base line. Therefore, a vessel not intended to deliver goods should not enter these waters. [1 Nautical mile – 1.852 km or 1852 m]

(16) Transit of Goods (Section 53 of the Customs Act, 1962)

These goods should be mentioned as Transit Goods in the Import General Manifest (IGM). They are allowed by customs to be transited through Indian port without payment of duty.



w.e.f. 14-5-2016:

Subject to the provisions of section 11 (i.e. power to prohibit importation or exportation of goods), where any goods imported in a conveyance and mentioned in the import manifest or the import report, as the case may be, as for transit in the same conveyance to any place outside India or to any customs station, the proper officer may allow the goods and the conveyance to transit without payment of duty, subject to such conditions, as may be prescribed.

(17) Transshipment of Goods (Section 54 of the Customs Act, 1962)

Example: 1

A vessel *Bhishma*, sailing from U.S.A to Australia via., India carries various types of products namely 'A, B, C & D'. 'A & B' are destined to Mumbai Port. On account of submission of bill of transshipment product 'A' transshipped to Chennai port as ultimate destination in India and product 'B' transshipped to Srilanka.

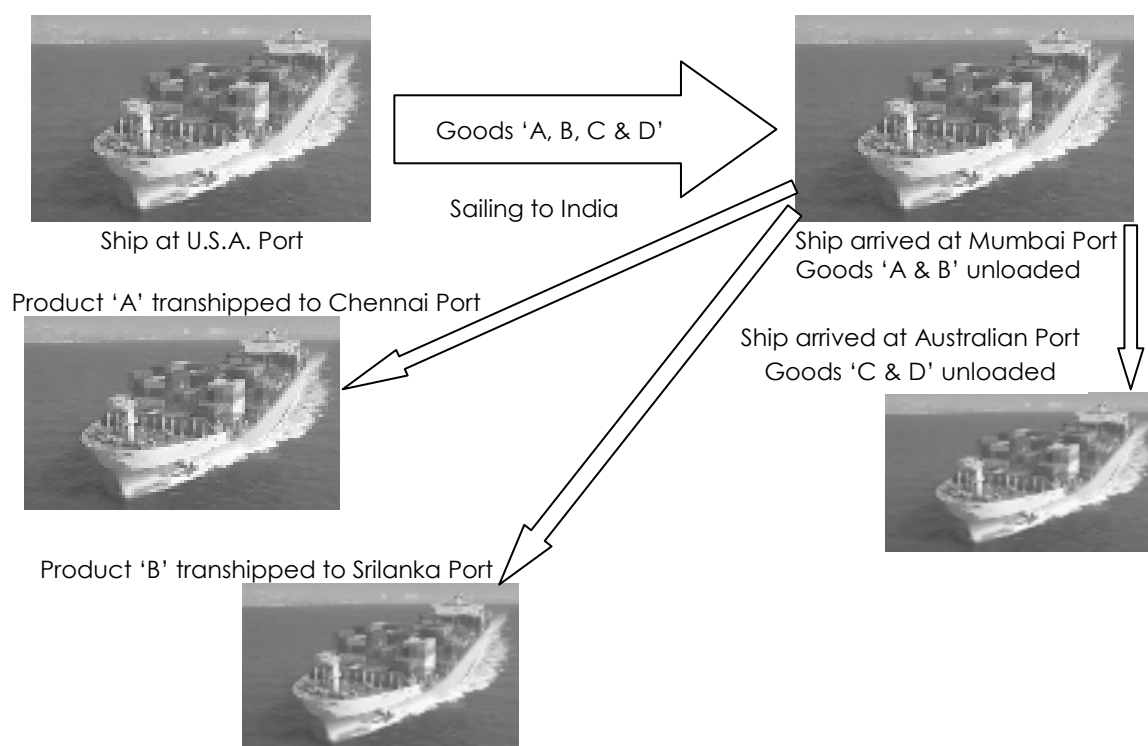
Find the imported goods, Transshipment goods and transit goods?

Answer:

Product 'A' is imported goods because its ultimate destination is in India.

Products 'A & B' are called as Transshipment goods, since these goods are transshipped to another vessel, Product 'A' transshipped to Chennai attracts import duty whereas product 'B' is destined to Srilanka without payment of duty.

Products C & D are transit goods since these goods remain in the same vessel *Bhishma* chartered to Australia.



(18) Stores:

As per section 2(38) of the Customs Act, stores means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting.

Case Law: 2

UOI v. V M Salgaoncar AIR 1998 SC1367:99 ELT 3 (SC).

Facts of the case: A Big Ship carrying merchandize and stores enters the territorial waters of India but it cannot enter the port. In order to unload the merchandize lighter ships are employed. Stores are consumed on board the ship as well as by the small ships. Examine whether such consumption of stores attracts customs duty. Quote relevant section and case law if any. Stores are supplied to the above ships. Will such supplies be treated as exports and be entitled to draw back? (CMA Final Dec 2013)



Decision: Bringing of 'stores' is treated as import. However, there is special provision for stores under section 87. Imported stores consumed on board an ocean going vessel (i.e. foreign going vessel) are exempt from import duty under Section 87. Since the ship is ocean going, stores consumed on board will not attract customs duty.

Regarding the smaller ships which are employed to unload the cargo from the mother ship, they are termed as "Transhippers". These are also treated as ocean going vessels as was decided in UOI v. V M Salgaoncar AIR 1998 SC 1367:99 ELT 3 (SC).

Hence stores consumed by small vessels would also be exempt from customs duty.

Stores supplied to the vessel will be treated as export as per Section 89 of Customs Act and hence will be eligible for duty drawback.

(19) Person-in-charge:

As per section 2(31) person-in-charge means

- (a) Vessel - Master
- (b) Aircraft - Commander or Pilot in Charge
- (c) Train - Conductor or Guard
- (d) Vehicle - Driver
- (e) Other Conveyance - Person in Charge

(20) High Seas:

An area beyond 200 nautical miles from the base line is called High Seas. All countries have equal rights in this area.

(21) Exclusive Economic Zone:

Exclusive Economic Zone extends to 200 nautical miles from the base line.

Note: one nautical mile = 1.1515miles or 1.853kms

(22) Domestic Tariff Area (D.T.A):

Means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the Special Economic Zones & 100% Export Oriented Units (EOUs)

Case Law: 3

Tirupati Udyog Ltd. v. UOI 2011 (272) E.L.T. 209 (A.P.)

Goods cleared from unit of DTA to Special Economic Zone (SEZ) chargeable to duty under the SEZ Act, 2005 or the Customs Act, 1962?

Decision: Customs duty can be levied only on goods imported into or exported beyond the territorial waters of India, Sec. 12 (1) of the Customs Act, 1962 (i.e. charging section) is not attracted for supplies made by a DTA unit to a unit located within the Special Economic Zone.

Therefore, goods cleared from DTA to SEZ is not liable to export duty either under SEZ Act, 2005 or under the Customs Act, 1962.

Case Law: 4

Aban Llyod Chilies Offshore Ltd. v UOI (2008) 227 ELT 24 (SC).

Goods imported by the assessee for consumption on oil rigs which are situated in Continental Shelf/Exclusive Economic Zones of India.



Decision: E E Z deemed to be a part of Indian Territory. Therefore, the supply of imported spares or goods or equipments to the rigs by a ship will attract import duty.

Case Law: 5

CCus. (Prev.), Mumbai v M. Ambalal & Co. 2010 (260) E.L.T. 487 (SC)

Point of dispute: Smuggled goods can be treated par with imported goods for the purpose of granting the benefit of the exemption notification?

Imported goods:	Smuggled goods
As per section 2(25) of the Customs Act, the term imported goods means any goods brought into India from a place outside India but does not include goods, which have been cleared for home consumption.	As per Section 2(39) of the Customs Act, Smuggled goods means any goods which are liable for confiscation u/s 111 or u/s 113 of the Customs Act.
Decision: The Apex court held that the smuggled goods could not be considered as 'imported goods' for the purpose of benefit of the exemption notification	

1.3 CIRCUMSTANCES OF LEVY OF CUSTOMS DUTIES

Section 12 of the Customs Act makes it clear that import or export of goods into or out of India is the taxable event for payment of the duty of customs. Lot of problems were faced in determining the point at which the importation or exportation takes place. The root cause of the problem was the definition of India.

The Supreme Court of India has given the landmark judgments in cases of Union of India v Apar Industries Ltd (1999) and further in the case of Garden Silk Mills Ltd v Union of India (1999). The import of goods will commence when they cross the territorial waters but continues and is completed when they become part of the mass of goods within the country, and the taxable event being reached at the time when goods reach the customs barriers and bill of entry for home consumption is filed.

(1) Taxable event for imported goods:

The taxable event occurs in the course of imports under the customs law with reference to the principles laid down by the Supreme Court in the cases of Garden Silk Mills Ltd. v Union of India; and Kiran Spinning Mills v CC. taxable event in case of imported goods can be summed up in the following lines:

- (i) Unloading of imported goods at the customs port – is not a taxable event
- (ii) Date of entry into Indian territorial waters – is not a taxable event
- (iii) Date of presentation of bill of entry – is not a taxable event
- (iv) Date on which the goods cross the customs barrier - is a taxable event

**Example : 2**

An importer imported some goods for subsequent sale in India at \$ 10,000 on assessable value basis. Relevant exchange rate and rate of duty are as follows:

Particulars	Date	Exchange rate declared by the CBIC	Rate of Basic Customs Duty
Date of submission of bill of entry	25th February 2018	₹ 58/USD	10%
Date of entry inwards granted to the vessel	5th March 2018	₹ 58.75/USD	12%

Calculate Assessable value and Customs Duty in Indian rupees?

Answer:

Relevant rate of duty for the imported goods is 12% (i.e. Date of submission of bill of entry or Date of entry inwards granted to the vessel whichever is later)

Exchange Rate is ₹ 58 per USD (i.e. the rate of CBIC as on the date of submission of Bill of Entry by the importer)

Assessable value = ₹ 5,80,000 (i.e. USD 10,000 x ₹ 58)

Basic Customs Duty = ₹ 69,600 (i.e. ₹ 5,80,000 x 12%)

2% Education cess = ₹ 1,392 (i.e. ₹ 69,600 x 2%)

1% SAH education cess = ₹ 696 (i.e. ₹ 69,600 x 1%)

Total Customs Duty = ₹ 71,688

(2) Taxable event for warehoused goods:

As per Section 15(1)(b) of the Customs Act, 1962, when goods have been deposited into a warehouse, and they are removed there from for home consumption, the relevant date for determination of rate of duty is the date of presentation of ex-bond bill of entry (i.e. Sub-bill of Entry) for home consumption.

w.e.f. 6-8-2014, Section 15(1) of the Customs Act, 1962 has been amended to provide for determination of rate of duty and tariff valuation for imports through a vehicle in cases where the bill of entry is filed prior to the delivery of import report. The proviso to section 15(1) has been amended to lay down that if a bill of entry has been presented before the date of arrival of the vehicle (out of box) by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such arrival. Therefore, under the amended provisions, the relevant date for determination of rate of duty and tariff valuation of imported goods in different cases will be as under:

Example: 3

An importer imported some goods. Entry inwards granted to the vessel on 7th February, and the goods were cleared from Chennai port for warehousing on 8th February, after assessment. The Bill of Entry was presented on 1st February for warehousing. Assessable value was US \$ 10,000. Assume that no additional duty is payable. The goods were warehoused at Chennai and were cleared from Chennai warehouse on 4th March. What is the duty payable while removing the goods from Chennai warehouse on 4th March? Exchange rates and rate of Customs Duties are as follows:

Particulars	Date	Exchange rate declared by the CBIC	Basic Customs Duty
Date of submission of bill of entry for warehousing	1st February	₹ 55/USD	10%
Date of entry inwards granted to the vessel	7th February	₹ 59/USD	15%
Date of clearance of goods from warehouse	4th March	₹ 60/USD	12%

Answer:

Relevant rate of duty for the imported goods warehoused is 12% (i.e. Date of submission of sub-bill of entry)

Exchange Rate is ₹ 55 per USD (i.e. the rate of CBIC as on the date of submission of Bill of Entry by the importer)

Assessable value = ₹ 5,50,000 (i.e. USD 10,000 x ₹ 55)

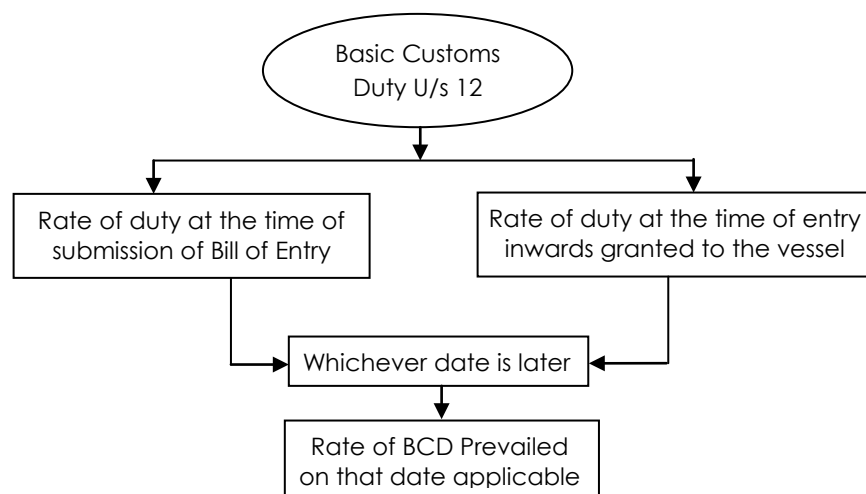
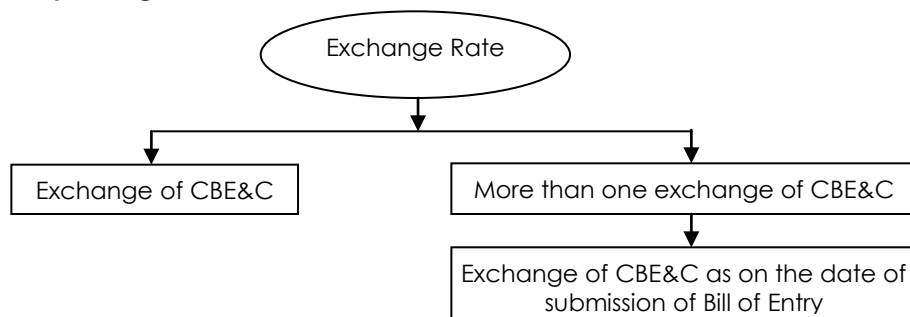
Basic Customs Duty = ₹ 66,000 (i.e. ₹ 5,50,000 x 12%)

2% Education cess = ₹ 1,320 (i.e. ₹ 66,000 x 2%)

1% SAH education cess = ₹ 660 (i.e. ₹ 66,000 x 1%)

Total Customs Duty = ₹ 67,980

Particulars	Relevant date
Goods entered for home consumption under section 46	Date of presentation of bill of entry OR Date of entry inwards of the vessel/arrival of the aircraft or (vehicle w.e.f. 6-8-2014) whichever is later
Goods cleared from a warehouse under section 68.	Date of presentation of bill of entry for home consumption.
Other goods	Date of payment of duty

Basic Customs Duty (BCD) on imported goods**Exchange rate for imported goods**



(3) Taxable event for exported goods:

As per section 16(1) of the Customs Act, 1962, taxable event arises only when proper officer makes an order permitting clearance (i.e. entry outwards) granted and loading of the goods for exportation took place under Section 51 of the Customs Act, 1962.

Rate of foreign exchange in case of exports:

In case of exports, rate of exchange of the CBIC as in force on the date on which a shipping bill or bill of export, as the case may be, is presented under Sec. 50 of the Customs Act, 1962 is applicable.

Assessable Value for exported goods:

For the purposes of calculation of export duty, the transaction value, that is to say the price actually paid or payable for the goods for delivery at the time and place of exportation under section 14 of Customs Act 1962, shall be the FOB price of such goods at the time and place of exportation.

Assessable value (for Exported Goods) = free on board (i.e. FOB)

Free on Board (FOB): FOB means all expenditure incurred by exporter upto the point of loading goods into the vessel or aircraft or vehicle is incurred by the exporter and hence, from importer point of view it is Free on Board.

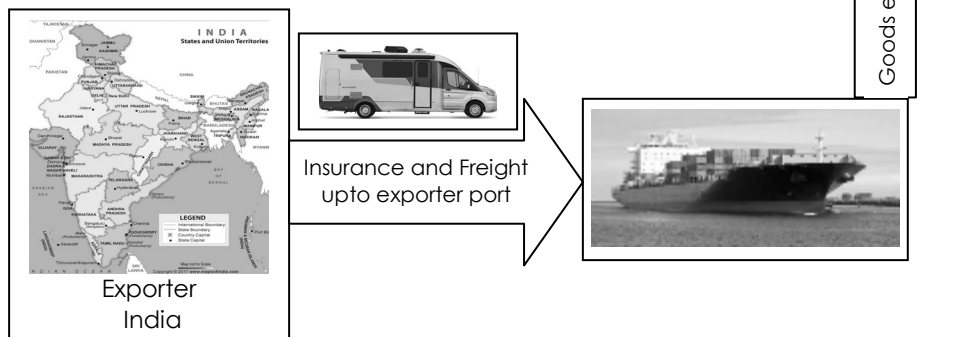
Cost Insurance and Freight (CIF): CIF means once the goods are reached to the importer country port or air port importer has to pay Cost (i.e. FOB value) along with Insurance and Freight from exporter country to importer country.

Important point: As per our Foreign Trade Policy (2015-2020) all imports into India are measured in terms of CIF value whereas exports from India are measured in terms of FOB value.

Simplified approach:

Cost incurred by the exp:

Raw Material	XXX	
OH	XXX	FOB = Cost + Insurance + Freight
Freight	XXX	C + I + F = CIF
Insurance	XXX	
Free on Board	XXX	



Example: 4

Compute export duty from the following data:

- (i) FOB price of goods: US \$ 1,00,000
- (ii) Shipping bill presented electronically on 28-02-2018
- (iii) Proper officer passed order permitting clearance and loading of goods for export on 01-03-2018.
- (iv) Rate of exchange and rate of export duty are as under

Duty	Rate of Exchange	Rate of Export
On 28-02-2018	1 US \$=₹65	10%
On 01-03-2018	1 US \$=₹66	8%

- (v) Rate of exchange is notified for export by Central Board of Excise and Customs (Make suitable assumptions wherever required and show the workings)

Answer:

Particulars	Value in ₹	Remarks
FOB	65,00,000	1,00,000 x ₹65
Customs Duty	5,20,000	₹65 lakhs x 8%

Note: Export duty does not carry cess 2% + 1%.

Exchange rate for export of goods is the rate of CEBC at the time of submission of shipping bill.

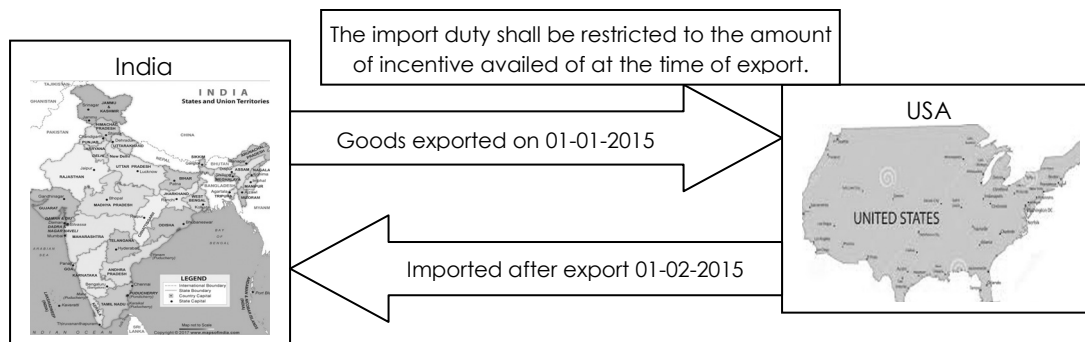
Rate of duty for export is the date on which entry outward granted for export and loading of goods taken place.

1.4 DUTY LIABILITY IN CERTAIN SPECIAL CIRCUMSTANCES

Duty liability in certain special circumstances:

- Goods are imported into India after exportation there from.
- Imported goods have been originally exported to the overseas supplier for repairs.
- Exported goods may come back for repairs and re-export.

1. Goods are imported into India after exportation there from:



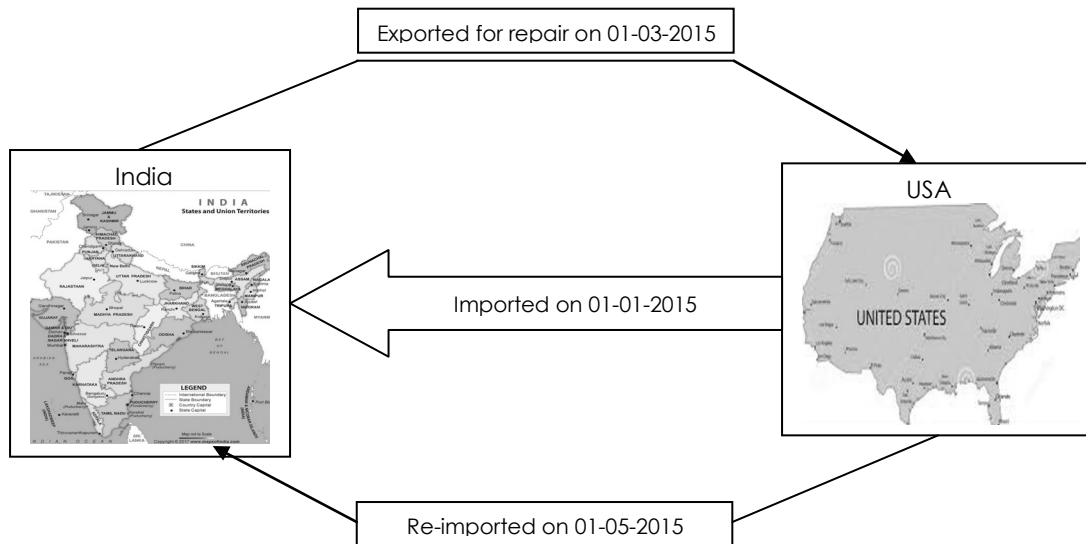
2. Imported goods have been originally exported to the overseas supplier for repairs:

No duty at the time of re-import will be levied:

If re-imported within 3 years from the date of export (extended up to 5 years)

The exported and imported goods must be in the same form and ownership of the goods should also not have changed.

This concept is not applicable if the repairs amount to manufacture and exports from EPZ or EOUs.



Example : 5

Mr. A imported an Air conditioner on 1st January 2018 for ₹ 5,00,000 from USA. Mr. A has paid import duty for ₹ 50,000. Due to some technical problems the same was exported for want of repairs on 31st January 2018. After incurring some additional cost for repairs and replacement worth for ₹ 1,00,000 the same was re-imported on 5th February 2018. The import duty in such case will be restricted on the value of repairs and replacement of ₹ 1,00,000.

Example : 6

A machine was originally imported from Japan at ₹ 250 lakh in August 2017 on payment of all duties of customs. The said machine was exported (sent-back) to supplier for repairs in January 2018 and re-imported without any re-manufacturing or re-processing in October, 2018 after repairs. Since the machine was under warranty period, the repairs were carried out free of cost.

However, the fair cost of repairs carried out (including cost of material ₹ 6 lakh) would have been ₹ 9 lakh. Actual insurance and freight charges (to and fro) were ₹ 3 lakh. The rate of basic customs duty is 10% and rate of IGST in India on like article is 12%.

Compute the amount of customs duty payable (if any) on re-import of the machine after repairs. The ownership of the machine has not been changed during the period.

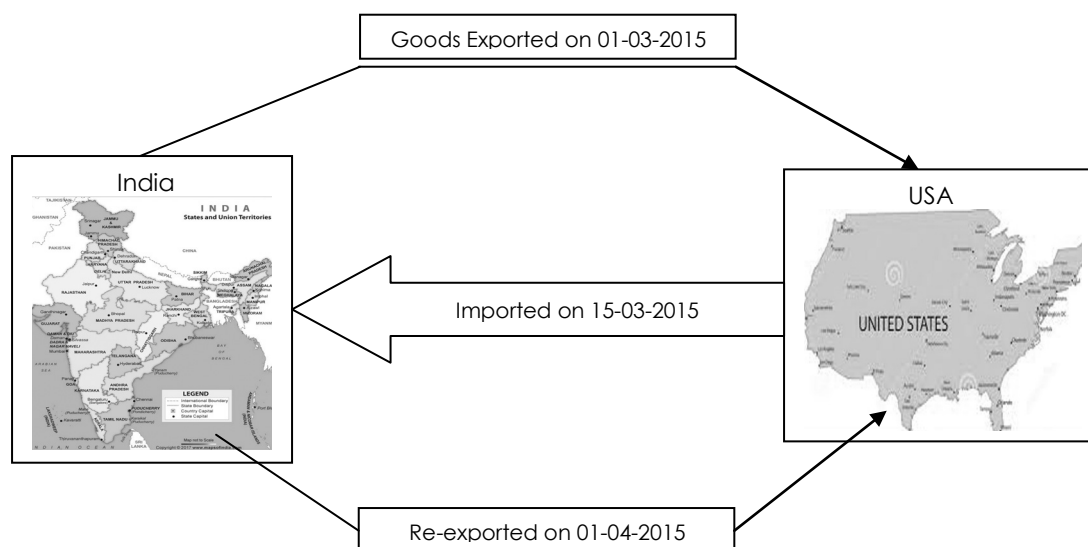
Answer:

Particulars	₹
Value of goods re-imported after exports [₹ 9 lakh (including cost of materials) + ₹3 lakh]	12,00,000
Basic customs duty @ 10%	1,20,000
Cess 3% on (BCD)	3,600
Balance (i.e. Transaction value)	13,23,600
Add: IGST @12% on 13,23,600	1,58,832
Landed Value	14,82,432
Total Customs Duty	2,82,432

3. Exported goods may come back for repairs and re-export:

No duty at the time of re-import will be levied:

1. The time limit for re-import should be within 3 years from the date of export. In case of export to Nepal, such time limit is 10 years.
2. The time limit for re-export is 6 months from the date of import (extended up to 12 months).
3. The importer at the time of importation executes a Bond.
4. The re-importation is for reprocessing, refining or re-making then the time limit for re-importation should be within 1 year from the date of exportation.



1.5 CIRCUMSTANCES UNDER WHICH NO DUTY WILL BE LEVIED

Pilferage: Section 13 of the Customs Act, 1962

No duty is payable if the pilferage found before goods cleared from customs:

- Importer does not have to prove pilferage,
- If the duty is paid before finding the pilferage, refund can be claimed

Section 13 does not apply for the warehoused goods.

w.e.f. 10-5-2013, there shall be no duty liability on a sample of goods consumed/destroyed during the course of testing/examination.

Conditions to be satisfied for exemption from duty:

- (i) The imported goods should have been pilfered.
- (ii) The pilferage should have occurred after the goods are unloaded, but before the proper officer makes the order of clearance for home consumption or for deposit into warehouse.
- (iii) The pilfered goods should not have been restored back to the importer.

Important points:

- a) If goods are pilfered after the order of clearance is made but before the goods are actually cleared, section 13 is not applicable and thus, duty would be leviable.
- b) Section 13 deals with only pilferage. It does not deal with loss/destruction of goods.
- c) Provisions of section 13 would not apply if it can be shown that pilferage took place prior to the unloading of goods.
- d) In case of pilferage, only section 13 applies and remission of duty under section 23(1) is not permissible.

Example: 7

If goods are pilfered after the order of clearance is made but before the goods are actually cleared, duty would be leviable?

Answer:

Yes. Importer has to pay duty.

Note: refund can be claimed

Example : 8

Provisions of section 13 would apply if it can be shown that pilferage took place prior to the unloading of goods?

Answer:

Section 13 would not apply in the given case.

The pilferage should have occurred after the goods are unloaded, but before the proper officer makes the order of clearance.

All goods, derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India [Section 21]:

Thus, even though such goods had not been actually imported, they would be liable to import duty unless such goods are entitled to be duty free under this Act.

Derelict means vessel or cargo which is abandoned in sea without any hope of recovering it.



Jetsam means where goods are cast into sea to reduce weight of ship to prevent it from sinking and the thrown goods sink.

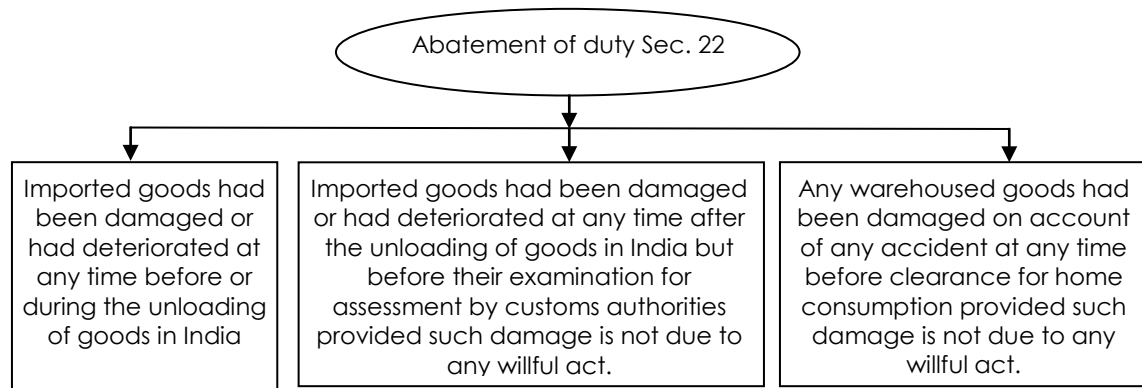


Flotsam means when goods continue to float after thrown in sea



Wreck means cargo or vessel or any property which are cast ashore by tides after ship-wreck



**Abatement of duty on damaged goods or deteriorated goods, [Sec. 22]:****Amount of duty chargeable after abatement**

$$\begin{array}{l}
 \text{Amount of} \\
 \text{duty} \\
 \text{chargeable} \\
 \text{after} \\
 \text{abatement}
 \end{array}
 =
 \left(\text{Duty on Goods before} \right. \\
 \left. \text{damage / deterioration} \right) - \left[\frac{\text{Value of damage /} \right. \\
 \left. \text{deteriorated goods}}{\text{Value of goods before}} \times \left(\text{Duty on Goods before} \right. \right. \\
 \left. \left. \text{damage / deterioration} \right) \right]$$

Valuation of the damaged or deteriorated goods:

The value shall be: -

(a) Value ascertained by the proper officer

Or

(b) The proper officer may sell such goods by public auction/tender or if the importer agrees, in any other manner and the gross sale proceeds shall be deemed to be the value of such goods.

Example: 9

X Ltd imported goods from USA for ₹ 50,000. After damage these goods valued by customs officer is ₹ 10,000. Total Customs duty on the value of imported goods levied ₹ 6,180. Imported goods had been damaged after the unloading of goods in India but before their examination for assessment by customs authorities, and such damage is not due to any willful act of X Ltd. Find total duty payable by X Ltd.

Answer:

Customs Duty = ₹ 1,236

Working Note:

6,180 – [(40,000/50,000) * 6,180] = ₹ 1,236

Abatement of duty is ₹ 4,944

Remission of duty on goods Lost or destruction of goods, [Section 23]:

- Section 23 applies only when there is no pilferage under section 13
- Burden of proof is on importer to prove loss or destruction under section 23
- Sec. 23 applicable in case of Loss or destruction (including leakage if any) must be due to fire, natural calamity (like earthquake or bad weather)
- Loss or destruction should be found before clearance of goods from the customs
- Section 23 is applicable even for the goods warehoused.

**Analysis of Section 23:**

- (a) This section comes into play in case of loss/destruction of imported goods at any time before their clearance for home consumption.
- (b) The remission of duty is permissible only in the case of total loss of goods. This implies that the loss is forever and beyond recovery. The loss referred to in this section is generally due to natural causes like fire, flood, etc. The loss of goods may be at the warehouse also.
- (c) Since section 23(1) is subject to the provisions of section 13, in case the goods have been pilfered after they have been unloaded but before order for clearance for home consumption or deposit in a warehouse, section 13 would apply and the importer would not be liable to pay the duty.

No duty in case of relinquishment of the title to the goods [Section 23(2)]

The owner of any imported goods may, at any time before an order for clearance of goods for home consumption or an order for permitting the deposit of goods in a warehouse has been made, relinquish his title to the goods and thereupon, he shall not be liable to pay the duty thereon.

However, the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

Importer may relinquish his title to the goods in the following cases [Section 23(2)]:

- (i) The goods may not be according to the specifications;
- (ii) The goods may have been damaged or deteriorated during voyage and as such may not be useful to the importer;
- (iii) There might have been breach of contract and, therefore, the importer may be unwilling to take delivery of the goods.

In all the above cases, the goods having been imported, the liability to customs duty is imposed and, therefore, the importer may relinquish his title to the goods unconditionally and abandon them. If the importer does so, he will not be required to pay the duty amount.

However, the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

Note:

It is open to the importer to exercise the option to relinquish the title on the imported goods at any time before the passing of order for clearance for home consumption or before order permitting the deposit of goods in a warehouse.



Study Note - 2

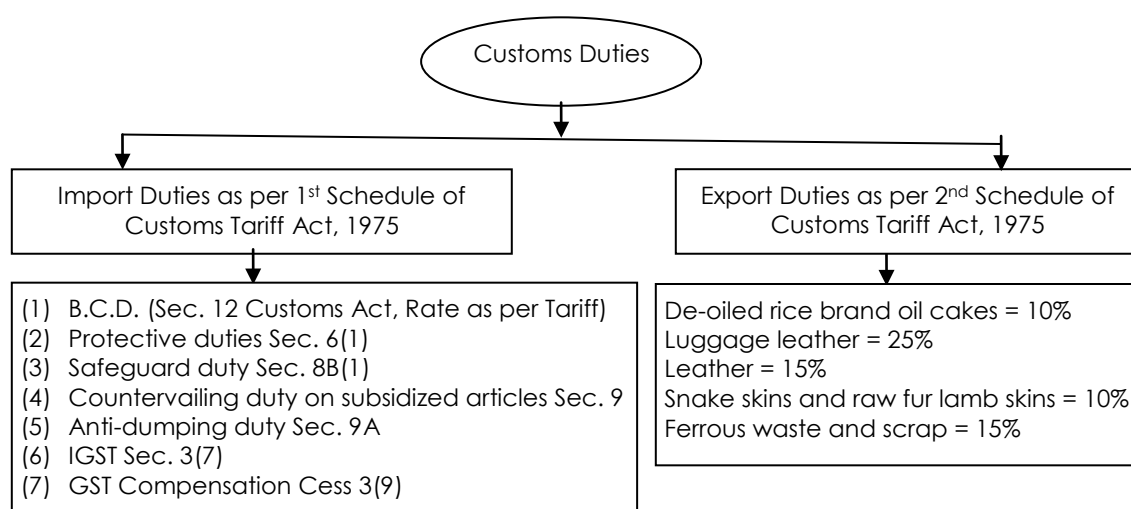
TYPES OF DUTIES



This Study Note includes

- 2.1 Introduction
- 2.2 Types of Duties
- 2.3 Exemption from Customs Duty

2.1 INTRODUCTION



Education Cess and Secondary & Higher Education Cess leviable on imported goods will continue to be levied on imported goods on BCD part.

2.2 TYPES OF DUTIES

(1) Basic Customs Duty (As per Sec 12 of the Customs Act, 1962):

Goods imported into India are chargeable to basic customs duty (BCD) under Customs Act, 1962. The rates of BCD are indicated in I Schedule (for Imports) of Customs Tariff Act, 1975. Education cess (EC) @2% and secondary & higher education cess (SHEC) @1% are applicable extra.

Generally, BCD is levied at standard rate of duty but if certain conditions are satisfied (below), the importer can avail the benefit of preferential rate of duty on imported goods.

Conditions for availing the benefit of preferential rate of duty:

- Specific claim for preferential rate must be made by the importer,
- Import must be from preferential area as notified by the Central Government,
- The goods should be produced/manufactured in such preferential area.



(2) Integrated Goods and Services Tax (IGST)

IGST (Integrated Goods and Services Tax) is a component under GST law, which is levied on goods being imported into India from other country. It has been subsumed various customs duties including Countervailing Duty (CVD) and Special Additional Duty of Customs (SAD).

In the GST regime, IGST will be levied on imports by virtue of sub - section (7) of Section 3 of the Customs Tariff Act, 1975. IGST wherever applicable, would be levied on cargo that would arrive on or after 1st July, 2017. It may also be noted that IGST would also be levied on cargo which has arrived prior to 1st July but a bill of entry is filed on or after 1st July 2017.

Similarly ex-bond bill of entry filed on or after 1st July 2017 would attract IGST, as applicable. In the case where cargo arrival is after 1 st July and an advance bill of entry was filed before 1st July along with the payment of duty, the bill of entry may be recalled and reassessed by the proper officer for levy of IGST as applicable .

Example: 1

Suppose Assessable Value (A.V.) including landing charges = ₹ 100/-

(1) BCD - 10%

(2) IGST - 12%

(3) Education cess – 2%

(4) Higher education cess - 1%

In view of the above parameters, the calculation of duty would be as below:

(a) BCD = ₹ 10 [10% of A.V.]

(b) Education cess - ₹ 0.2 [2% of (a)]

(c) Higher education cess - ₹ 0.1 [1% of (a)]

(d) IGST - ₹ 13.236 [A.V. + (a) + (b) + (c)] × 12%

Note: The inclusion of anti - dumping duties and safeguard duty in the value for levy of IGST and Compensation Cess is an important change. These were not hitherto included in the value for the levy of additional duty of customs (CVD) or Special Additional Duty (SAD). The IGST paid shall not be added to the value for the purpose of calculating Compensation Cess.

Case Law : 1

CVD (now called as IGST) on an imported product be exempted if the excise duty (now GST) on a like article produced or manufactured (now called as supply) in India is exempt?

Aidek Tourism Services Pvt. Ltd. v. CCus. 2015 (318) ELT 3 (SC)

Decision: Supreme Court held that rate of additional duty leviable under section 3(1) of the Customs Tariff Act, 1975 would be only that which is payable under the Central Excise Act, 1944 on a like article. Therefore, the importer would be entitled to payment of concessional/ reduced or nil rate of countervailing duty if any notification is issued providing exemption/ remission of excise duty with respect to a like article if produced/ manufactured in India.

(3) GST Compensation Cess:

Under GST regime, Compensation Cess will be charged on luxury products like high-end cars and demerit commodities like pan masala, tobacco and aerated drinks for the period of 5 years in order to compensate states for loss of revenue.



In the GST regime, IGST will be levied on imports by virtue of sub - section (9) of Section 3 of the Customs Tariff Act, 1975.

GST Compensation cess, wherever applicable, would be levied on cargo that would arrive on or after 1 st July, 2017. Similarly ex-bond bill of entry filed on or after 1st July 2017 would attract GST Compensation cess, as applicable. In the case where cargo arrival is after 1st July and an advance bill of entry was filed before 1 st July along with the payment of duty, the bill of entry may be recalled and reassessed by the proper officer for levy of GST compensation Cess, as applicable .

The value of the imported article for the purpose of levying GST Compensation cess shall be, assessable value plus Basic Customs Duty levied under the Act, and any sum chargeable on the goods under any law for the time being in force , as an addition to, and in the same manner as, a duty of customs. These would include education cess or higher education cess as well as anti - dumping and safeguard duties.

Input tax credit be availed on GST Compensation Cess paid on inward supplies:

Yes, input tax credit can be availed on GST Compensation Cess paid on inward supplies of the above mentioned notified goods. However, the credit of GST Compensation Cess paid can be utilized only towards payment of the GST Compensation Cess liability.

GST Compensation Cess applicable goods:

GST Cess will be levied on supply of certain notified goods – mostly belonging to the luxury and demerit category.

Items	GST Rate Applicable	GST Cess Range	GST Cess Ceiling
Coal	5%	INR 400 / tonne	INR 400 / tonne
Pan Masala	28%	60%	135%
Tobacco	28%	61% – 204%	INR 4170 / thousand
Aerated Drinks	28%	12%	15%
Motor Vehicles	28%	1% – 22%	22%

Example : 2

Suppose Assessable Value (A.V.) including landing charges = ₹ 100/ -

- (1) **BCD - 10%**
- (2) **IGST - 12%**
- (3) **Education cess – 2%**
- (4) **Higher education cess - 1%**
- (5) **Compensation cess - 10%**

In view of the above parameters, the calculati on of duty would be as below:

- (a) **BCD = ₹ 10 [10% of A.V.]**
- (b) **Education cess - ₹ 0.2 [2% of (a)]**
- (c) **Higher education cess - ₹ 0.1 [1% of (a)]**
- (d) **IGST - ₹13.236 [A.V. +(a)+(b)+(c)]x12%**
- (e) **Compensation cess - ₹ 11.03 [A.V. +(a)+(b)+(c)]x 10 %**

Where product attract CVD, IGST & Compensation cess:

**Example : 3**

Suppose Assessable Value (A.V.) including landing charges = ₹ 100/-

- (1) BCD - 10%
- (2) CVD - 12%
- (3) IGST - 28 %
- (4) Education cess – 2%
- (5) Higher education cess - 1%
- (6) Compensation cess - 10%

In view of the above parameters, the calculation of duty would be as below:

- (a) BCD = ₹ 10 [10% of A.V.]
- (b) CVD = ₹ 13.2 [12% of (A.V.+ BCD)]
- (c) Education cess - ₹ 0.464 [2% of (BCD+CVD)]
- (d) Higher education cess - ₹ 0.232 [1% of (BCD+CVD)]
- (e) IGST - ₹ 34.69 [A.V. +(a)+ (b)+ (c)+(d)]x 28 %
- (f) Compensation cess – ₹ 12.389 [A.V. +(a)+ (b)+ (c)+(d)]x 10 %

Note:

- (1) In cases where imported goods are liable to Anti - Dumping Duty or Safeguard Duty, calculation of Anti - Dumping Duty or Safeguard duty would be as per the respective notification issued for levy of such duty. It is also clarified that value for calculation of IGST as well as Compensation Cess shall also include Anti - Dumping Duty amount and Safeguard duty amount.
- (2) The inclusion of anti - dumping duties and safeguard duty in the value for levy of IGST and Compensation Cess is an important change. These were not hitherto included in the value for the levy of additional duty of customs (CVD) or Special Additional Duty (SAD). The IGST paid shall not be added to the value for the purpose of calculating Compensation Cess.

Example : 4

X Transport company imported Rolls Royce car for the purpose of providing output services by way of transportation of passengers. Following are the cost & other details-

Particulars	Amount (INR)
Cost of vehicle (Assessable value)	300,00,000
Custom duty	10%
IGST	28%
Compensation cess	20%

X Transport company is eligible to take Input tax credit and have output IGST liability of INR 120 Lakh. Calculate tax liability towards Custom duty & GST liability.

Answer:

Particulars	Calculation	Amount(INR)
Cost of Vehicle-(A)		300,00,000
Custom duty-(B)	10%	30,00,000
Cess-(C)	3% on (B)	90,000
Total custom duty payable- (D)	(B+C)	30,90,000
Total Cost after Custom duty-(E)	(A+D)	330,90,000
IGST-(F)	28% on (E)	92,65,200
Compensation cess-(G)	20% on (E)	66,18,000
Total cost-(H)	(E+F+G)	489,73,200



- Input tax credit available to set off against output IGST is INR 92,65,200
- Compensation cess paid cannot be set off against output tax liability of IGST
- Total tax payable by X Transport Company after adjusting IGST ITC is INR 27,34,800 (120,00,000-92,65,200)

(4) Protective Duties:

A duty imposed on imported goods for the protection of the interests of any industry established in India on the recommendation of Tariff Commission. It is effective only and inclusive of the date, if any, specified in the First Schedule of the Tariff.

(5) Safeguard Duty:

Safeguard duty is product specific. The duty imposed under this section shall be in force for a period of 4 years from the date of its imposition and can be extended with the total period of levy not exceeding 10 years.

Safeguard duty shall not apply to articles imported by a 100% EOU undertaking or a unit in a FTZ or in a SEZ unless specifically made applicable.

w.e.f. 6-8-2014 if imported goods are cleared in DTA, then safeguard duty will be payable.

Provisional Safeguard Duty:

The Central Government may, pending the determination under sub-section (1) of Section 8B, impose a provisional safeguard duty under this sub-section on the basis of a preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry;

Provided that where, on final determination, the Central Government is of the opinion that increased imports have not caused or threatened to cause serious injury to a domestic industry, it shall refund the duty so collected;

Provided further that the provisional safeguard duty shall not remain in force for more than two hundred days from the date on which it was imposed.

Question:

When shall the safeguard duty under section 8B of the Customs Tariff Act, 1975 be not imposed? Discuss briefly.

Answer:

The safeguard duty under section 8B of the Customs Tariff Act, 1975 is not imposed on the import of the following types of articles:

- Articles originating from a developing country, so long as the share of imports of that article from that country does not exceed 3% of the total imports of that article into India;
- Articles originating from more than one developing country, so long as the aggregate of imports from developing countries each with less than 3% import share taken together does not exceed 9% of the total imports of that article into India;
- Articles imported by a 100% EOU or units in a Free Trade Zone or Special Economic Zone unless the duty is specifically made applicable on them.

Note: "developing country" means a country notified by the Central Government in the Official Gazette for the purposes of this section.

Example : 5

Determine the safeguard duty payable by X Ltd., under section 8B of the Customs Tariff Act, 1975 from the following:

X Ltd imported Sodium Nitrite from a developing country from 26th February, 2015 to 25th February, 2016 (both days inclusive) ₹ 50 crores.

Total imports of Sodium Nitrite (including developing country) is ₹ 2,500 crores.

Note: Safeguard duty is @ 30%.

Whether your answer is different in case of import of Sodium Nitrite from a developing country ₹ 80 crores?

**Answer:**

Since, import from a developing country does not exceeds 3% (i.e. 2% only) of total import of that article in to India, Safeguard duty is Nil.

In the given case safeguard duty will be payable by X Ltd.

Safeguard duty = ₹ 24 crores (i.e. ₹ 80 crores x 30%)

Since, import from a developing country exceeds 3% (i.e. 3.2%)

Example : 6

Determine the safeguard duty payable by X Ltd., Y Ltd., Z Ltd. and A Ltd. under section 8B of the Customs Tariff Act, 1975 from the following:

Import of Sodium Nitrite from developing and developed countries from 26th February, 2015 to 25th February, 2016 (both days inclusive) are as follows:

Importer	Country of Import	₹ in Crores
X Ltd.	Developing Courty	70
Y Ltd.	Developing Courty	72
Z Ltd.	Developing Courty	52
A Ltd.	Developing Courty	50
Others	Developed Courty	2,256
	Total	2,500

Note: Safteguard duty 30%.

Answer:

Importer	Country of Import	₹ in Crores	% of imports
X Ltd.	Developing Courty	70	2.8%
Y Ltd.	Developing Courty	72	2.88%
Z Ltd.	Developing Courty	52	2.08%
A Ltd.	Developing Courty	50	2%
Others	Developed Courty	2,256	
	Total	2,500	9.76%

Safeguard duty is as follows:

Importer	₹ in Crores	% of imports
X Ltd.	21	70 × 30%
Y Ltd.	21.60	72 × 30%
Z Ltd.	15.60	52 × 30%
A Ltd.	15	50 × 30%

Articles originating from more than one developing countries and imports from each developing country is less than 3%, safeguard duty can be imposed if imports from all such developing countries taken together exceeds 9% of total imports of that article in India.

**Example : 7**

Determine the safeguard duty payable by X Ltd., Y Ltd., and Z Ltd. and A Ltd. under section 8B of the Customs Tariff Act, 1975 from the following:

Import of Sodium Nitrite from developing and developed countries from 26th February, 2015 to 25th February, 2016 (both days inclusive) are as follows:

Importer	Country of Import	₹ in Crores
X Ltd.	Developing Country	70
Y Ltd.	Developing Country	82
Z Ltd.	Developing Country	52
A Ltd.	Developing Country	50
Others	Developed Country	2,246
	Total	2,500

Note: Safeguard duty 30%.

Answer:

Importer	Country of Import	₹ in Crores	% of imports	
X Ltd.	Developing Country	70	2.8%	
Y Ltd.	Developing Country	72		3.28%
Z Ltd.	Developing Country	52	2.08%	
A Ltd.	Developing Country	50	2%	
Others	Developed Country	2,256		
	Total	2,500	6.88%	3.28%

Safeguard duty is as follows:

Importer	₹ in Crores	% of imports
X Ltd.	NIL	70 × 30%
Y Ltd.	24.60	82 × 30%
Z Ltd.	NIL	52 × 30%
A Ltd.	NIL	50 × 30%

Articles originating from more than one developing countries (each with less than 3% import share), then the aggregate of imports from all such countries taken together does not exceed 9% (i.e., in the given case 6.88%) of the total imports of that article into India. Therefore, Safeguard duty is not applicable to X Ltd., Z Ltd. and A Ltd.

[Circular No. 23/2015 Cus dated 29.09.2015]

Safeguard duties are rebatable as duty drawback (section 75 of the Customs Act).

Since safeguard duties are not taken into consideration while fixing All Industry Rates of drawback, the drawback of the same can be claimed under an application for Brand Rate under rule 6 or rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995.

This implies that drawback shall be admissible only where the inputs which suffered safeguard duties were actually used in the goods exported as confirmed by the verification conducted for fixation of Brand Rate.

Further, where imported goods subject to safeguard duties are exported out of the country as such, then the drawback payable under section 74 of the Customs Act would also include the incidence of safeguard duties as part of total duties paid, subject to fulfillment of other conditions.

**(6) Countervailing Duty on Subsidized articles:**

Duty levied if the articles are imported into India by getting the subsidies from other country.

The amount of countervailing duty shall not exceed the amount of subsidy paid.

It shall be in force for a period of 5 years from the date of its imposition and can be extended for a further period of 5 years.

(7) Anti-dumping duty:

It is imposed on imports of a particular country.

Where any articles exported by an exporter to India at less than its normal value, then, upon the importation of such article into India, the Central Govt., may impose an anti-dumping duty.

Example: 8

A commodity is imported into India from a country covered by a notification issued by the Central Government under section 9A of the Customs Tariff Act, 1975. Following particulars are made available:

CIF value of the consignment: US\$25,000

Quantity imported: 500 kgs.

Exchange rate applicable: ₹ 60=US\$1

Basic customs duty: 12%

Education and secondary and higher education cess as applicable as per the Finance Act, 2008.

As per the notification, the anti-dumping duty will be equal to the difference between the cost of commodity calculated @ US\$70 per kg. and the landed value of the commodity as imported.

Appraise the liability on account of normal duties, cess and the anti-dumping duty.

Assume that only 'basic customs duty' (BCD) and education and secondary and higher education cess are payable. IGST @12% is also be applicable.

Answer:

Statement showing land value of imported goods and customs duties:

Particulars	US \$
CIF value	25,000
	Value in ₹
Assessable value (i.e. 25,000 x ₹60)	15,00,000
Add: Customs duty 12.36% on Assessable value	1,85,400
Landed value (or value of imported goods)	16,85,400
Anti-dumping duty (21,00,000 – 16,85,400)	4,14,600
Market value of imported goods (500 kgs x ₹60 x US \$70) = 21,00,000	
Open Market Value	21,00,000
Add: IGST @12% on ₹ 21,00,000	2,52,000
Total	23,52,000

Total customs duty payable is ₹ 8,52,000 (i.e. 1,85,400 + 4,14,600 + 2,52,000)

Note:

In cases where imported goods are liable to Anti - Dumping Duty or Safeguard Duty, calculation of Anti - Dumping Duty or Safeguard duty would be as per the respective notification issued for levy of such duty. It is also clarified that value for calculation of IGST as well as Compensation Cess shall also include Anti - Dumping Duty amount and Safeguard duty amount

(8) Export Duties as per 2nd Schedule of Customs Tariff Act, 1975

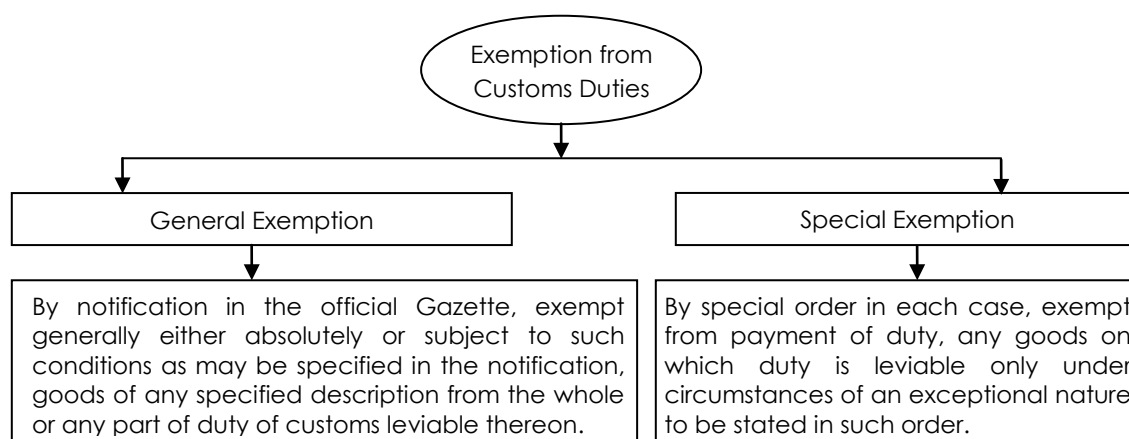
Export duty @ 10% on De Oiled Rice Bran (Grade 1) – used for Poultry/Cattle/Fish feed manufacturing	Export duty @ 25% on luggage leather	Export duty 15% Ferrous waste and scrap



Export duty @ 15% on Leather	Export duty 10% on Snake skins	Export duty 10% on raw fur lamb skins



2.3 EXEMPTION FROM CUSTOMS DUTY



Note: No duty shall be collected if the amount of duty leviable is equal to, or less than ₹ 100.



Study Note - 3

VALUATION UNDER CUSTOMS

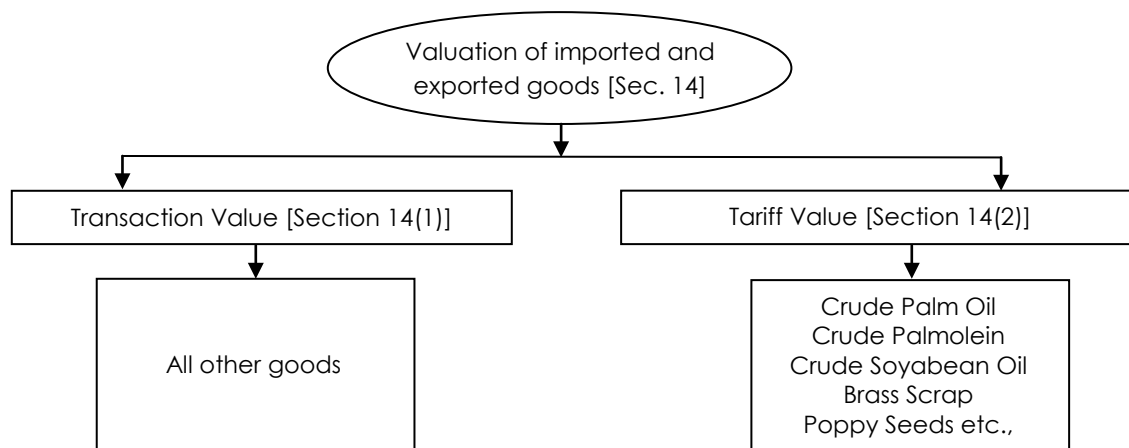


This Study Note includes

- 3.1 Introduction
- 3.2 Valuation of Imported Goods
- 3.3 Valuation of Export Goods

3.1 INTRODUCTION

Valuation of imported and exported goods [Sec.14]



3.2 VALUATION OF IMPORTED GOODS

Rule 1: Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

Rule 2: Various terms defined like Relative, Transaction Value, Computed Value, Deductive Value, Similar Goods, and Identical Goods etc.,

Rule 3: Transaction Value of import goods read with Rule 10:

This method is applicable only when importer satisfies the following conditions:

1. Seller should not have any control on the imported goods.
2. The sale price must be sole consideration
3. Sale proceeds should not be shared with exporter by the importer after sale
4. The buyer and seller should not be related.

**Case Law: 1****Commissioner of Cus., Vishakhapatnam v. Aggarwal Industries Ltd. 2011 E.L.T. 641 (S.C.):**

Statement of Facts: The importer entered into contract for supply of crude sunflower seed oil U.S. \$ 435 C.I.F./Metric ton. Under the contract, the consignment was to be shipped in the month of July, 2011. The period was extended by mutual agreement and goods were shipped on 5th August, 2011 at old agreed prices.

In the meanwhile, the international prices had gone up due to volatility in market, and other imports during August, 2011 were at higher prices.

Department sought to increase the assessable value on the basis of the higher prices as contemporaneous imports.

Decide whether the contention of the department is correct. You may refer to decided case law, if any, for your decision.

Decision: No. Department view is not correct. It is true that the commodity involved had volatile fluctuations in its price in the international market, but having delayed the shipment; the supplier did not increase the price of the commodity even after the increase in its price in the international market. There was no allegation of the supplier and importer being in collusion.

Thus, the appeal was allowed in the favour of the respondent- assessee.

Statement Showing Computation of Assessable value for Imported Goods

	₹
Value of Material (at ex-factory price)	xxxx
Carriage/freight/insurance up to the port (sea/air) of shipment in the exporter's country	xxxx
Charges for loading on to the ship at the shipping port in the exporter's country	xxxx
Free on Board (FOB)	xxxx
FOB	xxxx
Add: If not included in the above [Rule 10(1)]	xxxx
Commission and brokerage (except buying commissions)	xxxx
Packing cost (except cost of durable and returnable packing)	xxxx
Cost of engineering, development and plan or sketches (Undertaken outside India)	xxxx
Royalties and license fee	xxxx
Value of subsequent re-sale if payable to foreign supplier	xxxx
Value of material supplied by the buyer free of cost	xxxx
FOB value as per the Customs	xxxx
Cost of freight if not specified @ 20% of FOB value as per Customs [Rule 10(2)]	xxxx
Ship demurrage charges on chartered vessels [Rule 10(2)]	xxxx
Lighterage or barge charges [Rule 10(2)]	xxxx
Insurance if not specified @1.125% of FOB value as per Customs [Rule 10(2)]	xxxx
Cost, Insurance and Freight (CIF)/Assessable Value	xxxx

Note:

- (1) Assessable Value of Imported Goods=(Free On Board (FOB) + Insurance + Freight)
- (2) Service charges paid to canalizing agent: It is includible in the assessable value of imported goods [Hyderabad Industries Ltd. v. UOI 2000 (115) ELT 593 (SC)].
Who is a canalizing agent: He is not the agent of the importer nor does he represent the importer abroad. He use to buy goods from foreign seller and subsequently sells to Indian importer.
- (3) Inspection/Certification Charges: If contract specify for certification by the independent agency for imported goods then charges incurred on such inspection are includible in assessable value [Bombay Dyeing & Mfg. v. CC 1997 (90) ELT 276 (SC)].



Amendment in Customs Valuation

As per Notification No. 91/2017-CUSTOMS (N.T.), dt. 26.09.2017, the following changes are made to the Customs Valuation (Determination of Value of Imported Goods) Rules 2007 (or CVR, 2007), namely:-

- (1) "place of importation" means the customs station, where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse;"
- (2) the value of the imported goods shall include –
 - (a) the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation;
 - (b) the cost of insurance to the place of importation

Provided that where the cost referred to in (a) is not ascertainable, such cost shall be twenty per cent of the free on board value of the goods:

Provided further that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in (b) is ascertainable, the cost referred to in (a) shall be twenty per cent of such sum:

Provided also that where the cost referred to in (b) is not ascertainable, such cost shall be 1.125% of free on board value of the goods:

Provided also that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in (a) is ascertainable, the cost referred to in (b) shall be 1.125% of such sum:

Provided also that in the case of goods imported by air, where the cost referred to in (a) is ascertainable, such cost shall not exceed twenty per cent of free on board value of the goods:

Provided also that in the case of goods imported by sea or air and transhipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded.

Explanation: The cost of transport of the imported goods referred to in (a) includes the ship demurrage charges on chartered vessels, lighterage or barge charges."

As per Circular No. 39 / 2017-Customs, dt. 26.09.2017, the treatment of the loading, unloading and handling charges will be:

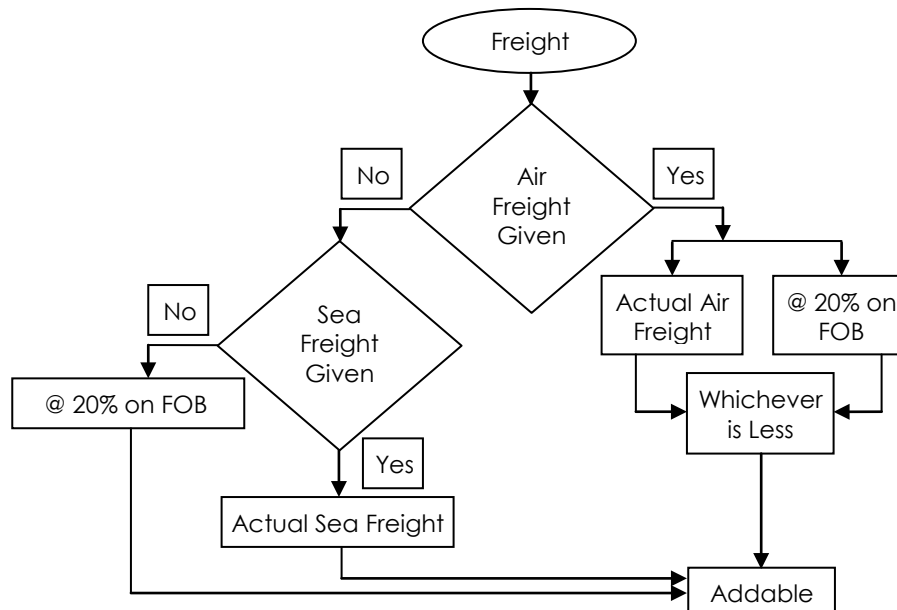
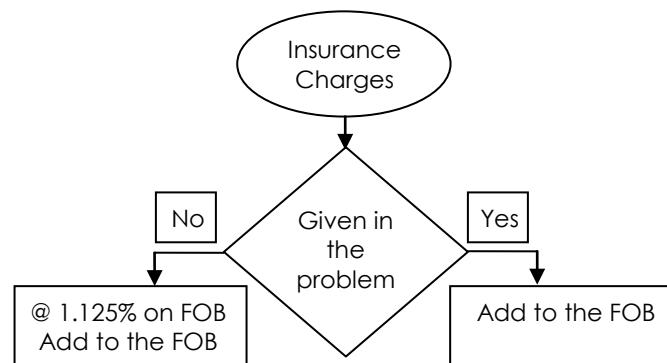
- (1) The Hon'ble Supreme Court had ruled in the case of M/s Wipro Ltd. Vs Assistant Collector of Customs-2015 (319) ELT 177 (S.C.) dated 16/04/2015 that the landing charges to be added to the value of goods, should be based on actual charges incurred, and not a notional charge of 1% as has been provided in the Rules.
- (2) By virtue of the amendment now carried out to the CVR, 2007, the loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation, shall no longer be added to the CIF value of the goods.
- (3) The phrase "loading, unloading and handling charges" is to be understood as "the cost of transport of the imported goods to the port or place of importation". Thus, only charges incurred for delivery of goods "to" the place of importation (such as the loading and handling charges incurred at the load port) shall now be includible in the transaction value.

Case Law: 2

Commissioner of Central Excise, Mangalore v. Mangalore Refinery & Petrochemicals Ltd. {(2016) 66 taxmann.com 108 (SC)}

Revenue contended that demurrage charges paid by the assessee are includible in the assessable value for the levy of custom duty.

Decision: Demurrage charges are incurred after the goods reached at Indian Ports, thus it is a post-importation event; relying on the case of Commissioner of Customs v. Essar Steel Ltd. (2015) 51 GST 181/58 taxmann.com 191, the Apex Court has held that Demurrage charges are not includible in assessable value of imported goods.

**Freight charges****Insurance charges****Example 1:**

From the particulars given below, find out the assessable value of the imported goods under the Customs Act, 1962.

Sl. No.	Particulars	US\$
(i)	Cost of the machine at the factory of the exporting country	10,000
(ii)	Transport charges incurred by the exporter from his factory to the port for shipment.	500
(iii)	Handling charges paid for loading the machine in the ship	50
(iv)	Buying commission paid by the importer	50
(v)	Freight charges from exporting country to India	1,000
(vi)	Exchange Rate to be considered 1\$ = ₹ 65	



Answer:

Statement showing assessable value for imported goods:

S.No.	Particulars	Value US \$	Workings
(i)	Cost of the machine at the factory of the exporting country	10,000	
(ii)	Transport charges incurred by the exporter from his factory to the port for shipment	500	
(iii)	Handling charges paid for loading the machine in the ship	50	
	FOB Value of Exporter	10,550	
(iv)	Buying commission paid by the importer	-	Not addable into the assessable value
(v)	Cost of insurance	118.6875	@1.125% on FOB value
(vi)	Freight charges from exporting country to India	1,000	
(vii)	CIF Value/ Assessable value	11,668.6875	
(viii)	Assessable value (in INR)	₹ 7,58,465	₹65 x US\$11,668.6875 = ₹ 7,58,465

Example 2:

XYZ Industries Ltd., has imported certain equipment from Japan at an FOB cost of 2,00,000 Yen (Japanese). The other expenses incurred by M/s. XYZ Industries in this connection are as follows:

- (i) Freight from Japan to India Port 20,000 Yen
- (ii) Insurance paid to Insurer in India ₹ 10,000
- (iii) Designing charges paid to Consultancy firm in Japan 30,000 Yen
- (iv) M/s. XYZ Industries had expended ₹ 1,00,000 in India for certain development activities with respect to the imported equipment
- (v) XYZ Industries had incurred road transport cost from Mumbai port to their factory in Karnataka ₹ 30,000
- (vi) The Central Board of Excise and Customs had notified for purpose of section 14(3)* of the Customs Act, 1962 exchange rate of 1 Yen = ₹ 0.3948. The inter bank rate was 1 Yen = ₹ 0.40
- (vii) M/s XYZ Industries had effected payment to the Bank based on exchange rate 1 Yen = ₹ 0.4150
- (viii) The commission payable to the agent in India was 5% of FOB cost of the equipment in Indian Rupees. Arrive at the assessable value for purposes of customs duty under the Customs Act, 1962 providing brief notes wherever required with appropriate assumptions.

Answer:

Statement showing computation of Assessable Value for the imported goods

Particulars	Amount in Yen	Remarks	Working note
Free on Board (FOB)	2,00,000		
Designing charges	30,000	Addable into the assessable value	
Development charges	—	Not addable into the assessable value, because these are post shipment expenses	
Road transport charges	—	Not addable into the assessable value, because these are post shipment expenses	
Commission	10,000	Addable into the assessable value	2,00,000 x 5% = 10,000
FOB value of the Customs	2,40,000		
	Amount in ₹		
Total	94,752	Exchange rate of the Central Board of Excise and Customs (CBIC) is relevant	2,40,000 Yen x 0.3948



Particulars	Amount in ₹	Remarks	Working note
Insurance	10,000	Addable into the assessable value	
Freight	7,896	Addable into the assessable value	20,000 x 0.3948
Total CIF value/ Assessable Value	1,12,648		

Example 3:

BSA & Company Ltd. have imported a machine from U.K. From the following particulars furnished by them, arrive at the assessable value for the purpose of customs duty payable:

(i)	F.O.B. cost of the machine	10,000 U.K. Pounds
(ii)	Freight (air)	3,000 U.K. Pounds
(iii)	Engineering and design charges paid to a firm in U.K.	500 U.K. Pounds
(iv)	License fee relating to imported goods payable by the buyer as a condition of sale	20% of F.O.B. Cost
(v)	Materials and components supplied by the buyer free of cost valued	₹ 20,000
(vi)	Insurance paid to the insurer in India	₹ 6,000
(vii)	Buying commission paid by the buyer to his agent in U.K. 100 U.K. Pounds	

Other Particulars:

(i) Inter-bank exchange rate as arrived by the authorized dealer: ₹72.50 per U.K. Pound.

(ii) CBIC had notified for purpose of Section 14 of the Customs Act, 1944, exchange rate of ₹70.25 per U.K. Pound.

(iii) Importer paid ₹5,000 towards demurrage charges for delay in clearing the machine from the Airport.

(Make suitable assumptions wherever required and show workings with explanations)

Answer:

	UK Pounds
FOB Value	10,000
Add: Engineering and Design charges (Paid in UK)	500
Add: License fee (20% on 10,000 UKP)	2,000
Sub-total	12,500
	Value in ₹
Sub-total (12,500 UKP × ₹ 70.25)	8,78,125
Add: Material supplied by the buyer freely	20,000
FOB Value as per customs	8,98,125
Add: Air freight (8,98,125 × 20%)	1,79,625
Add: Insurance	6,000
CIF Value/ Assessable value	10,83,750

Example 4:

Compute the duty payable under the Customs Act, 1962 for an imported equipment based on the following information:

(i) Assessable value of the imported equipment US \$10,100.

(ii) Date of Bill of Entry 25.4.2018 basic customs duty on this date 12% and exchange rate notified by the Central Board of Excise and Customs Us \$ 1 = ₹ 65.



(iii) Date of Entry inwards 21.4.2018 Basic customs duty on this date 16% and exchange rate notified by the Central Board of Excise and Customs US \$ 1 = ₹ 60.

(iv) IGST u/s 3(7) of the Customs Tariff Act, 1975: 12%.

Educational cess @ 2% in terms of the Finance Act (No. 2), 2004 and secondary and higher educational cess @ 1% in terms of the Finance Act, 2007.

Make suitable assumptions where required and show the relevant workings and round off your answer to the nearest Rupee.

Answer:

	₹	
A.V	6,56,500.00	(10,100 x 65)
ADD: BCD 12% on 6,56,500	78,780.00	
ADD: 2% Edu. Cess	1,575.60	(78,780x 2%)
ADD: 1% SAH Edu. Cess	787.80	(78,780x 1%)
Balance	7,37,643.40	
ADD: IGST 12% on 7,37,643.40	88,517.21	
Value of Imported Goods	8,26,160.61	
Customs Duty (i.e. 8,26,160.61 – 6,56,500)	1,69,661.00	

Example 5:

Compute the assessable value and Customs duty payable from the following information:

(i)	F.O.B value of machine	8,000 UK Pounds
(ii)	Freight paid (air)	2,500 UK Pounds
(iii)	Design and development charges paid in UK	500 UK Pounds
(iv)	Commission payable to local agents @ 2% of F.O.B in Indian Rupees	
(v)	Date of bill of entry (Rate BCD 12%; Exchange rate as notified by CBEC ₹ 68 per UK Pound)	24.10.2017
(vi)	Date of entry inward (Rate of BCD 18%; Exchange rate as notified by CBEC ₹ 70 per UK Pound)	20.10.2017
(vii)	IGST payable 18%	
(viii)	Insurance charges actually paid but details not available	

Answer:

	UK Pounds
FOB	8,000
Add: Design and Development (paid in UK)	500
Add: Commission to local agent (2% on 8,000 UKP)	160
FOB Value as per customs	8,660
Add: Air freight (8,660 × 20%)	1,732
Add: Insurance (8,660 × 1.125%)	97.425
CIF Value/ Assessable value	10,489.425
Assessable value in ₹ (10,489.425 × 68)	7,13,281



Statement showing customs duties

Particulars	Value ₹	Working note
Assessable value	7,13,281	
Add: BCD	85,593.72	(7,13,281 x 12%)
Add: Edu. Cess	1,711.87	(85,593.72 x 2%)
Add: Sec. Hr. Edu. Cess	855.94	(85,593.72 x 1%)
Balance	8,01,442.53	
Add: IGST	1,44,259.66	(8,01,442.53 x 18%)
Landed value	9,45,702.19	
Total Customs duties	2,32,421.19/2,32,421	(9,45,702.19 – 7,13,281)

Example 6:

Liberty International Group has imported a machine by air from United States. Bill of entry is presented on 18.07.2017. However, entry inwards is granted on 7.08.2017.

The relevant details of the transaction are provided as follows:

CIF value of the machine imported	\$ 13,000
Airfreight paid	\$ 2,800
Insurance charges paid	\$200

Rate of exchange as

Announced by	As on 18.07.2017	As on 7.08.2017
CBIC	1 US \$ = ₹ 66	1 US \$ = ₹ 65.80
RBI	1 US \$ = ₹ 66.10	1 US \$ = ₹ 66.10

Calculate the assessable value (in rupees) for the purposes of levy of customs duty as well as total customs duty.

BCD = Nil

IGST = 18%

Make suitable assumptions wherever necessary.

Answer:

Particulars	Amount in US\$	Remarks	Workings
CIF value	13,000		
Less: Air freight	2,800	Air freight should not be more than 20% on FOB	
Less: insurance	200		
F O B value	10,000		
Add: Air freight	2,000	Air freight restricted to 20% on the FOB value	10,000 x 20% = 2,000
Add: Insurance	200		
CIF value/Assessable Value	12,200		US\$ (10,000+ 2,000 + 200)
			12,200 x 1% = US\$122
	Amount in ₹		
Assessable value	8,05,200	CBIC exchange rate as on the date of submission of bill of entry is relevant.	US\$12,200 x 66 = ₹ 8,05,200
Add: BCD	Nil		



Add: Cess 3%	Nil		
Balance	8,05,200		
Add: IGST @ 18%	1,44,936		(8,05,200 x 18%)
Landed value	9,50,136		

Example 7:

Compute the assessable value and total customs duty payable under the Customs Act, 1962 for an imported machine, based on the following information:

	US \$
(i) Cost of the machine at the factory of the exporter	20,000
(ii) Transport charges from the factory of exporter to the port for shipment	800
(iii) Handling charges paid for loading the machine in the ship	50
(iv) Buying commission paid by the importer	100
(v) Lighterage charges paid by the importer	200
(vi) Freight incurred from port of entry to Inland Container depot	1,000
(vii) Ship demurrage charges	400
(viii) Freight charges from exporting country to India	5,000

Date of bill of entry	20.02.2018 (Rate BCD 20%; Exchange rate as notified by CBIC ₹ 60 per US \$)
Date of entry inward	25.01.2018 (Rate of BCD 12%; Exchange rate as notified by CBIC ₹ 65 per US \$)
IGST payable under section 3(7) of the Customs Tariff Act, 1975	12%

Also find the eligible input tax credit to the importer.

Answer:

Statement showing Assessable and customs duty:

Particulars	US \$	Remarks
Cost of the machine	20,000	
Add: transport charges from factory of exporter to the port for shipment	800	
Add: handling charges	50	
FOB	20,850	
Add: buying commission	Nil	Not addable
FOB of the Customs	20,850	
Add: Insurance	234.5625	20,850 x 1.125%
Add: Freight	5,000	
Add: Lighterage charges	200	
Add: Ship demurrage	400	
CIF Value/Assessable Value	26,684.5625	
	₹	
Assessable Value	16,01,074	26,684.5625 USD x ₹ 60
Add: BCD 20%	3,20,215	₹ 16,01,074 x 20%
Add: 3% Cess	9,606	(3,20,215 x 3%)



Balance	19,30,895	
Add: IGST	2,31,707	₹ 19,30,895 x 12%
Landed value of imported goods	21,62,602	
Total customs duty	5,61,528	

Note: Importer is eligible to avail input tax credit of IGST portion (i.e. ₹ 2,31,707) under GST Law provided he is using these goods for his business.

Rule 4: Transaction value of Identical Goods

Identical goods means the goods must be same in all respects, including physical quantity

This method is applicable only when following conditions are satisfied:

- Identical goods can be compared with the other goods of the same country from which import takes place.
- These goods must be valued at a price which is produced by the same manufacturer.
- If price is not available then the price of other manufacturers of the same country is to be taken into account.
- If more than one value of identical goods is available, lowest of such value should be taken.

A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities.

Example : 8

Gujarat Dry Fruits Limited imported dry fruits and declared the value as under—

Date of imports	Quantity (MT)	Declared value per MT	Country of import
November 2017	250	25,000	Egypt
November 2017	150	25,000	Egypt

It was found that imports were also made by some other dealers as indicated below:-

Date of Imports:	Quantity (MT)	Declared Value ₹ per MT	Country of import
And importer			
September 2017	50	35,000	Dubai
Mumbai Intil			
October 2017			
Chennai Fruits Ltd	20	40,000	Persia

The Customs Department has sought to assess the imports made by the Gujarat Fruits Ltd. as Contemporaneous imports under section 14 read with Rule 4 of the Customs Valuation Rules, 2007. Briefly examine whether the action proposed by the Department is correct.

Answer:

The goods are said to be identical only if the goods to be valued have been produced in the same country. In the given question, the goods in question have been imported from Egypt, while other importers have imported goods from other countries. Therefore, the department action is not correct.

**Example : 9**

A consignment of 800 metric tonnes of edible oil of Malaysian origin was imported by a charitable organization in India for free distribution to below poverty line citizens in a backward area under the scheme designed by the Food and Agricultural Organization. This being a special transaction, a nominal price of US\$ 10 per metric tonne was charged for the consignment to cover the freight and insurance charges. The Customs House found out that at or about the time of import of this gift consignment, there were following imports of edible oil of Malaysian origin:

S. No.	Quantity imported in metric tonnes	Unit price in US \$ (CIF)
1.	20	260
2.	100	220
3.	500	200
4.	900	175
5.	400	180
6.	780	160

The rate of exchange on the relevant date was 1 US \$ = ₹ 63.00 and the rate of basic customs duty was 15% ad valorem. There is no countervailing duty or special additional duty. Calculate the amount of duty leviable on the consignment under the Customs Act, 1962 with appropriate assumptions and explanations where required.

Answer:

Calculation of amount of duty payable:—
exchange rate of \$ 1 = ₹ 63

	₹
CIF Value (800 metric tonnes x 160 USD x ₹ 63)/ Assessable value	80,64,000
15% Basic Customs duty on ₹ 80,64,000	12,09,600
Add: Education cess @ 2% on 12,09,600	24,192
Add: Secondary and higher education cess @ 1% 12,09,600	12,096
Total custom duty payable	12,45,888

Notes: more than one transaction value for identical goods are given, we are supposed to take the lowest price of the quantity which is nearest to the quantity of import.

Case Law : 3**Gira Enterprises v. CCus. 2014 (307) E.L.T.209 (SC)**

Can the value of imported goods be increased if Department fails to provide to the importer, evidence of import of identical goods at higher prices?

Facts of the Case: The appellant imported some goods from China. On the basis of certain information obtained through a computer printout from the Customs House, Department alleged that during the period in question, large number of such goods were imported at a much higher price than the price declared by the appellant. Therefore, Department valued such goods on the basis of transaction value of identical goods as per rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and demanded the differential duty along with penalty and interest from the appellant. However, Department did not provide these printouts to the appellant.

Decision: The Supreme Court held that mere existence of alleged computer printout was not proof of existence of comparable imports. Even if assumed that such printout did exist and content thereof were true, such printout must have been supplied to the appellant and it should have been given reasonable opportunity to establish that the import transactions were not comparable.



Thus, in the given case, the value of imported goods could not be enhanced on the basis of value of identical goods as Department was not able to provide evidence of import of identical goods at higher prices.

Rule 5: Transaction value of Similar Goods

“Similar goods” includes—

Which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;

Valuation:

- Produced in the country in which the goods being valued were produced; and
- Produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

Difference between identical and Similar Goods

Identical goods	Similar goods
Goods must be same in all respects, except for minor differences in appearance	Goods have like characteristics and components and perform same functions
Example: Hero Honda two Wheeler Products namely Splendor and Passion	Example: Hero Honda Splendor and Bajaj scooter.

Rule 6: Determination of value

If the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8.

Rule 7: Deductive Value

Based on the request of the importer if the Customs Officer approves, either deductive method or computed value method as the case may be can be adopted.

In case of deductive method the valuation is as follows:

Assessable is calculated by reducing the post-importation costs and expenses from this selling price.

Example : 10

Selling price minus selling commission, transportation, insurance associated costs within India and duties and taxes paid in India.

The method may be used when goods are extracted on High Seas (e.g. minerals, crude oil etc.) and brought into India for sale. It will be import and dutiable.

Example : 11

A Ltd., sell in India from a price list which grants favourable unit prices for purchases made in larger quantities.

Sale quantity	Unit price in ₹ (Exclusive of duties and taxes)	Number of sales
1-10 units	100	10 sales of 5 units 5 sales of 3 units
11-25 units	95	5 sales of 11 units
Over 25 units	90	1 sale of 30 units 1 sale of 50 units



The selling price includes the following post shipment expenses:

Freight from port to factory in India for ₹ 24,000

Insurance to cover transit damage from port to factory in India for ₹ 6,000

Number of units imported from high seas 5,000 units. Find the assessable value and total customs duty.

Note: BCD @12%.

Answer:

Sale quantity	Unit price in ₹ (exclusive of duties and taxes)	Total quantity sold at each price
1-10 units	100	65
11-25 units	95	55
Over 25 units	90	80

The greatest number of units sold 80, therefore, the unit price in the greatest aggregate quantity is ₹ 90.

	₹
Sale value	4,50,000 (i.e. ₹ 90 x 5,000 units)
Less: Freight & insurance	30,000
Assessable value	4,20,000
Total customs duty	₹ 51,912 (₹ 4,20,000 x 12.36%)

Example : 12

X Ltd., imported 500 units of minerals from High Seas for sale in India. Selling price exclusive of duties and taxes. Freight from port to depot in India is ₹ 10,150 and Insurance ₹ 1,250.

Sale quantity	Unit price ₹
400 units	100
300 units	90
150 units	100
500 units	95
250 units	105
350 units	90
50 units	100

Basic Customs Duty 12% and education cess as applicable. Calculate total customs duty as per Rule 7 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Assume there is no IGST applicable for the product.

Answer:

Total quantity Sold	Unit price
650	90
500	95
600	100
250	105

The greatest number of units sold at a particular price is 650 units;

Therefore, the unit price in the greatest aggregate quantity is ₹ 90.



	₹
Selling Price	= 45,000 (i.e. 500 units x ₹ 90)
Less: Freight (post shipment)	= (10,150)
Less: Insurance (post shipment)	= (1,250)
Assessable Value	= 33,600
Total Customs Duty = ₹ 4,153 (i.e. 33,600 x 12.36%)	

Rule 8: Computed Value

The value of imported goods shall be based on a computed value, which shall consist of the sum of:—

- The cost or value of materials and fabrication or other processing employed in producing the imported goods;
- an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;
- The cost or value of all other expenses under sub-rule (2) of rule 10.

This method is normally possible when the importer in India and foreign exporter are closely associated and the foreign exporter is willing to give necessary costing.	Cost of Materials and General expenses for producing the imported goods	₹ xx
	Add: profit of the exporter	₹ xx
	Add: all expenditure as per Rule 10	₹ xx
	Assessable Value	₹ xx

Rule 9: Residual method

Residual method is also called as Best Judgment Method. This method is applicable when all aforesaid methods are not applicable. The value determined under this method cannot exceed normal price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in course of International Trade, when seller or the buyer are non-relatives and the price is sole consideration for such sale.

While determining Assessable Value, we should not consider the following

- The selling price in India of the goods produced in India;
- A system which provides for the acceptance for customs purposes of the highest of the two alternative values;
- The price of the goods on the domestic market of the country of exportation;
- The cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;
- The price of the goods for the export to a country other than India;
- Minimum customs values; or
- Arbitrary or fictitious values.

Rule 10: Cost of Services:

Already discussed under rule 3

Where FOB value; Cost of Insurance and Cost of Transportation are not ascertainable:



S.No.	Rule	Particulars	Treatment	Remarks
1.	10(2) proviso 3	Cost of transport (i.e. Freight not known)	$20\% \times (\text{FOB value} + \text{Cost of Insurance})$	CIF value $\times 20/120$
2.	10(2) proviso 3	Insurance (i.e. not known)	$1.125\% \times (\text{FOB value} + \text{Cost of transport})$	CIF value $\times 1.125/101.125$
3.	10(2) proviso 3	FOB value	CIF value – cost transport – cost of insurance	

Example : 13

Following particulars are available in respect of certain goods imported into India:

CIF value: US\$10,000

Exchange rate:

Notified by RBI ₹ 60 = US\$1

Notified by CBIC ₹ 58 = US\$1

Compute the following:

(a) FOB value

(b) Cost of insurance

(c) Cost of freight and

(d) Assessable value in rupees as per the Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Answer:

As per Rule 10(2) proviso 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, where FOB value of goods and Cost of Insurance and Freight are not ascertainable, then the cost of insurance and transport shall be computed as follows:

Particulars	As per Rule 10(2) proviso 3	Working
Cost of transport (i.e. Freight not known)	$20\% \times (\text{FOB value} + \text{Cost of Insurance})$	CIF value $\times 20/120$
Insurance (i.e. not known)	$1.125\% \times (\text{FOB value} + \text{Cost of transport})$	CIF value $\times 1.125/101.125$
FOB value	CIF value – cost transport – cost of insurance	

CIF value in ₹ 5,80,000 (i.e. US \$ 10,000 $\times$ ₹58)

Sl. No.	Particulars	₹	Working
(a)	FOB value	= 4,76,881	(i.e. ₹ 5,80,000 – 96,667 – 6,452)
(b)	Cost of insurance	= 6,452	(i.e. ₹ 5,80,000 $\times$ 1.125/101.125)
(c)	Cost of transport	= 96,667	(i.e. ₹ 5,80,000 $\times$ 20/120)
(d)	Assessable value	= 5,80,000	(CIF Value = Assessable Value)

Rule 11: Declaration by the Importer

As per this rule, the importer shall declare value and furnish all documents or information called for by the proper officer for the purposes of valuation. Wrong declaration of value under Rule 10 may call for penal provisions in Customs Act, 1962

Rule 12: Rejection of Declared Value:

If the proper officer feels that the declaration made under Rule 11 are not fair values he may reject it as not suitable in the determination of Transaction value under Rule 3, after procuring further information or documents. However, final decision under Rule 12 shall be taken after proper hearing only.



Rule 13: Interpretative Notes:

These notes specified in the schedule to these rules are meant to render help in the interpretation of these rules. These interpretative notes are explained already in the aforesaid rules.

3.3 VALUATION OF EXPORT GOODS

Valuation is essential for export goods even though many products are exempted from export duty under the Customs Law.

Importance of valuation of export goods:

- Duty Drawback
- Export incentives like DEPB License
- Refund of CENVAT credit, if any.
- Payment of duty on export, if any.

The Customs Valuation (Determination of Value of Export Goods) Rules, 2007 is applicable only if the aforesaid conditions are not satisfied:

- Rule 1:**
- (i) These rules may be called the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.
 - (ii) They shall come into force on the 10th day of October, 2007.
 - (iii) They shall apply to export goods.

Rule 2: Definitions

Some important definitions are:

- (a) "goods of like kind and quality" means export goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the same functions or are commercially interchangeable with the goods being valued, produced by the same person or a different person; and
- (b) "transaction value" means the value of export goods within the meaning of sub-section (1) of section 14 of the Customs Act, 1962.

Rule 3: Determination of the method of valuation

1. Subject to rule 8, the value of export goods shall be the transaction value.
2. The transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.
3. If the value cannot be determined under the provisions of sub-rule (1) and sub-rule (2), the value shall be determined by proceeding sequentially through rules 4 to 6.

Rule 4: Determination of export value by comparison

- (1) The value of the export goods shall be based on the transaction value of goods of like kind and quality exported at or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation adjusted in accordance with the provisions of sub-rule (2).
- (2) In determining the value of export goods under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including—
 - difference in the dates of exportation,
 - difference in commercial levels and quantity levels,
 - difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared,



- difference in domestic freight and insurance charges depending on the place of exportation

Rule 5: Computed value method

If the value cannot be determined under rule 4, it shall be based on a computed value, which shall include the following:—

- cost of production, manufacture or processing of export goods;
- charges, if any, for the design or brand;
- An amount towards profit.

Rule 6: Residual method

Subject to the provisions of rule 3, where the value of the export goods cannot be determined under the provisions of rules 4 and 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods.

Rule 7: Declaration by the exporter

The exporter shall furnish a declaration relating to the value of export goods in the manner specified in this behalf.

Rule 8: Rejection of declared value

- (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods, he may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response from such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be deemed to have not been determined in accordance with sub-rule (1) of rule 3.
- (2) At the request of an exporter, the proper officer shall intimate the exporter in writing the ground for doubting the truth or accuracy of the value declared in relation to the export goods by such exporter and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Presently the following goods are subject to export duty:

Commodity	Rate of Duty
Luggage leather	25%
Hides, Skins and leather	15%
Snake skins and lamb skins	10%
Steel product [w.e.f. 10-5-2008]	15%
Iron ores	₹ 300 per metric tonne
Chromium ores	₹ 2,000 per metric tonne

Refund of Export duty:

Refund of export duty is permissible in the following circumstances subject to satisfaction of certain conditions

- Goods are reimported within one year from the date of export
- These goods are not for resale
- Refund claim is lodged within six months from the date of clearance by Customs Officer for re-importation.



Study Note - 4

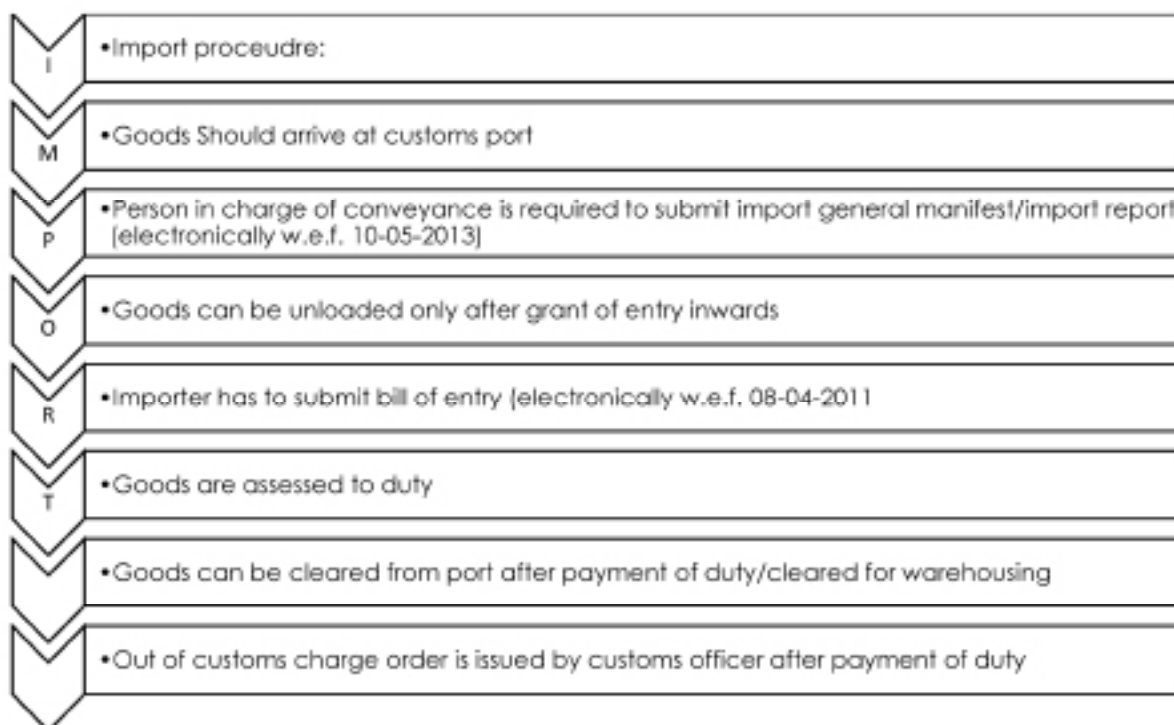
IMPORT & EXPORT PROCEDURES



This Study Note includes

- 4.1 Import Procedure under Customs
- 4.2 Goods Cleared for Home Consumption
- 4.3 Warehousing
- 4.4 Export Procedure under Customs
- 4.5 Deemed Export
- 4.6 Duty Drawback
- 4.7 Negative List of Duty Drawback
- 4.8 Imports by 100% Export Oriented Units (EOU)
- 4.9 Import/Procurement by SEZs
- 4.10 Project Import

4.1 IMPORT PROCEDURE UNDER CUSTOMS



Imports and Input Tax Credit (ITC) :

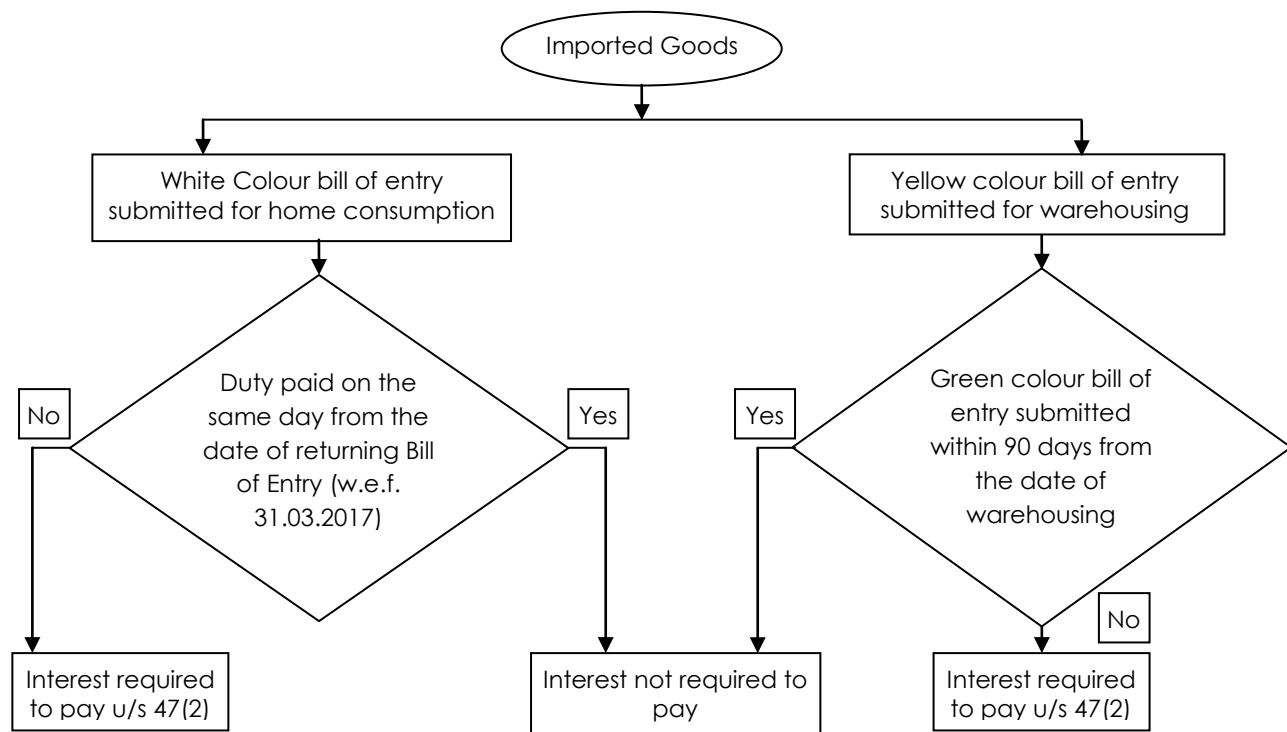
In GST regime, input tax credit of the integrated tax (IGST) and GST Compensation Cess shall be available to the importer and later to the recipients in the supply chain, however the credit of basic customs duty (BCD) would not be available. In order to avail ITC of IGST and GST Compensation Cess, an importer has to mandatorily declare



GST Registration number (GSTIN) in the Bill of Entry. Provisional IDs issued by GSTN can be declared during the transition period.

However, importers are advised to complete their registration process for GSTIN as ITC of IGST would be available based on GSTIN declared in the Bill of Entry. Input tax credit shall be availed by a registered person only if all the applicable particulars as prescribed in the Invoice Rules are contained in the said document, and the relevant information, as contained in the said document, is furnished in FORM GSTR - 2 by such person.

Customs EDI system would be interconnected with GSTN for validation of ITC. Further, Bill of Entry data in non - EDI locations would be digitized and used for validation of input tax credit provided by GSTN.



4.2 GOODS CLEARED FOR HOME CONSUMPTION

Clearance of Goods for Home Consumption [Sec. 47 (1) of the Customs Act, 1962]:

w.e.f. 14-5-2016, Sec. 47 (1) Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption:

Provided that the Central Government may, by notification in the Official Gazette, permit certain class of importers to make deferred payment of said duty [ie. duty payable under sec. 47(1)] or any charges in such manner as may be provided by rules (w.e.f. 14-5-2016).

Interest for late payment of duty @15% (Section 47(2) of the Customs Act, 1962

The duty should be paid within five working days after the 'Bill of Entry' is returned to the importer for payment of duty. w.e.f. 10-5-2013 the time reduced to two working days.

w.e.f. 31-3-2017 Finance Act, 2017 section 47(2) amended:



Importer shall have to make payment of duty on the same day in case of self-assessed Bill of Entry and in case of re-assessment or provisional assessment, within one day after the return of Bill of Entry.

As per section 47(2) of Customs Act, the importer is liable to pay interest where –

- the importer fails to pay the import duty under this section on the same day in case of self-assessed Bill of Entry and in case of re-assessment or provisional assessment, within one day after the return of Bill of Entry from the date on which the bill of entry is returned to him for payment of duty, he shall pay interest @ 15% p.a. on such duty till the date of payment of the said duty.
- w.e.f. 14-5-2016: in the case of deferred payment under the proviso to sub-section (1), from such due date as may be specified by rules made in this behalf, he shall pay interest @ 15% p.a. on the duty not paid or short-paid till the date of its payment.

Note: if the CBEC satisfied that it is necessary in the public interest so to do, it may, by order for reasons to be recorded, waive the whole or part of any interest payable under this section.

Example : 1

X Pvt. Ltd. imported goods in the month of April, 2018 and submitted 'Bill of Entry' on 9th April 2018 for home clearances. After verification bill of entry has been returned by the department on 10th April 2018 for payment of customs duty of ₹ 1,03,000. However, duty has been paid on 30th April, 2018. There are five holidays from 11th April 2018 to 30th April 2018. Find the interest under Sec. 47(2) of the Customs Act, 1962.

Answer:

Interest is ₹677

No. of days from 10th April, 2018 to 30th April, 2018 = 21 days

No. of days delay = 21-5 = 16 days

Interest = 1,03,000 x 15/100 x 16/365 = ₹ 677

Example : 2

A bill of entry was presented on 4th August, 2017. The vessel carrying goods arrived on 11th August, 2017. Entry inwards was granted on 13th August, 2017, and the bill of entry was assessed on that date and was also returned to the importer for payment of duty on that date. The duty amounting to ₹5,00,000 was paid by the importer on 22nd August, 2017.

Calculate the amount of interest payable under section 47(2) of the Customs Act, 1962, given that there were four holidays during the period from 14th August to 22nd August, 2017.

Answer:

Interest Rate = 15% p.a.

No. of days delay = from 13th Aug 2017 to 22nd Aug 2017 = 10 days

No. of days delay = 10 days

Less: No. of holidays = -4 days

Net No. of days delay for interest = 6 days

Interest = ₹1,233

₹5,00,000 x 15/100 x 6/365 = ₹1,232.88



Case Law : 1

CCus. v. Shreeji Overseas (India) Pvt. Ltd. 2013 (289) E.L.T. 401 (Guj.)

Point of dispute: Can the time-limit prescribed under Sec. 48 of the Customs Act, 1962 for clearance of the goods within 30 days be read as time-limit for filing of bill of entry under Sec. 46 of the Customs Act, 1962?

Decision: It has been held by the High Court in the above case, the time-limit prescribed under section 48 for clearance of the goods within 30 days cannot be read into section 46 and it cannot be inferred that section 46 prescribes any time-limit prescribed for filing of bill of entry.

Section 46 of the Customs Act, 1962: No time limit for filing a bill of entry by an importer upon arrival of goods.

Section 48 of the Customs Act, 1962: Authorities to sell the goods if imported goods not cleared for home consumption/warehoused/transhipped within 30 days of unloading the same.

Example : 3

Mr. Suhaan imported a consignment of goods which was unloaded on 31.10.2013. He filed the bill of entry on 15.12.2013. The Deputy Commissioner of Customs imposed a penalty of ₹ 15,000 on Mr. Suhaan as there was a delay of 15 days in filing the bill of entry. The Deputy Commissioner contended that section 46 and 48 of the Customs Act, 1962 read together provide that bill of entry ought to be filed within 30 days from the date of unloading of the goods.

Examine the issue in the light of relevant statutory provisions and decided case laws, if any.

Answer:

It has been held by the High Court in the case of Shreeji Overseas (India) Pvt. Ltd., the time-limit prescribed under section 48 for clearance of the goods within 30 days cannot be read into section 46 and it cannot be inferred that section 46 prescribes any time-limit prescribed for filing of bill of entry.

Therefore, penalty cannot be imposed on Mr. Suhaan as he has not committed any offence by filing bill of entry after 45 days of unloading the goods.

However, the custodian after giving notice to Mr. Suhaan and with the approval of the proper officer can sell the goods imported by Mr. Suhaan.

W.e.f. 31-3-2017 Finance Act, 2017 Section 46 amended:

Submission of Bill of entry:

The importer shall presented the bill of entry under section 46(1) of the Customs Act, 1962 before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or for warehousing.

Provided that a bill of entry may be presented within 30 days of the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India.

Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for the late presentation of the bill of entry as may be prescribed.

Therefore, CCus. v. Shreeji Overseas (India) Pvt. Ltd. 2013 (289) E.L.T. 401 (Guj.) case law became overruled.

4.3 WAREHOUSING

w.e.f. 14-5-2016, As per Section 2(43) of the Customs Act, 1962, "warehouse" means a public warehouse licensed under section 57 or a private warehouse licensed under section 58 OR Special Warehouse license u/s 58A.



Features of Warehousing:

1. Importer can defer payment of import duties by storing the goods in a safe place
2. Importer allowed doing manufacturing in bonded warehouse and then re-exporting from it.
3. The importer can be allowed to keep the goods up to One year without payment of duty from the date he deposited the goods into warehouse.
4. This time period is extended to Three years for Export Oriented Units and the time period still be extended to Five years if the goods are capital goods.
5. The importer minimizes the charges by keeping in a warehouse, otherwise the demurrage charges at port is heavy.
6. Assistant Commissioner of Customs or Deputy Commissioner of Customs are competent to appoint a warehouse as public bonded warehouse.
7. The Assistant Commissioner of Customs or Deputy Commissioner of Customs may license private warehouse. The license to private warehouse can be cancelled by giving ONE month notice.
8. Only dutiable goods can be deposited in the warehouse.
9. Green Bill of Entry has to be submitted by the importer to clear goods from warehouse for home consumption.
10. Rate of duty is applicable as on the date of presentation of Bill of Entry (i.e. sub-bill of entry or ex-bond bill of entry) for home consumption.
11. Reassessment is not allowed after the imported goods originally assessed and warehoused.
12. The exchange rate is the rate at which the Bill of Entry (i.e. 'into bond') is presented for warehousing.
13. If the goods which are not removed from warehouse within the permissible period, then subsequent removal called as improper removal. The rate of BCD which is applicable as on the last date on which the goods should have been removed but not removed is applicable, [**Kesoram Rayon v Commissioner of Customs (1996)**].

w.e.f. 14-5-2016:

- (1) Section 59 of the Customs Act, 1962, Bond amount has been increased from twice of the duty amount to thrice of the duty amount and security also will have to be given.
- (2) Now, rent charges claimable will not be pre-requisite for non-compliances of any of the provisions, since it is the issue of custodian i.e. owner of the warehouse.

Licensing of Public Warehousing:

Sec. 57 The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a public warehouse wherein dutiable goods may be deposited.

Licensing of Private Warehouses:

Sec. 58 The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a private warehouse wherein dutiable goods imported by or on behalf of the licensee may be deposited.

Licensing of Special Warehousing:

Sec. 58A (1) The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a special warehouse wherein dutiable goods may be deposited and such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods therefrom without the permission of the proper officer.

Sec. 58A (2) The Board may, by notification in the Official Gazette, specify the class of goods which shall be deposited in the special warehouse licensed under sub-section (1).



Sec. 58A (2) The Board may, by notification in the Official Gazette, specify the class of goods which shall be deposited in the special warehouse licensed under sub-section (1).

Consequently, **CBEC, vide Notification No. 66/2016 Cus (NT) dated 14.05.2016** has notified the following class of goods which shall be deposited in a special warehouse:

- (i) gold, silver, other precious metals and semi-precious metals and articles thereof;
- (ii) goods warehoused for the purpose of:
 - supply to DFS (Duty Free Shops) in a customs area;
 - supply as stores to vessels/aircrafts under Chapter XI of the Customs Act, 1962;
 - supply to foreign privileged persons in terms of the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957.

Note:

- (1) Privileged person means a person entitled to import/purchase locally from bond goods free of duty for his personal use/for the use of any member of his family/for official use in his Mission, Consular Post or Office or in Deputy High Commission/Assistant High Commission.
- (2) A Duty-Free Shop (DFS) in the airport need not be a licensed as warehouse under section 58A.
 - a. DFS located in customs area should not be treated as a warehouse.
 - b. In fact, it is a point of sale for the goods which are to be ex-bonded and removed from a warehouse for being brought to a DFS in the customs area for sale to eligible persons, namely international passengers arriving or departing from India.

Cancellation of Licence [Section 58B w.e.f. 14-5-2016]:

- (1) Where a licensee contravenes any of the provisions of this Act or the rules or regulations made thereunder or breaches any of the conditions of the licence, the Principal Commissioner of Customs or Commissioner of Customs may cancel the licence granted under section 57 or section 58 or section 58A.

Provided that before any licence is cancelled, the licensee shall be given a reasonable opportunity of being heard.

- (2) The Principal Commissioner of Customs or Commissioner of Customs may, without prejudice to any other action that may be taken against the licensee and the goods under this Act or any other law for the time being in force, suspend operation of the warehouse during the pendency of an enquiry under sub-section (1).

- (3) Where the operation of a warehouse is suspended under sub-section (2), no goods shall be deposited in such warehouse during the period of suspension:

Provided that the provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse.

- (4) Where the licence issued under section 57 or section 58 or section 58A is cancelled, the goods warehoused shall, within seven days from the date on which order of such cancellation is served on the licensee or within such extended period as the proper officer may allow, be removed from such warehouse to another warehouse or be cleared for home consumption or export:

Provided that the provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse till they are removed to another warehouse or cleared for home consumption or for export, during such period".

Period for which Goods may remain Warehoused w.e.f. 14-5-2016

As per Sec. 61 of the Customs Act, 1962

- (1) Any warehoused goods may remain in the warehouse in which they are deposited or in any warehouse to which they may be removed:

- (a) in the case of capital goods intended for use in any hundred per cent. export oriented undertaking or electronic hardware technology park unit or software technology park unit or any warehouse wherein manufacture or other operations have been permitted under section 65, till their clearance from the warehouse;
- (b) in the case of goods other than capital goods intended for use in any hundred per cent. export oriented undertaking or electronic hardware technology park unit or software technology park unit or any warehouse wherein manufacture or other operations have been permitted under section 65, till their consumption or clearance from the warehouse; and
- (c) in the case of any other goods, till the expiry of one year from the date on which the proper officer has made an order under sub-section (1) of section 60:

Provided that in the case of any goods referred to in this clause, the Principal Commissioner of Customs or Commissioner of Customs may, on sufficient cause being shown, extend the period for which the goods may remain in the warehouse, by not more than one year at a time:

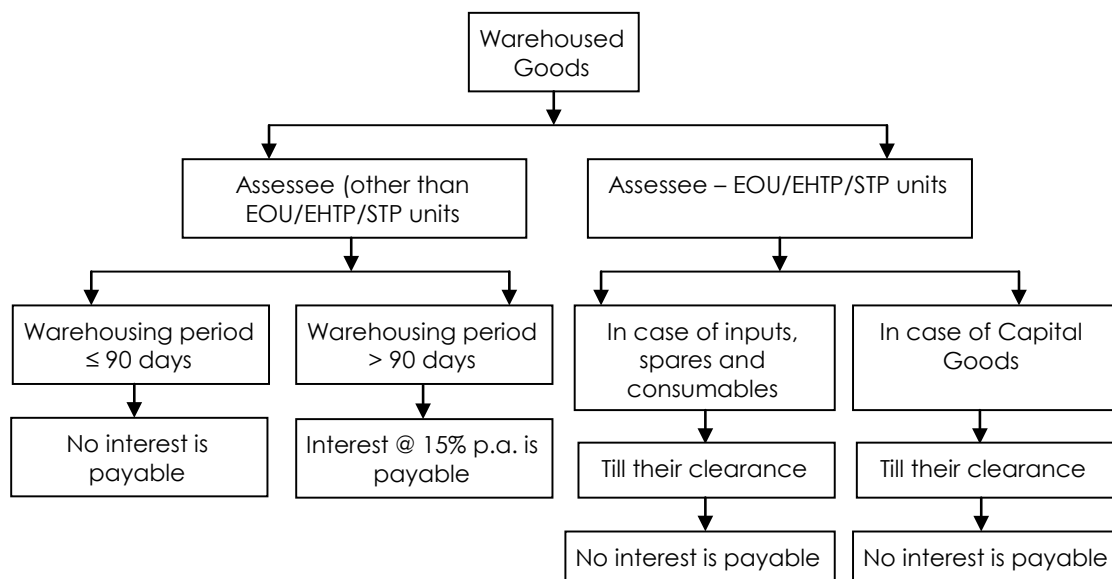
Provided further that where such goods are likely to deteriorate, the period referred to in the first proviso may be reduced by the Principal Commissioner of Customs or Commissioner of Customs to such shorter period as he may deem fit.

- (2) Where any warehoused goods specified in clause (c) of sub- section (1) remain in a warehouse beyond a period of ninety days from the date on which the proper officer has made an order under sub-section (1) of section 60, interest shall be payable at such rate as may be fixed by the Central Government under section 47, on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said ninety days till the date of payment of duty on the warehoused goods:

Provided that if the Board considers it necessary so to do, in the public interest, it may,—

- (a) by order, and under the circumstances of an exceptional nature, to be specified in such order, waive the whole or any part of the interest payable under this section in respect of any warehoused goods;
- (b) by notification in the Official Gazette, specify the class of goods in respect of which no interest shall be charged under this section;
- (c) by notification in the Official Gazette, specify the class of goods in respect of which the interest shall be chargeable from the date on which the proper officer has made an order under sub-section (1) of section 60.

Applicability of Interest on Warehoused Goods w.e.f. 14-5-2016:



**w.e.f. 14-5-2016 Control over Warehoused Goods has been Omitted:**

Now there will be a record based control on such warehouses except for warehouses setup under section 58A and hence there is no need of payment of MOT charges by EOU except for class of goods which is notified under section 58A.

Section 63 of the Customs Act, 1962 - Payment of Rent and Warehouse Charges.

Prior to 14-5-2016	W.e.f. 14-5-2016	Remarks
The owner of any warehoused goods shall pay to the warehouse-keeper rent and warehouse charges at the rates fixed under any law for the time being in force or where no rates are so fixed, at such rates as may be fixed by the Commissioner of Customs. (2) If any rent or warehouse charges are not paid within ten days from the date when they became due, the warehouse- keeper may, after notice to the owner of the warehoused goods and with the permission of the proper officer cause to be sold (any transfer of the warehoused goods notwithstanding) such sufficient portion of the goods as the warehouse-keeper may select.	Omitted	This was the issue of the custodian i.e. owner of warehouse and not the custom officers.

Sec 64 of the Customs Act, 1962 - Owner's Right to deal with Warehoused Goods:

w.e.f. 14-5-2016 The owner of any warehoused goods may, after warehousing the same:

- inspect the goods;
- deal with their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;
- sort the goods; or
- show the goods for sale.

Note: Since physical control has been abolished, there is no need of obtaining sanction on payment of MOT charges.

Section 65 of the Customs Act, 1962 - Manufacture and Other Operations in relation to Goods in a Warehouse.

Prior to 14-5-2016	w.e.f. 14-5-2016	Remarks
With the sanction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs and subject to such conditions and on payment of such fees as may be prescribed, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods.	With the permission of the Principal Commissioner of Customs or Commissioner of Customs and subject to such conditions and on payment of such fees as may be prescribed, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods.	It is upward delegation. Now EOU, EHTP Units will have to be obtained license u/s 58/65 from Principal Commissioner / Commissioner

Custody and Removal of Warehoused Goods (New Section 73A w.e.f. 14-5-2016)

- All warehoused goods shall remain in the custody of the person who has been granted a licence under section 57 or section 58 or section 58A until they are cleared for home consumption or are transferred to another warehouse or are exported or removed as otherwise provided under this Act.
- The responsibilities of the person referred to in sub-section (1) who has custody of the warehoused goods shall be such as may be prescribed.



- (3) Where any warehoused goods are removed in contravention of section 71, the licensee shall be liable to pay duty, interest, fine and penalties without prejudice to any other action that may be taken against him under this Act or any other law for the time being in force.

Note: The provision has been inserted so as to recover the duty either from custodian or importer as may be prescribed to protect the revenue.

Liability of duty interest fine will be on importer and or custodian, as the case may be.

This will cause more responsibility on custodian.

Warehousing without Warehousing (Section 49 of the Customs Act, 1962):

If the assessment is delayed for imported goods, then those goods can be stored in public warehouse without executing the bond is called as warehousing without warehousing.

Prior to 10-5-2013, no time-period had been specified under section 49 for which imported goods could be stored in a warehouse.

w.e.f. 10-5-2013, There is a time limit of 30 days to remove the goods from warehouse where the goods has been stored under S.49 of the Customs Act, 1962 i.e. warehousing without warehousing.

However, the Commissioner of Customs may extend the period of storage for a further period not exceeding 30 days at a time.

Warehoused Goods (Removal) Regulations, 2016 (NT 67/2016 Cus Dt 14.5.2016):

1. Owner of warehoused goods make a request:

Where the warehoused goods are to be removed from one warehouse to another warehouse or from a warehouse to a customs station for export, the owner is required to make a request in prescribed Form for transfer of goods.

2. Conditions for transport of goods: Where the goods are removed:

- from the customs station of import to a warehouse or
- from one warehouse to another warehouse or
- from the warehouse to a customs station for export

the transport of the goods shall be under one-time lock (OTL), affixed by the proper officer or licensee or bond officer [i.e. an officer of customs in charge of a warehouse], as the case may be. However, the Principal Commissioner/Commissioner of Customs may dispense with the condition of one-time lock and allow transport of the goods without affixing the one-time-lock, having regard to the nature of goods or manner of transport.

3. Acknowledgement of receipt of goods at the destination, to be produced by the owner of goods:

The owner of the goods shall produce to the proper officer at customs station of import or the bond officer, within ONE month [or extended period allowed], an acknowledgement issued by the licensee or the bond officer of the warehouse to which the goods have been removed or the proper officer at the customs station of export, as the case may be, stating that the goods have arrived at that place. In case the owner fails to provide the acknowledgment, he shall pay the full amount of duty chargeable on account of such goods together with interest, fine and penalties payable under section 72(1).

One Time Lock (OTL):

When the goods are removed from the customs station of import for warehousing, the proper officer affixes a one-time lock (OTL) on the container or means of transport (closed trucks). The serial number of OTL alongwith date and time of its affixation needs to be endorsed upon Bill of Entry for warehousing and transport document.

All customs stations are required to maintain records incorporating the number of the OTL, bill of entry, truck



number, container number (if applicable), date & time of affixing the OTL and the name, designation & telephone number of the officer affixing the OTL.

A similar procedure has been provided under Warehoused Goods (Removal) Regulations, 2016 for removal of goods from one warehouse to another and from a warehouse to customs station for export.

However, the Principal Commissioner of Customs /Commissioner of Customs may permit movement of goods without affixation of such OTLs, where the nature of goods or their manner of transport so warrant (e.g. Liquid Bulk Cargo transported through Pipe Line & Over Dimensional Cargo)

Transfer of Goods to Another Warehouse:

Warehouse – Private or Public	Special warehouse
(1) Licensee (namely incharge of warehouse) shall transfer warehoused goods to another warehouse only when the owner of the goods produce the form for transfer of goods bearing the orders of the bond officer permitting such transfer.	(1) Licensee (namely incharge of warehouse) shall transfer warehoused goods to another warehouse only with the permission of the Bond Officer on the form for transfer of goods.
(2) After the goods are removed and loaded on means of transport, licensee would: (a) affix a one-time-lock to the means of transport, (b) endorse the number of one-time lock on prescribed form for transfer of goods and on transportation documents, (c) cause one copy of each of these documents to be delivered to bond officer and (d) record the removal of goods record the removal of goods	(2) Once bond officer permits removal of goods from warehouse, licensee shall, in the presence of Bond Officer, : (a) cause the goods to be loaded onto the means of transport, and (b) affix a one-time-lock to the means of transport.

Monthly return: A licensee shall file with the Bond Officer a monthly return in prescribed form, of the receipt, storage, operations and removal of the goods in the warehouse, within 10 days after the close of the month to which such return relates. However, such return shall be furnished on/before the 10th day of the month immediately preceding the month in which the warehousing period would expire.

Online filing of Ex-bond Bill of Entry and EDI based Monitoring of Warehouses at Customs Station of Import (w.e.f. 31.05.2015)

The filing of ex-bond bills of entry on ICES will provide the benefits of automation to importers availing the warehousing facility and lend efficiency to the process of clearance of the warehoused goods.

On receipt of copy of the ex-bond bill of entry, jurisdictional bond officer shall verify its details from ICEGATE (Indian Customs Electronic Commerce/Electronic Data interchange (EC/EDI) Gateway) to check that, the order of clearance for home consumption has been made by the proper officer. In case of any discrepancy, he shall not permit the removal of goods from the warehouse and immediately inform his Deputy or Assistant Commissioner for resolution of the same.

Example : 4

Explain the validity of the following statements with reference to Chapter IX of the Customs Act, 1962 containing the provisions relating to the warehousing:

- The proper officer is not authorized to lock any warehouse with the lock of the Customs Department.**
- The Commissioner of Customs (Appeals) may appoint public warehouses wherein dutiable goods may be deposited.**
- The Commissioner of Customs or Principal Commissioner of Customs is not required to give a notice to the licensee while canceling the license of a private warehouse if he has contravened any provision of the said Act.**

Answer:

- (a) The given statement is invalid: Sec. 58A (1) The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a special warehouse wherein dutiable goods may be deposited and such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods therefrom without the permission of the proper officer.
- (b) The given statement is invalid: The Commissioner of Customs or the Principal Commissioner of Customs can appoint public warehouse, wherein dutiable goods can be deposited under Section 57 of the Customs Act, 1962.
- (c) The given statement is valid: The Commissioner of Customs or Principal Commissioner of Customs is not required to give a notice to the licensee while canceling the license of a private warehouse if he has contravened any provision of the said Act, as per section 58(2)(b) of the Customs Act, 1962.

Example : 5

An importer imported some goods on 1st January, 2018 and the goods were cleared from Mumbai port for warehousing on 8th January, 2018 by submitting Bill of Entry, exchange rate was ₹ 50 per US \$. FOB value US \$ 10,000. The rate of duty on 8th January, 2018 was 20%. The goods were warehoused at Pune and were cleared from Pune warehouse on 31st May, 2018, when rate of basic customs duty was 12% and exchange rate was ₹68.75 per 1US \$. IGST @12% is applicable.

You are required to find:

- (a) The total Customs duty payable.
- (b) The interest if any payable.

Answer:

	USD
FOB	10,000
Add: 20% Freight on FOB	2,000
Add: 1.125% Insurance on FOB	112.5
CIF/ Assessable Value	12,112.50

	₹	
Assessable Value	6,05,625	(i.e. 12,112.50 x ₹ 50)
Add: BCD 12%	72,675	(i.e. 6,05,625 x 12%)
Add: 2% Ed. Cess	1,454	(i.e. 72,675 x 2%)
Add: 1% SAH Ed. Cess	727	(i.e. 72,675 x 1%)
Transaction value subject to GST	6,80,481	
Add: IGST	81,658	(i.e. 6,80,481 x 12%)
Value of import	7,62,139	
Value of Customs duties	1,56,514	
Interest: (i.e. 1,58,078 x 15% x 54/365)	3,473	

Working Note: From 8th January 2018 to 31st May 2018 = 144 – 90 = 54 days

**Example : 6**

Vipul imported certain goods in December, 2017. An 'into Bond' bill of entry was presented on 14th December, 2017 and goods were cleared from the port for warehousing. Assessable value on that date was US \$1,00,000. The order permitting the deposit of goods in warehouse for four months was issued on 21st December, 2017. Vipul deposited the goods in warehouse on the same day but did not clear the imported goods even after the warehousing period got over on 20th April, 2018.

A notice was issued under section 72 of the Customs Act, 1962, demanding duty, interest and other charges. Vipul cleared the goods on 14th May 2018. Compute the amount of duty and interest payable by Vipul while removing the goods on the basis of following information:

Particulars	14-12-2017	20-4-2018	14-5-2018
Rate of exchange per US \$ (as notified by Central Board of Excise & Customs)	₹ 65.20	₹ 65.40	₹ 65.50
Basic Customs Duty	15%	10%	12%
No other customs duty is payable except basic customs duty.			

Answer:

Assessable value ₹ 65,20,000/-

Customs duty is ₹ 6,71,560

$(\text{USD } 1,00,000 \times ₹ 65.20) \times 10.30\% = ₹ 6,71,560$

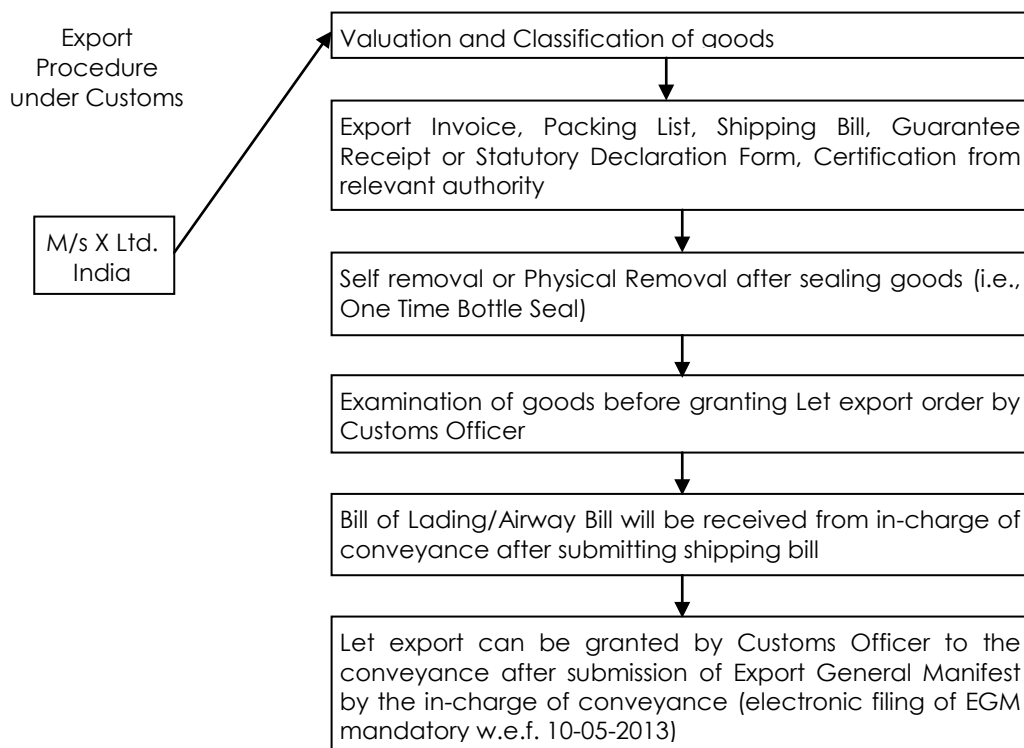
Interest payable is ₹ 15,179/-

$(6,71,560 \times 15/100) \times 55 \text{ days}/365 = ₹ 15,179/-$

No. of days delay:

Month	No. of days delay
From 21st Dec 2017 to 31st Dec 2017	11
Jan 2018	31
Feb 2018	28
Mar 2018	31
April 2018	30
May 2018	14
Total	145
Less: No. of days for which no interest	-90
No. of days delay for interest	55

4.4 EXPORT PROCEDURE UNDER CUSTOMS



Export Procedure under Goods and Services Tax (GST):

Exporters can furnish bond or letter of undertaking instead of paying Integrated GST at the time of exporting goods and services with effect from July 1, 2017. In case the IGST has been paid, the exporters can seek refund of the tax paid.

IGST is levied on the supply of any goods and services in the course of inter-state trade or commerce. As per the IGST Act, export and import of goods and services are deemed to be a supply in the course of inter-state trade or commerce. Supplies of goods and services for exports have been categorised as 'Zero Rated Supply' implying that goods could be exported under bond or Letter of Undertaking without payment of integrated tax followed by claim of refund.

Under section 7(5) of IGST Act, 2017 supply will be treated, as inter-state supply when

- the supplier is located in India and
- the place of supply is outside India or
- place of supply is SEZ unit.

Further, exports would be considered as "Zero rated supply" under section 16 of IGST Act.

Any person making zero rated supply (i.e. any exporter) shall be eligible to claim refund under either of the following options, namely:-

- he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 (Refunds) of the Central Goods and Services Tax Act or the rules made there under.



- (b) he may supply goods or services or both under bond or Letter of Undertaking (LUT), subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or

For the option (a), procedure to file refund has been outlined in the Refund Rules under GST. The exporter claiming refund of IGST will file an application electronically through the Common Portal, either directly or through a Facilitation Centre notified by the GST Commissioner. The application shall be accompanied by documentary evidences as prescribed in the said rules. Application for refund shall be filed only after the export manifest or an export report, as the case may be, is delivered under section 41 of the Customs Act, 1962 in respect of such goods.

For the option (b), governing under rule 96 of the CGST Rules, 2017 the ARE-1 which is being submitted presently shall be dispensed with except in respect of commodities to which provisions of Central Excise Act would continue to be applicable. shipping bill filed by an exporter shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when the person in charge of the conveyance carrying the export goods duly files an export manifest or an export report covering the number and the date of shipping bills or bills of export and the applicant has furnished a valid return (i.e. Form GSTR-3 or GSTR-3B).

ARE-1 which is being submitted presently shall be dispensed with except in respect of commodities to which provisions of Central Excise Act would continue to be applicable.

For both option (a) and (b) exporters have to provide details of GST invoice in the Shipping bill.

Procedure regarding refund of integrated tax paid on goods exported out of India is governed by rule 96 of the CGST Rules, 2017.

Procedure regarding LUT & refund of IGST is governed by rule 96A of CGST Rules, 2017 (w.e.f 01.07.2017).

Export of goods or services under bond or Letter of Undertaking as below:-

- (1) Any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in FORM GST RFD-11 to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest specified under sub-section (1) of section 50 within a period of —
 - (a) fifteen days after the expiry of three months from the date of issue of the invoice for export, if the goods are not exported out of India; or
 - (b) fifteen days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange.
- (2) The details of the export invoices contained in FORM GSTR-1 furnished on the common portal shall be electronically transmitted to the system designated by Customs and a confirmation that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from the said system.
- (3) Where the goods are not exported within the time specified in sub-rule (1) and the registered person fails to pay the amount mentioned in the said sub-rule, the export as allowed under bond or Letter of Undertaking shall be withdrawn forthwith and the said amount shall be recovered from the registered person in accordance with the provisions of section 79.
- (4) The export as allowed under bond or Letter of Undertaking withdrawn in terms of subrule (3) shall be restored immediately when the registered person pays the amount due.
- (5) The Board, by way of notification, may specify the conditions and safeguards under which a Letter of Undertaking may be furnished in place of a bond.
- (6) The provisions of sub rule (1) shall apply, mutatis mutandis, in respect of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit without payment of integrated tax.";

**CBEC Circular No . 8/8 /2017 - GST dated 4th October 2017:****(1) Eligibility to export under LUT:**

The facility of export under LUT has been now extended to all registered persons who intend to supply goods or services for export without payment of integrated tax except those who have been prosecuted for any offence under the CGST Act or the Integrated Goods and Services Tax Act, 2017 or any of the existing laws and the amount of tax evaded in such cases exceeds Rs 250 lakh (i.e. two hundred and fifty lakh rupees) vide Circular No . 8/8 /2017 - GST dated 4th October 2017 .

(2) Validity of LUT:

The LUT shall be valid for the whole financial year in which it is tendered. However, in case the goods are not exported within the time specified in sub - rule (1) of rule 96A of the CGST Rules and the registered person fails to pay the amount mentioned in the said sub - rule, the facility of export under LUT will be deemed to have been withdrawn. If the amount mentioned in the said sub - rule is paid subsequently, the facility of export under LUT shall be restored.

As a result, exports, during the period from when the facility to export under LUT is withdrawn till the time the same is restored, shall be either on payment of the applicable integrated tax or under bond with bank guarantee.

(3) Form for bond/ LUT:

Till the time FORM GST RFD - 11 is available on the common portal, the registered person (exporters) may download the FORM GST RFD - 11 from the website of the Central Board of Excise and Customs (www.cbec.gov.in) and furnish the duly filled form to the jurisdictional Deputy/Assistant Commissioner having jurisdiction over their principal place of business. The LUT shall be furnished on the letter head of the registered person, in duplicate, and it shall be executed by the working partner, the Managing Director or the Company Secretary or the proprietor or by a person duly authorised by such working partner or Board of Directors of such company or proprietor. The bond, wherever required, shall be furnished on non-judicial stamp paper of the value as applicable in the State in which the bond is being furnished.

(4) Documents for LUT:

Self - declaration to the effect that the conditions of LUT have been fulfilled shall be accepted unless there is specific information otherwise. That is, self - declaration by the exporter to the effect that he has not been prosecuted should suffice for the purposes of Notification No. 37 /2017 - Central Tax dated 4 th October, 2017. Verification, if any, may be done on post - facto basis.

(5) Time for acceptance of LUT/Bond:

As LUT/ Bond is a priori requirement for export, including exports to a SEZ developer or a SEZ unit, the LUT/ bond should be processed on top most priority. It is clarified that LUT/ bond should be accepted within a period of three working days of its receipt along with the self - declaration as stated in para (4) above by the exporter. If the LUT / bond is not accepted within a period of three working days from the date of submission , it shall deemed to be accepted.

(6) Bank guarantee:

Since the facility of export under LUT has been extended to all registered persons, bond will be required to be furnished by those persons who have been prosecuted for cases involving an amount exceeding Rupees two hundred and fifty lakhs. A bond, in all cases, shall be accompanied by a bank guarantee of 15% of the bond amount.

(7) Clarification regarding running bond:

The exporters shall furnish a running bond where the bond amount would cover the amount of self - assessed estimated tax liability on the export . The exporter shall ensure that the outstanding integrated tax liability on exports is within the bond amount. In case the bond amount is insufficient to cover the said liability in yet to



be completed exports, the exporter shall furnish a fresh bond to cover such liability. The onus of maintaining the debit / credit entries of integrated tax in the running bond will lie with the exporter. The record of such entries shall be furnished to the Central tax officer as and when required.

(8) Sealing by officers:

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

(9) Purchases from manufacturer and Form CT - 1:

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

(10) Transactions with EOUs:

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

(11) Realization of export proceeds in Indian Rupee : Attention is invited to para A (v) Part - I of RBI

Master Circular No. 14/2015 - 16 dated 01st July, 2015 (updated as on 05th November, 2015), which states that "there is no restriction on invoicing of export contracts in Indian Rupees in terms of the Rules, Regulations, Notifications and Directions framed under the Foreign Exchange Management Act, 1999. Further, in terms of Para 2.52 of the Foreign Trade Policy (2015 - 2020), all export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency. However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non - resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan".

Accordingly, it is clarified that the acceptance of LUT for supplies of goods to Nepal or Bhutan or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines. It may also be noted that the supply of services to SEZ developer or SEZ unit under LUT will also be permissible on the same lines. The supply of services, however, to Nepal or Bhutan will be deemed to be export of services only if the payment for such services is received by the supplier in convertible foreign exchange.

(12) Jurisdictional officer:

In exercise of the powers conferred by sub - section (3) of section 5 of the CGST Act, it is hereby stated that the LUT /Bond shall be accepted by the jurisdictional Deputy/Assistant Commissioner having jurisdiction over the principal place of business of the exporter. The exporter is at liberty to furnish the LUT /bond before either the Central Tax Authority or the State Tax Authority till the administrative mechanism for assigning of taxpayers to the respective authority is implemented.

Note: Circular No. 2/2/2017 – GST dated 5th July, 2017, Circular No. 4/4/2017 – GST dated 7th July, 2017 and Circular No. 5/5/2017 – GST dated 11th August, 2017 are hereby rescinded except as respects things already done or omitted to be done.



Practical theory:

Example : 7

How soon will refund in respect of export of goods or services be granted during the GST regime?

Answer:

(a) In case of refund of tax on inputs used in exports:

- Refund of 90% will be granted provisionally within seven days of acknowledgement of refund application.
- Remaining 10% will be paid within a maximum period of 60 days from the date of receipt of application complete in all respects.
- Interest @ 6% is payable if full refund is not granted within 60 days.

(b) In the case of refund of IGST paid on exports:

Upon receipt of information regarding furnishing of valid return in Form GSTR-3 by the exporter from the common portal, the Customs shall process the claim for refund and an amount equal to the IGST paid in respect of each shipping bill shall be credited to the bank account of the exporter.

Example : 8

M/s X Ltd. manufacture of exempted excisable goods for export. Company availed input stage rebate (ITC on inputs) used in the manufacture of exported goods. Whether the company is eligible for refund of ITC on inputs?

Answer:

Under IGST law a person engaged in export of goods which is an exempt supply is eligible to avail input stage credit for zero rated supplies. Once goods are exported, refund of unutilized credit can be availed under Section 16(3)(a) of IGST Act, 2017 and Section 54 of the CGST Act, 2017 and the rules made there under.

Example : 9

what do you mean refund under section 54 of CGST Act, 2017?

Answer:

As per explanation to section 54 of the CGST Act 2017 refund includes refund of tax paid on zero-rated supplies of goods or services or both

OR

on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilized input tax credit as provided under section 54(3) of the CGST Act, 2017.

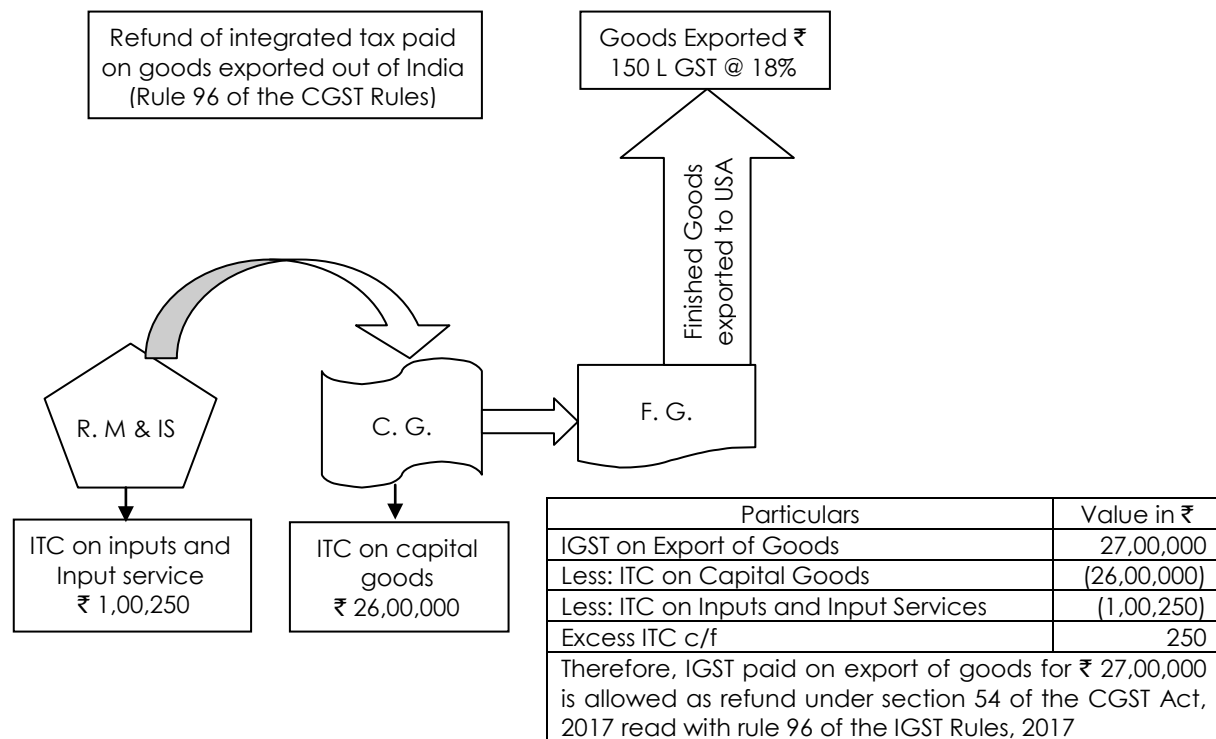
Example : 10

Under what circumstances it may be beneficial to pay IGST on export of goods and claim rebate (i.e. Refund) under rule 96 of the CGST Rules, 2017.

Answer:

If assessee has balance of tax in Capital Goods Input Tax Credit Account, it is advisable to pay duty (i.e. IGST) on export and claim refund, as balance in Capital Goods Input Tax Credit Account is never refundable.

Simplified approach: Assume X Ltd. purchased goods by paying GST for manufacture. After manufacture supplied goods to an import located in USA in the following manner:



Note: In general all our exports free from Basic Customs Duty unless law specifically stated otherwise.

Example : 11

How to execute Bond required for exporting without payment of IGST?

Answer:

Following are the instructions on how to execute Bond required for exporting without payment of IGST.

Step 1: Bond has to be executed when your turnover in the previous year is less than ₹ 1,00,00,000/-.

Step 2: Bond of amount equivalent to the tax liability (usually annual liability) has to be executed on non-judicial stamp paper in the favour of President of India, through the concerned Assistant Commissioner.

Step 3: In the bond, exporter has to mention the Bank Guarantee amount which is equivalent to 15% of the bond value (or lesser if allowed by Assistant Commissioner).

Step 4: Stamp Paper for Bond can be of value ₹ 500/- or more (or as prescribed by concerned Assistant Commissioner). Stamp paper should be purchased from your own State (same jurisdiction) i.e. where the concerned Range Office is located. It should be purchased in the name of exporter (with address).

Bond-Language does not fit well on single page, so you have to use second page. Second page can be any blank page to print the extra content.

Step 5: Exporter has to self-sign the bond on first page as well as on second page. Second page has to be signed by two witnesses. Then, Bond has to be attested by a Notary.

Step 6: Exporter has to submit self-signed copy of own ID-Proof (Like Aadhar Card). You also have to submit the copies of ID-Proofs (Like Aadhar Card) of witnesses, which has to be self-signed by him.



4.5 DEEMED EXPORTS

The term Deemed Exports an export without actual export, it means goods and services are sold and provide respectively within India and payment also received in the Indian Rupees. As per the Foreign Trade Policy the following few transactions can be considered as deemed exports.

- Sale of goods to units situated in Export Oriented Units, Software Technology Park, and Electronic Hardware Technology Park etc.
- Sale of capital goods to fertilizer plants
- Sale of goods to United Nations Agencies
- Sale of goods to projects financed by bilateral Agencies, etc.

4.6 DUTY DRAWBACK

Duty drawback allowed for the following:

- Import duty paid on imported goods
- The excise duty and Service Tax

No drawback is allowed on
VAT, CST

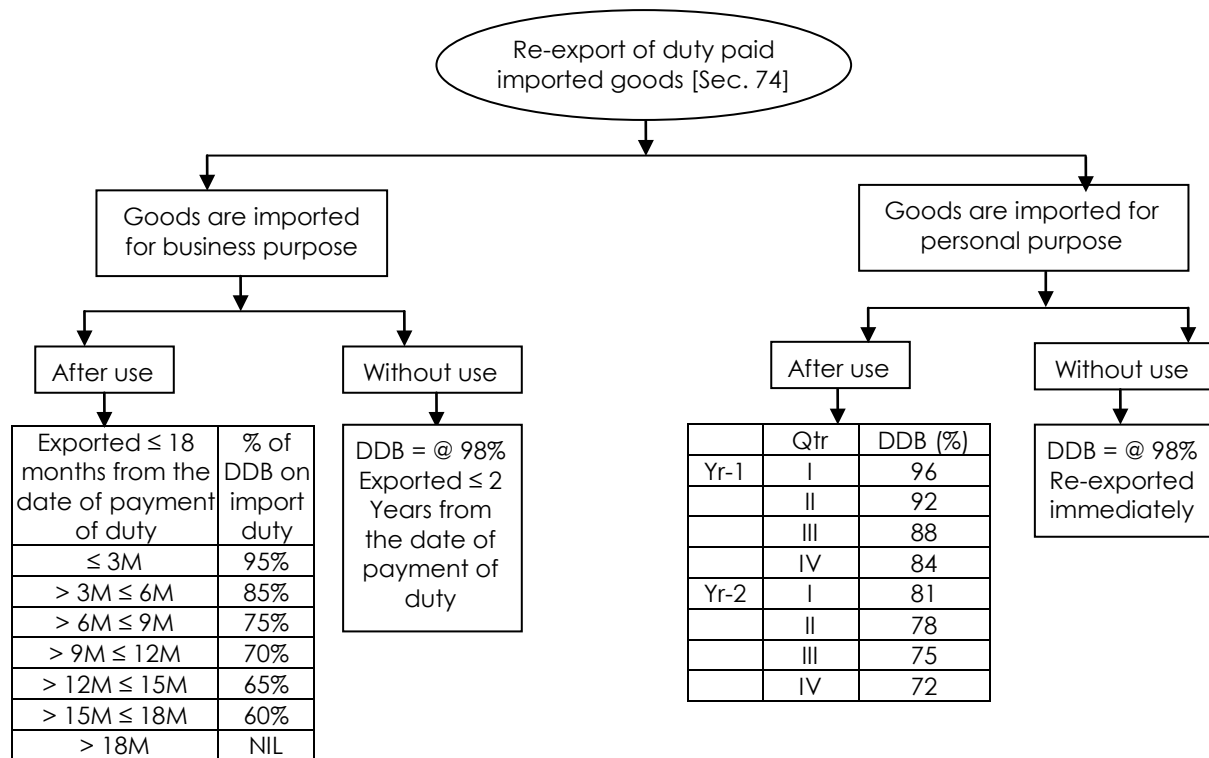
Two categories of duty drawback:

1. Duty Drawback on Re-Export (Sec. 74)
2. Duty Drawback on Export (Sec. 75)

Duty Drawback on Re-Export [Section 74]

Conditions should be satisfied:

1. Originally the goods should have been imported into India; Customs duty on import should have been paid.
2. The imported goods should be capable of being easily identifiable as the same goods which were originally imported.
3. The goods have been exported after proper examination of the goods and after ensuring that there is no prohibition or restriction on their export by the proper officer.
4. The goods should have been identified to the satisfaction of the Assistant or Deputy Commissioner of Customs as the goods, which were imported, and
5. The goods should have been entered for export within two years from the date of payment of duty on the importation thereof. This period can be extended up to two years by CBEC or by the Commissioner of Customs.
6. The market price of such goods must not be less than the amount of drawback claimed.



Goods are imported for personal purpose after use re-exported after 2 years from the date of payment of import duty then with prior permission from CBE&C; DDB can be claimed as per the following percentages:

	Qtr	DDB
(%)		
Yr-3	I	69.5
	II	67
	III	64.5
	IV	62
Yr-4	I	60
	II	58
	III	56
	IV	54

Duty Drawback on Re-Export not allowed:

Drawback of import duty paid is not allowed if these goods are exported:

- Wearing apparel, Tea chests,
- Exposed cinematograph film passed by the Board of Film Censors in India,
- Unexposed photographic films, paper and plates and X-Ray films.

Example : 12

Calculate the amount of duty drawback allowable under section 74 of the Customs Act, 1962 in following cases:

- Salman imported a motor car for his personal use and paid ₹ 5,00,000 as import duty. The car is re-exported after 6 months and 20 days.
- Nisha imported wearing apparel and paid ₹ 50,000 as import duty. As she did not like the apparel, these are re-exported after 20 days.
- Super Tech Ltd. imported 10 computer systems paying customs duty of ₹ 50 lakh. Due to some technical problems, the computer systems were returned to foreign supplier after 2 months without using them at all.

Answer:

- a) The amount of duty drawback is ₹ 4,40,000 (i.e. ₹ 5,00,000 @ 88%), since these goods are used in India.
- b) Duty drawback is ₹ nil, assumed that wearing apparels are re-exported after being used.
- c) Duty drawback is ₹ 49,00,000 (i.e. 50,00,000 x 98%), since these good are re-exported without being used.

Example : 13

With reference to drawback on re-export of duty paid imported goods under section 74 of the Customs Act, 1962, answer in brief the following questions:

- (i) What is the time limit for re-exportation of goods as such?
- (ii) What is the rate of duty drawback if the goods are exported without use?
- (iii) Is duty drawback allowed on re-export of wearing apparel without use?

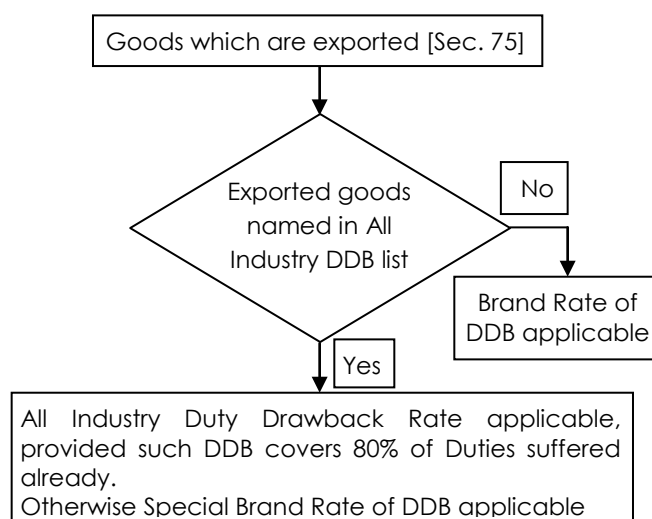
Answer:

- (i) As per section 74 of the Customs Act, 1962, the duty paid imported goods are required to be entered for export within two years from the date of payment of duty on the importation.

This period can be extended by CBEC if the importer shows sufficient reason for not exporting the goods within two years.

- (ii) If duty paid imported goods are exported without use, then 98% of such duty is re-paid as drawback.
- (iii) Yes, duty drawback is allowed when wearing apparels are re-exported without being used.

Goods which are exported [Sec. 75]



w.e.f. 22.11.2014, where the exporter has already filed a duty drawback claim under All Industry Rates (AIR) Schedule, he cannot request for fixation of Special Brand Rate of drawback. Thus, the exporter should determine prior to export of goods, whether to claim drawback under AIR or Special Brand Rate.

**Example: 14**

An exporter exported 2,000 pairs of leather shoes @ ₹ 750 per pair. All industry rate of drawback is fixed on average basis i.e. @ 11% of FOB subject to maximum of ₹ 80 per pair. The exporter found that the actual duty paid on inputs was ₹ 1,95,000. He has approached you, as a consultant, to apply under Rule 7 of the drawback rules for fixation of 'special brand rate'. Advise him suitably.

Answer:

Drawback Amount ₹1,65,000

(i.e. $2,000 \times 750 \times 11\%$)

or

₹1,60,000 (i.e. $₹80 \times 2,000$) whichever is less.

Therefore duty drawback allowed is ₹1,60,000.

All Industry duty drawback rate = $@82.05\% [(1,60,000/1,95,000) \times 100\%]$.

Therefore, exporter is eligible for claiming All Industry Duty Drawback.

4.7 NEGATIVE LIST OF DUTY DRAWBACK

Negative list of Duty Drawback [Section 76]

- (1) DDB amount is less than Rs 50
- (2) In case of negative sales
- (3) If CENVAT CREDIT availed (except BCD)
- (4) DDB amount is more than 1/3rd of Market value of exports
- (5) Export to Nepal and Bhutan and the export proceeds are not received in hard currency (it means USD, GBP or Pounds).
- (6) DDB as % on FOB less than 1% unless amount of DDB is more than or equal to Rs 500
- (7) Duty drawback is not allowed if the exporter has already availed the Duty Entitlement Pass Book (DEPB) or other export incentives.
- (8) If the sale proceeds not received within the time period allowed by Reserve Bank of India.
- (9) Duty drawback amount exceeds the market value of exported goods.

Example : 15

Computation of duty drawback: 'A' exported a consignment under drawback claim consisting of the following items—

Particulars	Chapter Heading	FOB value ₹	Drawback rate
200 pieces of pressure stores mainly made of beans @ ₹ 80/piece	74.04	16,000	4% of FOB
200 Kgs. Brass utensils @ ₹ 200 per Kg.	74.13	40,000	₹ 24/Kg.
200 Kg. Artware of brass @ ₹ 300 per Kg.	74.22	60,000	17.50% of FOB subject to a maximum of ₹ 38 per Kg.

On examination in docks, weight of brass Artware was found to be 190 Kgs. and was recorded on shipping bill. Compute the drawback on each item and total drawback admissible to the party.



Answer:

The drawback on each item and total drawback admissible to the party shall be-

Particulars	FOB value ₹	Drawback rate	Drawback Amount (₹)
200 pcs, pressure stoves made of brass	16,000	4% of FOB	640
200 Kgs. Brass utensils	40,000	₹ 24 per Kg.	4,800
200 kgs. Artware of brass, whose actual weight was 190 Kgs. only. (60,000 x 190/200) x 17.5% = 9975 190 kgs x ₹ 38 = ₹ 7,220		17.50% of FOB subject to maximum of ₹ 38 per Kg. (₹ 9,975 or ₹ 7,220 whichever is less)	7,220
Total Drawback admissible (in ₹)			12,660

Example : 16

X Ltd. has exported following goods to USA. Discuss whether any duty drawback is admissible under section 75 of the Customs Act, 1962.

Product	FOB Value of Exported goods	Market Price of goods	Duty drawback rate
A	2,50,000	1,80,000	30% of FOB
B	1,00,000	50,000	0.75% of FOB
C	8,00,000	8,50,000	3.50% of FOB
D	2,000	2,100	1.50% of FOB

Note: Imported value of product C is ₹ 9,50,000.

Answer:

Duty draw back amount for all the products are as follows

Product A:

Drawback amount = 2,50,000 x 30% = ₹ 75,000 or ₹ 1,80,000 x 1/3 = ₹ 60,000

Allowable duty draw back does not exceed 1/3 of the market value.

Hence, the amount of duty drawback allowed is ₹ 60,000

Product B:

Drawback amount allowed is ₹ 750 (i.e. ₹ 1,00,000 x 0.75%). Since, the amount is more than ₹ 500 even though the rate is less than 1%.

Product C:

No duty drawback is allowed, since the value of export is less than the value of import (i.e. negative sale)

Product D

No duty drawback is allowed, since the duty drawback amount is ₹ 30 (which is less than ₹ 50).

Though rate of duty drawback is more than 1%, no duty drawback is allowed.

**Example : 17**

Calculate the amount of duty drawback allowable under the Customs Act, 1962 in the following cases:

- (a) Jaggi Mehta imported a car from U.K. for his personal use and paid ₹ 4,50,000 as import duty. However, the car is re-exported immediately without bringing it into use.
- (b) Meenakshi imported a music player from Dubai and paid ₹12,000 as import duty. She used it for four months but re-exports the same after four months.
- (c) XYZ Ltd. exported 1000 kgs of a metal of FOB value of ₹ 1,00,000. Rate of duty drawback on such export is ₹ 60 per kg. Market price of goods is ₹ 40,000 (in wholesale market).

Answer:

- (a) Jaggi Mehta can claim duty drawback of ₹ 4,41,000 (98% of ₹ 4,50,000).
- (b) Meenakshi can claim duty drawback of ₹ 10,200 (i.e. 85% of ₹ 12,000)
- (c) XYZ Ltd. is not entitled to claim duty drawback in this case. Since, market value of exported goods is less than the value of Duty Drawback.

Is drawback allowed in respect of milk products?

w.e.f. 23-11-2015 Duty Drawback Allowed on Wheat.

w.e.f. 13-02-2015 Duty drawback on rice allowed.

Prior to 21.09.2013	w.e.f. 21.09.2013
No drawback was allowed on milk products	Rule 3 of the Central Excise Duties and Service Tax Drawback Rules, 1995, drawback will be allowed in respect of milk products.
Duty drawback allowed on wheat	Duty drawback not allowed on wheat
Duty drawback not allowed on rice, casein, caseinates and other casein derivatives; casein glues	Duty drawback not allowed on rice, casein, caseinates and other casein derivatives; casein glues

Drawback shall not be recovered (Notification No. 30/2011-Cus., Dated 11-4-2011):

As per Rule 16A (5) the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 where sale proceeds are not realized by an exporter within the period allowed under the FEMA, the amount of drawback paid to the exporter or the claimant shall not be recovered if

- I. such non-realisation of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. (ECGC), under an insurance cover and
- II. the Reserve Bank of India writes off the requirement of realization of sale proceeds on merits and
- III. the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer.

A Vessel was caught up in the rough weather and sank in the territorial waters.**Case Law: 2****Union of India v Rajindra Dyeing & Printing Mills Ltd. 2005 (180) ELT 433 (SC):**

A vessel was caught up in the rough weather and sank in the territorial waters.

Duty drawback can be claimed?



Decision: The vessel sunk within territorial waters of India and therefore there is no export. Accordingly, no duty drawback shall be available in this case. The territorial waters extend to 12 nautical miles into the sea from the base line.

Example: 18

Alpha Ltd. manufactures heavy machinery. 50% of its production is exported to European countries. The machinery is manufactured with the help of imported components as well as indigenous raw materials. Alpha Ltd. regularly pays import duty and central excise duty on the imported components and indigenous raw materials respectively and claims duty drawback on exports made by it.

On 28.11.2013, it loaded a machinery manufactured by it on a vessel 'Victoria' for being exported to Germany. 'Victoria' set sail from Mumbai on 01.12.2013, but was caught up in the rough weather and sank in the territorial waters on 02.12.2013. The Customs

Department has refused to grant duty drawback claimed by Alpha Limited in respect of the machinery loaded on 28.11.2013 for the reason that the machinery has not reached Germany.

Examine the situation with the help of decided case laws, if any.

Answer:

Union of India v Rajindra Dyeing & Printing Mills Ltd. 2005 (180) ELT 433 (SC):

The vessel sunk within territorial waters of India and therefore there is no export. Accordingly, no duty drawback shall be available in this case. The territorial waters extend to 12 nautical miles into the sea from the base line.

4.8 IMPORTS BY 100% EXPORT ORIENTED UNITS (EOU)

EOUs/EHTPs/STPs will be allowed to import goods without payment of basic customs duty (BCD) as well additional duties leviable under Section 3 (1) and 3(5) of the Customs Tariff Act.

GST would be leviable on the import of input goods or services or both used in the manufacture by EOUs which can be taken as input tax credit (ITC). This ITC can be utilized for payment of GST taxes payable on the goods cleared in the DTA or refund of unutilized ITC can be claimed under Section 54(3) of CGST Act.

In the GST regime, clearance of goods in DTA will attract GST besides payment of amount equal to BCD exemption availed on inputs used in such finished goods.

Note: DTA clearances of goods, which are not under GST, would attract Central Excise duties as before.

**Example : 19**

M/s X Ltd. (a unit of 100% EOU located in Chennai) sold goods to M/s A Ltd. (Located in Mumbai) for ₹ 20 lac. If M/s X Ltd. being EOU imported these goods exempted from BCD @10%. IGST 12% is applicable.

Find the total GST is liable to pay by X Ltd.

How much input tax credit M/s A Ltd. can avail?

Answer:

Particulars (w.e.f. 1-7-2017)	Value in ₹	Workings
Assessable value	20,00,000	
ADD: Basic Customs Duty 10%	2,00,000	20,00,000 X 10%
Add: Cess 3% on BCD	6,000	2% Edu. Cess +
1% Sec. Hr. Edu. Cess		
Sub-total	22,06,000	
ADD:IGST @12%	2,64,720	22,06,000X 12%
Sub-total	24,70,720	
Total IGST	4,70,720	

ITC allowed to M/s A Ltd. (Buyer):

Particulars	Value ₹
BCD	nil
IGST	2,64,720
TOTAL	2,64,720

4.9 IMPORTS / PROCUREMENT BY SEZ'S

Authorised operations in connection with SEZs shall be exempted from payment of IGST. Hence, there is no change in operation of the SEZ scheme.

Supplies made to an SEZ unit or a SEZ developer is zero rated. The supplies made to an SEZ unit or a SEZ developer can be made in the same manner as supplies made for export:

Either on payment of IGST under claim of refund;

Or

under bond or LUT without payment of any IGST.

4.10 PROJECT IMPORT

Project Import :

Currently for items imported under project import scheme (i.e. CTH 9801), unique heading under the Central Excise Tariff, for the purposes of levy of CVD does not exist. Therefore, under the Central Excise Tariff, each item is getting classified in a heading as per its description and duty is paid on merit.

In the GST regime, for the purpose of levying IGST all the imports under the project import scheme will be classified under heading 9801 and duty shall be levied @ 18%.

Study Note - 5

CUSTOMS RULES, 2017



This Study Note includes

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

5.1 CUSTOMS (IMPORT OF GOODS AT CONCESSIONAL RATE OF DUTY) RULES, 2017

These rules were notified vide Notification No. 68 /2017 - Customs (N. T.) dated 30th June 2017. They shall come into force on the 1st day of July, 2017.

Rule 2 - Application

- (1) These rules shall apply to an importer, who intends to avail the benefit of an exemption notification issued under sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and where the benefit of such exemption is dependent upon the use of imported goods covered by that notification for the manufacture of any commodity or provision of output service.
- (2) These rules shall apply only in respect of such exemption notifications which provide for the observance of these rules.

Rule 3 - Definition

In these rules, unless the context otherwise requires, -

"exemption notification" means a notification issued under sub-section (1) of section 25 of the Act;

"Jurisdictional Custom Officer" means an officer of Customs of a rank equivalent to the rank of Superintendent or an Appraiser exercising jurisdiction over the premises where either the imported goods shall be put to use for manufacture or for rendering output services;

"manufacture" means the processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly;

"output service" means supply of service with the use of the imported goods.

Rule 4- Information about intent to avail benefit of exemption notification.

An importer who intends to avail the benefit of an exemption notification shall provide the information to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, the particulars, namely:-

- (i) the name and address of the manufacturer;
- (ii) the goods produced at his manufacturing facility;
- (iii) the nature and description of imported goods used in the manufacture of goods or providing an output service.

Rule 5- Procedure to be followed

- (1) The importer who intends to avail the benefit of an exemption notification shall provide the following information –
 - (i) the estimated quantity and value of the goods to be imported,
 - (ii) particulars of the exemption notification applicable on such import and



- (iii) the port of import in respect of a particular consignment for a period not exceeding one year;
 - (a) in duplicate, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, and
 - (b) in one set, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at the Custom Station of importation.
- (2) **Submission of Bond** - The importer who intends to avail the benefit of an exemption notification shall submit a continuity bond with such surety or security as deemed appropriate by the Deputy Commissioner of Customs or Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, with an undertaking to pay the amount equal to the difference between the duty leviable on inputs but for the exemption and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.
- (3) The Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, shall forward one copy of information received from the importer to the Deputy Commissioner of Customs, or as the case may be, Assistant Commissioner of Customs at the Custom Station of importation.
- (4) On receipt of the copy of the information under clause (b) of sub-rule (1), the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at the Custom Station of importation shall allow the benefit of the exemption notification to the importer who intends to avail the benefit of exemption notification.

Rule 6 -Maintaining records and furnishing Importer who intends to avail the benefit of an exemption notification to give information regarding receipt of imported goods and maintain records. –

- (1) The importer who intends to avail the benefit of an exemption notification shall provide the information of the receipt of the imported goods in his premises where goods shall be put to use for manufacture, within two days (excluding holidays, if any) of such receipt to the jurisdictional Customs Officer.
- (2) The importer who has availed the benefit of an exemption notification shall maintain an account in such manner so as to clearly indicate the quantity and value of goods imported, the quantity of imported goods consumed in accordance with provisions of the exemption notification, the quantity of goods re-exported, if any, under rule 7 and the quantity remaining in stock, bill of entry wise and shall produce the said account as and when required by the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service.
- (3) The importer who has availed the benefit of an exemption notification shall submit a quarterly return, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, by the tenth day of the following quarter.

Rule 7 Re-export or clearance of unutilised or defective goods

- (1) The importer who has availed benefit of an exemption notification, prescribing observance of these rules may reexport the unutilised or defective imported goods, within six months from the date of import, with the permission of the jurisdictional Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service:

Provided that the value of such goods for re-export shall not be less than the value of the said goods at the time of import.



- (2) The importer who has availed benefit of an exemption notification, prescribing observance of these rules may also clear the unutilised or defective imported goods, with the permission of the jurisdictional Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, within a period of six months from the date of import on payment of import duty equal to the difference between the duty leviable on such goods but for the exemption availed and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

Rule 8 Recovery of duty in certain case. –

The importer who has availed the benefit of an exemption notification shall use the goods imported in accordance with the conditions mentioned in the concerned exemption notification or take action by re-export or clearance of unutilised or defective goods under rule 7 and in the event of any failure, the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service shall take action by invoking the Bond to initiate the recovery proceedings of the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

References in any rule, notification, circular, instruction, standing order, trade notice or other order pursuant to the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 and any provision thereof or to the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 and any corresponding provisions thereof shall, be construed as reference to the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

