



वित्त मंत्रालय
MINISTRY OF
FINANCE



HANDBOOK OF GST LAW & PROCEDURES

FOR DEPARTMENTAL OFFICERS



जीएसटी के 7 वर्ष
सशक्त व्यापार, समग्र विकास

Message by Chairman



As you are aware, the Goods and Services Tax (GST), launched on 1st July, 2017, has successfully completed seven years of its functioning. The implementation of GST has brought about a paradigm shift in the administration of indirect tax in India. GST is a unified tax system that replaced multiple indirect taxes levied by both the Central and State Governments – thereby realizing the goal of One Nation One Market One Tax. I am very happy to note that in these seven years, our taxpayer number has doubled to 1.4 Crore in comparison to the number at its inception. Also, recently, GST collections have crossed ₹2 lakh crore mark. I thank all the taxpayers for making this possible and complement our officers for their hard work.

The idea to launch a departmental GST Handbook was budding in minds of our officers since the inception of GST. This idea is finally brought to shape by a dedicated team. The outcome is a comprehensive GST Handbook to enable departmental officers to easily understand the legal provisions envisaged in the CGST Act, 2017 and Rules thereunder. In my understanding, the handbook will serve as a ready reckoner for the GST officers and ensure uniform implementation of Laws and procedures.

I wholeheartedly congratulate the officers involved in the drafting, brainstorming and providing timely feedback towards the finalization of this GST Handbook. Your efforts have given this handbook an extra edge. I encourage all the Departmental officers to make the best use of this Handbook.

Best wishes,

A handwritten signature in blue ink, appearing to read 'Sanjay Kumar Agarwal'.

Sanjay Kumar Agarwal
Chairman, CBIC

Message by Member (GST)



A need has been felt by the Departmental officers regarding a GST Handbook for the smooth functioning and easy understanding of the various procedures of GST. On the basis of feedback received from the various offices under CBIC, DGGST has brought out the GST Handbook for the departmental officers. This will aid to have a holistic view of GST which is presently available in various compartments like Antarang, ADVAIT, etc.

The GST Handbook explains the various aspects of GST in a simple and lucid manner to enable a comprehensive understanding of the working of GST. The Handbook is organised into 14 Chapters. Each chapter spells out the legal and procedural requirements of law as a simple 'how to' guide for the officers.

The aim of this endeavour is to explain the procedural and legal aspects of GST in a simple language. This GST Handbook lists important elements of various Chapters/Sections of CGST Act, 2017 and IGST Act, 2017 and rules thereof, so that, officers may perform their tasks efficiently. However, it should be noted that the purpose of this Handbook is to serve as a guide or advisory and it is neither exhaustive nor legally binding. An effort has been made to provide most updated information on various aspects of GST law and procedure.

This guidance Handbook is an effort to equip the officers of the department with requisite skills in GST. The guidelines provided in the Handbook are intended to enable the departmental officers to carry out their duties effectively and efficiently. It is sincerely hoped that the Handbook would further help in the implementation of an effective GST Ecosystem. Any suggestions/ observations on the Handbook will be most welcome and may be shared with DGGST so that further editions of the Handbook is even better and more informative.

I place on record my appreciation for the officers of the sub committees and supervisory committee along with officers from DGGST and field formations under the overall guidance of Ms. Seema Arora, Pr. DG, DGGST who have put sincere efforts in drafting this simple yet well explained GST Handbook in consultation with the officers of various CGST zones.

Best wishes,



(Shashank Priya)
Member, (GST)

Message by Pr. DG , DGGST



It is with immense pleasure and pride that I present to you our latest initiative, the GST Handbook-a comprehensive guide designed to simplify the intricacies of the Goods and Services Tax (GST) Act and Rules thereunder. Since, the rollout of GST in 2017, we have witnessed numerous changes and amendments in CGST Act and Rules, necessitating a resource that ensures our officials and taxpayers remain well-informed and up-to-date with the evolving procedures.

As per the direction of CBIC, the Supervisory Committee was constituted to supervise the drafting of GST Handbook. Thereafter, Sub-Committees with the officers from various Zones and Directorates was constituted to draft all chapters of the CGST Act, 2017. For peer review of the draft, inputs were received from various formations of CBIC.

With its user-friendly interface and in-depth explanations, the reference serves as a guiding resource for both our dedicated officials and the taxpayers we serve. While this handbook serves as a foundational resource, it is also designed to be adaptive. Any future procedural or policy changes within the GST framework will prompt necessary revisions to ensure the handbook remains relevant and up-to-date.

I extend my sincere gratitude to the dedicated committee members whose expertise and diligence have brought this handbook to fruition. The committed effort of the committees has resulted in a useful resource that will undoubtedly enhance the efficiency and effectiveness of GST administration within our jurisdiction.

Although due care has been taken in drafting the GST Handbook both online & offline, the possibility of minor errors and inaccuracies cannot be ruled out. Any error and omission detected in the Handbook may be brought to the notice of the Directorate General of GST.

Warm regards,

(Seema Arora)
Principal Director General
DGGST.



Acknowledgements

Supervisory Committee

1. Ms. Seema Arora, Pr. Director General, DGGST, New Delhi
2. Shri Rajesh Sodhi, Pr. Chief Commissioner, CGST, New Delhi
3. Shri Yogendra Garg, Pr. Director General, DG (Systems), New Delhi
4. Ms. Simmi Jain, Director General, DG (Audit), New Delhi
5. Ms. Farah Iqbal Gupta, Additional Director General, DGGST, HQ, New Delhi
6. Shri Gaurav Singh, Commissioner, GST Policy Wing, New Delhi

Drafting Committee

1. Shri Aseem Kumar, Additional Director General, DGGST, Mumbai
(Overall Co-ordination of drafting)
2. Shri Amandeep Singh, Additional Director General, DG (Audit), New Delhi
3. Shri Umesh Kumar, Additional Director, DGGST, HQ, New Delhi
4. Shri Sudhanshu Rai, Additional Director, DGCI, HQ, New Delhi
5. Shri Pankaj Kumar, Additional Director, DGCI Raipur
6. Shri Jayshankar Prakash Upadhyay, Additional Commissioner, Sub Commissionerate, Mohali
7. Shri Jyotiraditya, Additional Commissioner, CGST Commissionerate, Delhi East
8. Shri Tagadi Manjunath, Additional Director, DGGST, HQ, New Delhi

Peer Review By

1. Pr. Chief Commissioner, Ahmedabad CGST Zone
2. Pr. Chief Commissioner, Kolkata CGST Zone
3. Pr. Chief Commissioner, Mumbai CGST Zone
4. Chief Commissioner, Chandigarh CGST Zone
5. Chief Commissioner, Vadodara CGST Zone

Sub Committee

1. Ms. Devshree, Joint Director, DGGST, HQ, New Delhi
2. Dr. Raghvendra P., Joint Director, DGGST, Mumbai
3. Shri Ramesh Hanumantha, Assistant Director, DGGST, Mumbai



Index

01	Chapter 1: OVERVIEW OF GST	10
02	Chapter 2: REGISTRATION	38
03	Chapter 3: RETURNS & SCRUTINY THEREOF	50
04	Chapter 4: ASSESSMENT	72
05	Chapter 5: DEMAND AND DETERMINATION THEREOF	82
06	Chapter 6: REFUND UNDER GST	92
07	Chapter 7: AUDIT	108
08	Chapter 8: INSPECTION, SEARCH, SEIZURE AND ARREST	122
09	Chapter 9: OFFENCES AND PENALTIES	140
10	Chapter 10: RECOVERY OF TAX	156
11	Chapter 11: APPEALS & REVISION	172
12	Chapter 12: JOB WORK, ANTI PROFITEERING AND OTHER MISC. PROVISIONS	188
13	ADVANCE RULING	206
14	TRANSITIONAL PROVISIONS	210

01 OVERVIEW OF GST

1. INTRODUCTION

- 1.1 This Chapter provides the scope and extent of GST, for better understanding of the tax structure under the GST law. The topics covered in this Chapter provide the general idea of the taxation policy and the authority of law, which will aid in the daily working of departmental officers.
- 1.2 The provisions of CGST Act, 2017 and CGST Rules, 2017, relevant to this Chapter are as under–

Sr. No.	Section/Rule	Provision pertaining to
1	Section 7	Scope of supply
2	Section 9	Levy of CGST
3	Section 9(3) and 9(4)	Reverse Charge Levy
4	Section 10	Composition Levy
5	Rule 3	Intimation of Composition levy
6	Rule 4	Effective date for Composition levy
7	Rule 5	Conditions and restrictions for Composition levy
8	Rule 6	Validity of Composition levy
9	Rule 7	Rate of tax of the Composition levy
10	Section 11	Power of Government to exempt
11	Section 12	Time of Supply of goods
12	Section 13	Time of Supply of services
13	Section 15	Valuation of supply of goods and services
14	Rule 27	Value of supply of goods where the consideration is not wholly in money
15	Rule 28	Valuation of supply between related and distinct persons
16	Rule 29	Value of supply of goods made or received through an agent
17	Rule 30	Valuation of supply on cost basis
18	Rule 31	Residual method of valuation
19	Rule 31A	Value of supply in case of lottery, betting, gambling and horse racing
20	Rule 32	Determination of value in certain circumstances
21	Rule 32A	Value of supply of services where Kerala Flood Cess is applicable
22	Rule 33	Value of supply of services in case of Pure Agent
23	Rule 34	Rate of exchange of currency, other than Indian Rupees, for determination of value
24	Rule 35	Value of supply inclusive of Integrated tax, Central tax, State tax, Union Territory tax
25	Section 31	Tax Invoice
26	Rule 46	Tax Invoice
27	Rule 46A	Invoice-cum-bill of supply
28	Rule 47	Time limit for issuing tax invoice
29	Rule 48	Manner of issuing invoice
30	Rule 50	Receipt Voucher
31	Rule 51	Refund Voucher
32	Rule 52	Payment Voucher
33	Rule 53	Revised tax invoice and credit and debit notes
34	Rule 54	Tax invoice in special cases
35	Rule 55	Transportation of goods without issue of invoice

36	Rule 55A	Tax invoice or bill of supply to accompany transport of goods
37	Section 16	Input Tax Credit
38	Rule 36	Documentary requirements and conditions for claiming input tax credit
39	Rule 37	Reversal of input tax credit in the case of non-payment of consideration
40	Rule 38	Claim of credit by a banking company or a financial institution
41	Rule 40	Manner of claiming input tax credit in special circumstances
42	Rule 41	Transfer of credit on sale, merger, amalgamation, lease or transfer of a business
43	Rule 41A	Transfer of credit on obtaining separate registration for multiple places of business within a State or Union Territory
44	Section 17	Apportionment of credit and blocked credits
45	Rule 42	Manner of determination of input tax credit in respect of inputs and input services and reversal thereof
46	Rule 43	Manner of determination of input tax credit in respect of capital goods and reversal thereof
47	Section 18	Availability of credit in special circumstances
48	Rule 44	Manner of reversal of credit under special circumstances
49	Rule 44A	Manner of reversal of credit of Additional duty of Customs in respect of Gold dore bar
50	Section 19	Taking input tax credit in respect of inputs and capital goods sent for job work
51	Rule 45	Conditions and restrictions in respect of inputs and capital goods sent to the job worker
52	Section 20	Manner of distribution of Input Tax Credit by Input Service Distributor (ISD)
53	Section 21	Manner of recovery of credit distributed in excess
54	Rule 39	Procedure for distribution of input tax credit by Input Service Distributor
55	Section 49	Payment of tax, interest, penalty, etc.
56	Rule 85	Electronic Liability Register
57	Rule 86	Electronic Credit Ledger
58	Rule 86A	Conditions of use of amount available in electronic credit ledger
59	Rule 87	Electronic Cash Ledger
60	Rule 88	Identification number for each transaction
61	Rule 88A	Order of utilization of input tax credit
62	Section 51	Tax Deducted at Source (TDS) under GST
63	Section 52	Tax Collected at Source (TCS) under GST
64	Rule 138	Information to be furnished prior to commencement of movement of goods and generation of e-way bill
65	Rule 138A	Documents and devices to be carried by a person-in-charge of a conveyance
66	Rule 138B	Verification of documents and conveyances
67	Rule 138C	Inspection and verification of goods
68	Rule 138D	Facility for uploading information regarding detention of vehicle
69	Rule 138E	Restriction on furnishing of information in Part A of FORM GST EWB-01
70	Section 6	Cross Empowerment

- 1.3 The relevant Provisions, Forms, Circulars, Notifications, etc., wherever mentioned, can be seen by clicking ctrl+click on the respective hyperlink, which will open the <https://taxinformation.cbic.gov.in> page. On clicking GST option on the menu bar, 'Information-GST' page will appear, below which the option of Act, Rules, Forms, Notification, etc. is provided. The required page of the relevant Provisions/Forms/Circulars/Notifications can be seen by clicking the appropriate option.
- 1.4 Goods and Services Tax (hereinafter referred to as "GST"), introduced in India with effect from 01.07. 2017, is a comprehensive destination based indirect Value Added Tax on supply of goods as well as services.
- 1.5 Prior to introduction of GST, both Centre and States were empowered to impose indirect taxes on goods. Centre was imposing Central Excise duty on manufacture of goods and States were imposing Sales tax/VAT on sale of goods. Besides goods, services were also being subjected to Service tax, which only Centre could levy.

- 1.6 The idea of 'one tax for entire nation' was conceptualized and an Empowered Committee of State Finance Ministers was formed to design the road map for GST. The Empowered Committee recommended dual GST model for the country, under which GST had two components, viz. the Central GST (CGST) to be levied and collected by Centre and State GST (SGST) to be levied and collected by the respective States, subsuming most of the indirect taxes being levied. For Inter-State transactions (supplies from one State to another State) an Integrated GST (IGST) to be levied by Centre was recommended.
- 1.7 GST being a uniform tax system for the entire country, required constitutional amendment. As such Bill in this regard was introduced in both the Houses of Parliament. After the Bills were passed by both the Houses, the Bill received assent from the President of India on 08.09.2016 and also notified on the same day as The Constitution (One Hundred and First Amendment) Act, 2016.
- 1.8 The structure of GST is such that the Central Government and the State Governments have framed GST laws together. Some of the features include -
- (a) **Uniform law across the country:** The GST law is based on the Model GST law drafted by the Centre and the States. Therefore, the law is more or less identical throughout the country.
 - (b) **Common Procedures:** The procedures and formats as prescribed by the CGST and the SGST are identical.
 - (c) **Common Compliance Mechanism:** GSTN, promoted jointly by the Central and State Governments, is the common compliance portal for GST.
- 1.9 The aim of GST was tax integration, tax simplification, promotion of Ease of Doing Business and to instill the feeling of 'One nation, One tax'.
- 1.10 A new Article 279A was inserted in the Constitution of India, which prescribes constitution of a 'GST Council' for making recommendations on the governance of entire law relating to GST Act.
- 1.11 Broad meaning of the terms used frequently in this handbook is as under –
- 'Central Tax' means tax levied under the CGST Act, 2017.
 - 'State Tax' means tax levied under the SGST Act, 2017.
 - 'Integrated Tax' means tax levied under the IGST Act, 2017.
 - 'Union Territory Tax' means tax levied under the UTGST Act, 2017.
 - 'Assessment' means determination of tax liability under the CGST Act, 2017.
 - 'Common Portal' means the common Goods and Services Tax Electronic Portal.
 - '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 taxable supply will be a principal supply (predominant element).
 - 'Consideration' means any payment made or to be made by the recipient or any other person, either in money or otherwise for the supply of goods and/or services and the monetary value of any act or forbearance for the supply of goods and/or services.
 - 'exempt supply' means supply of any goods and/or services which attracts 'nil' rate of tax or wholly exempt or non-taxable.
 - 'Input' means any goods other than capital goods used or intended to be used by the supplier in the course of furtherance of business.
 - 'Input service' means any service used or intended to be used by the supplier in the course of furtherance of business.
 - 'Input Tax' means the Central Tax, State Tax, Integrated Tax or Union Territory tax charged on any supply of goods and/or services made to a person.
 - 'Inward supply' means receipt of goods and/or services by purchase or acquisition or any other means.
 - 'Mixed supply' means two or more individual supplies of goods or services or any combination thereof, made in conjunction with each other for a single price.
 - 'Output tax' means the tax chargeable on taxable supply of goods and/or services. Output tax does not include the tax payable under Reverse Charge basis.
 - 'Outward supply' means supply of goods and/or services by way of sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by a person in the course of furtherance of business.
 - 'Recipient' of supply of goods and/or services means the person who is liable to pay consideration or the

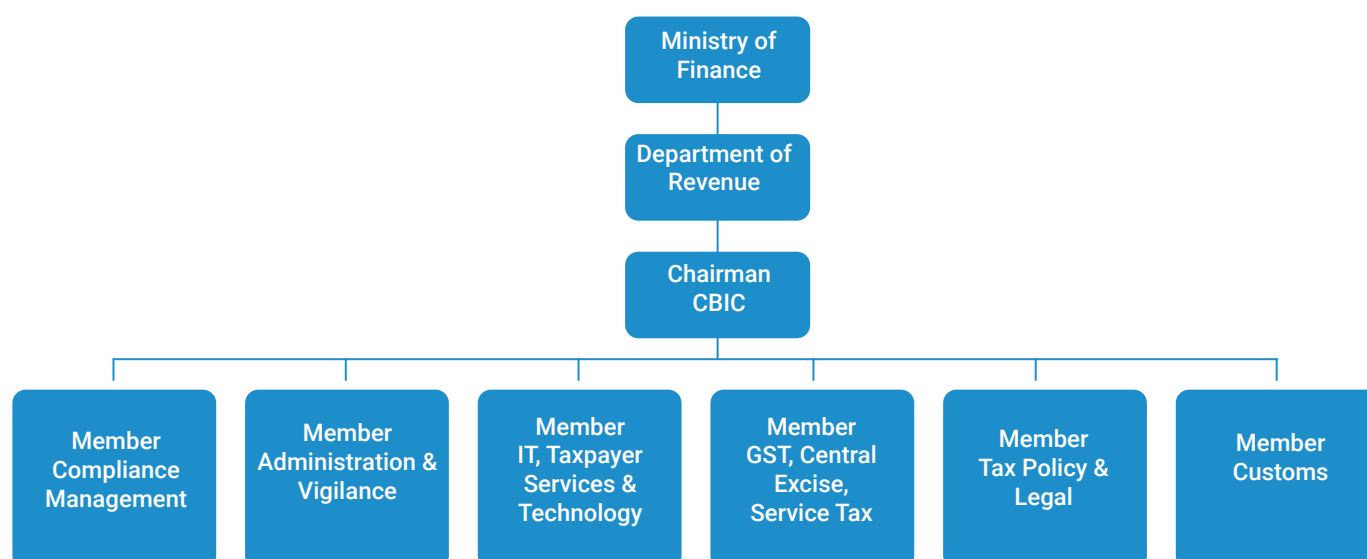
person to whom the goods are delivered or to whom the possession or use of the goods is given or the person to whom the service is rendered.

- 'Registered person' means a person registered under the CGST Act, 2017.
- 'Reverse Charge' means the liability to pay tax by the recipient of supply of goods and/or services instead of the supplier of such goods and/or services.
- 'Taxable Supply' means supply of goods or services or both, leviable to tax under the CGST Act, 2017.
- 'Taxable person' means a person who is registered or liable to register under the CGST Act, 2017.

2. CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

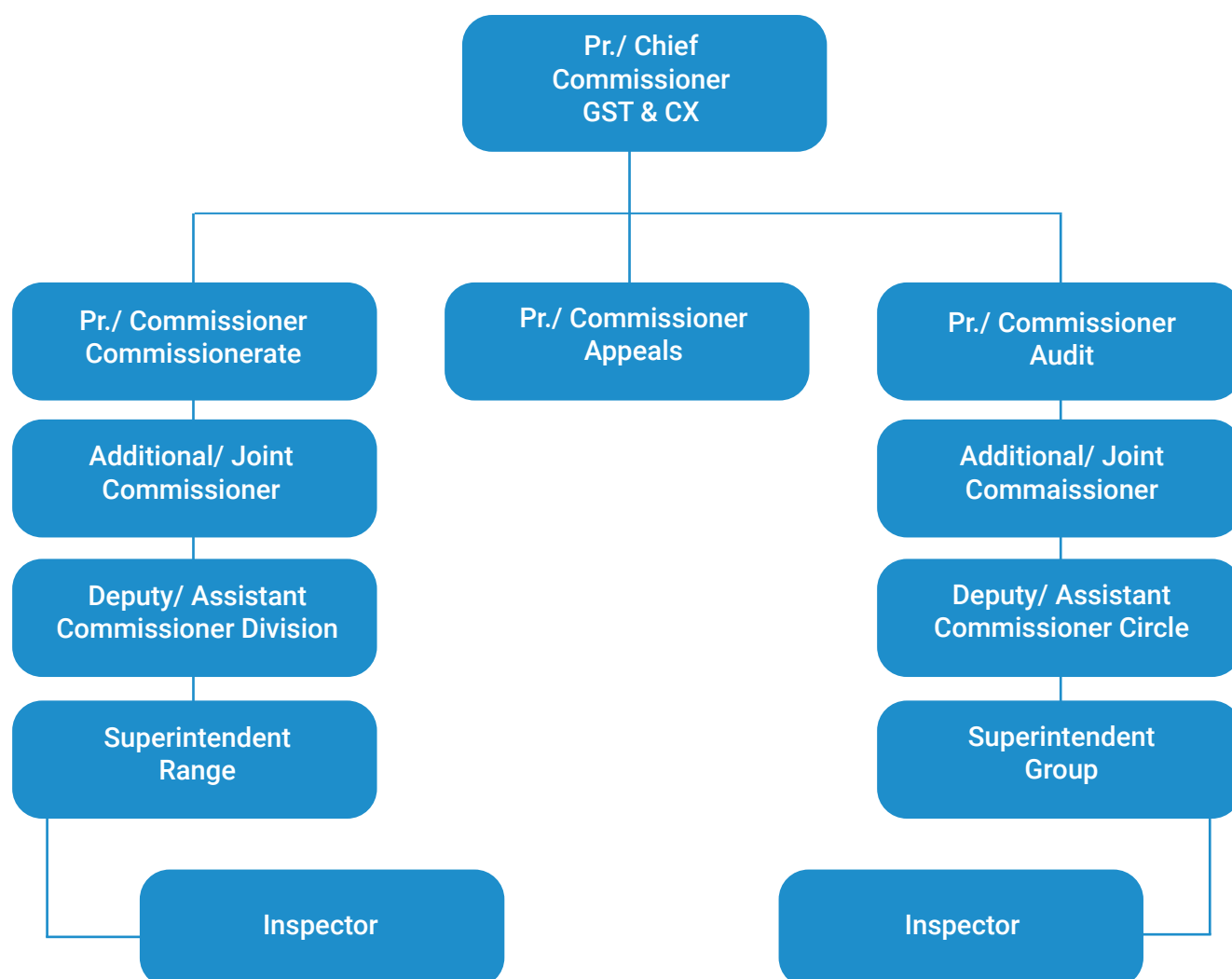
- 2.1. Central Board of Indirect Taxes and Customs (CBIC) is a part of the Department of Revenue under Ministry of Finance, Government of India. It deals with the tasks of formulation of policy concerning levy and collection of Customs, Central Excise duties, Central Goods & Services Tax and IGST, prevention of smuggling and administration of matters relating to Customs, Central Excise, Central Goods & Services Tax, IGST and Narcotics to the extent under CBIC's purview. CBIC also acts as a regulator with respect to the "dealers in precious metals and precious stones" and "real estate agents" and related matters under Prevention of Money Laundering Act, 2002.
- 2.2. The Board is the administrative authority for its subordinate organizations, including Custom Houses, Central Excise and Central GST Commissionerates and the Central Revenues Control Laboratory. CBIC administers all the Indirect Tax related matters in India. GST in totality comes under the purview of this Board.
- 2.3. The CBIC is also charged with creating guidelines for the imposition and collection of Central Excise Duties, Customs, IGST, Central Goods and Services Tax (CGST).
- 2.4. The CBIC plays a crucial role in enforcing compliance with GST laws. This includes conducting investigations, inspections, and raids to detect and prevent tax evasion. In addition to enforcing compliance, the CBIC also provides support and guidance to taxpayers. This includes providing information on GST laws and procedures, and answering queries and concerns of taxpayers.
- 2.5. The CBIC maintains a GST portal, which is a digital platform for taxpayers to file GST returns and make tax payments.
- 2.6. The CBIC is headed by Chairman and has 6 members in addition to the Chairman. In the performance of its administrative and executive functions, the CBIC is assisted by Principal Chief Commissioners/Chief Commissioners and Principal Director Generals/Director Generals. The Principal Commissioners/ Commissioners working under the Principal Chief Commissioner/ Chief Commissioner's supervision also discharge executive functions.

Organisational Chart of CBIC



All Members have supervisory control on the Zones and Directorates

Organisational chart at Zonal level



3. GST COUNCIL

- 3.1. GST Council is a constitutional body, consisting of representatives from both Union and State Governments. It consists of the Union Finance Minister as the Chairperson, Minister of State for Finance (Revenue) as Member and the Minister in-charge of Tax or Finance or any nominated Minister of the State as Member.
- 3.2. The GST Council is supported by the GST Council Secretariat and headed by the Revenue Secretary.
- 3.3. The purpose of GST Council is to act as a converging platform for the Union and the State Governments for them to work in a harmonious manner towards a common goal. The GST Council takes decisions in the periodical GST Council Meetings, which are then communicated to the Centre and the State in the form of recommendations. The minutes of GST Council meetings are published in the official website <https://gstcouncil.gov.in>.
- 3.4. The aim of the GST Council is to carry out its function in a consensual and harmonious manner with respect to formulation and implementation of GST Law across the country.
- 3.5. The GST Council is empowered to make recommendations to the Union and the State Governments on –
 - the taxes, cesses and surcharges levied by the Union, the States and the Local Bodies (like Municipal Corporation/Council, Panchayats, etc.) which may be subsumed in the GST;
 - the goods and services that may be subjected to or exempted from the GST;
 - model GST laws, principles of levy, apportionment of GST levied on supplies in the course of inter-State trade or commerce and the principles that govern the place of supply;
 - the threshold limit of turnover below which goods and services may be exempted from GST;
 - the rates including floor rates with bands of GST;
 - any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;
 - special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand;

- any other matter relating to the GST, as the Council may decide;
- the date on which the GST be levied on Petroleum Crude, High Speed Diesel, Motor Spirit (Petrol), Natural Gas and Aviation Turbine Fuel.

4. GOODS AND SERVICE TAX NETWORK (GSTN)

4.1. GSTN is a Special Purpose Vehicle and has been set up to cater to the needs of GST. It is an interface between the Government and the taxpayers. The GSTN provides a shared Information Technology (IT) infrastructure and services to Central and State Governments, taxpayers and other stakeholders for implementation of GST. The functions of the GSTN include:

- Facilitating registration;
- Return filing and processing and forwarding the returns to Central and State authorities;
- Computation and settlement of IGST;
- Matching of tax payment details with banking network;
- Providing various MIS reports to the Central and the State Governments based on the taxpayer return information, need based information and business intelligence;
- Providing analysis of taxpayers' profile;
- Payment management, including payment Gateways and integration with banking systems;
- Taxpayer management, including account management, notifications, information, and status tracking;
- Tax authority account and ledger Management;
- Processing and reconciliation of GST on import and integration with EDI systems of Customs;
- Maintenance of interfaces between the Common GST Portal and tax administration systems;
- Provide training to stakeholders;
- Carry out research and study best practices.

4.2. The following functions can be performed by taxpayers through GST Common Portal:

- Application for registration as well as amendment in registration, cancellation of registration and profile management;
- Creation of Challan for payment of taxes, including penalties, fines, interest, etc.;
- Change of status of a taxpayer from normal to Compounding and vice-versa;
- Uploading of Invoice data & filing of various statutory returns/Annual statements;
- Track status of return/tax ledger/cash ledger etc. using unique Application Reference Number (ARN) generated on GST Portal;
- File application for refund, appeal, advance ruling etc.;
- Status review of return/tax ledger/cash ledger;
- Generation of E-way bill.
- Generation of E-invoice by taxpayers with Annual Turnover of more than 5 crores.

4.3 The officers use information/application submitted by taxpayer on GST Portal for following statutory functions:

- Approval/rejection for enrollment/registration of taxpayers;
- Tax administration (Assessment/Audit/Refund/ Appeal/Investigation etc.);
- Business Analytics, MIS and other statutory functions.

4.4. The following are some of the features of the GSTN-BO (Back Office) in the GST Portal for the CGST Tax Officers:

- In addition to the Modules relating to Registration, Refund, Scrutiny of Returns, Enforcement, Show Cause Notice & Adjudication and Recovery on GST Portal, various Modules would be available on BO for Pending actions, wherein the Officer gets the task-list against each Module. These Modules are available depending upon the roles assigned to the Officer.
- Hyperlinks would be available for each Pending action, wherein the Officer gets the list of ARNs for action. The task-list gives the total count as well as critical count of number of days available for completion of task.
- The Officer can also view the Taxpayer Profile on BO, wherein he can see all data of taxpayer, in the same manner in which a Taxpayer views his data.

- List of taxpayers, who have not added Bank details is displayed. This will help the Officer to initiate action for suo-moto cancellation of registration after following the due process.
- List of Defaulters would be available on the BO dashboard, which will help in timely issuance of Notice to Return Defaulters (GSTR-3A).
- The Hyperlinks provided in BO will assist to view the Electronic Cash Ledger, Electronic Credit ledger, Electronic Liability Register (Related to Return), Electronic Liability Register (not related to Return) and Negative Liability Statement.
- Records of Returns filed by the Taxpayers would be available on the Dashboard, helping the Officer to view Tax Liability and ITC comparison (GSTR-1, GSTR-3B and GSTR-2A/2B).
- The Officers can view on Dashboard the List assigned to him, the List assigned from his Desk to other Officer and the List assigned to him from other Officer's Desk, through the links provided therein. In case of non-availability of an Officer to complete a task, the facility to re-assign such task to other Officer is also available. Work items can also be re-assigned to other Officer in the Role of re-assign cases.

5. SALIENT FEATURES OF GST

5.1. GOODS AND SERVICES TAX (GST) LEVY.

5.1.1 GST is a dual levy with the Centre and States simultaneously levying it on a common tax base. The GST levied and administered by the Centre on intra-State (within a State) supply of goods and/or services is called the Central GST (CGST) and that levied by the States/Union territory is called the State GST (SGST)/UTGST. Similarly, Integrated GST (IGST) is levied and administered by Centre on every inter-state (from one State to another State) supply of goods and services.

5.1.2. The CGST and the SGST is levied simultaneously on every transaction of supply of goods and services made by registered persons, except the exempted goods and services, goods and services which are outside the purview of GST. Further, both are levied on the same price or value.

Illustration I: The rate of CGST is 9% and that of SGST is 9%. When a wholesale dealer of steel in Uttar Pradesh supplies steel bars and rods to a construction company located within the same State for Rs. 100/-, the dealer would charge CGST of Rs. 9/- and SGST of Rs. 9/-, in addition to the basic price of the goods. He would be required to deposit Rs. 9/- as CGST component, which will go into the credit of Central Government account and Rs. 9/- as the SGST component, which will go into the credit of the concerned State Government, i.e. Uttar Pradesh here.

Illustration II: An advertising company located in Mumbai supplies advertising services to a company manufacturing soap also located within the State of Maharashtra for Rs. 100/-. The tax rate for the said service is 9% CGST and 9% SGST. The ad company would charge CGST of Rs. 9/- and SGST of Rs. 9/- to the basic value of the service. He would be required to deposit Rs. 9/- as the CGST component, which will go into the Central Government account and Rs. 9/- as the SGST component which will go into the account of the concerned State Government, i.e. Maharashtra.

Illustration III: The rate of CGST is 9% and that of SGST is 9%. When a wholesale dealer of Chemicals in Karnataka supplies his goods to a company located in Telangana for Rs. 100/-. As this is an inter-State supply, the dealer would charge IGST of Rs. 18/-, in addition to the basic price of the goods. He would be required to deposit Rs. 18/- as IGST which will go into the credit of Central Government account. The tax amount shall be apportioned between the Central Government and the State Government in the prescribed manner.

5.1.3. The following taxes/duties levied by the Central Government and State Government have been subsumed under GST -

(i) Taxes levied and collected by the Centre:

- Central Excise duty
- Duties of Excise (Medicinal and Toilet Preparations)
- Additional Duties of Excise (Goods of Special Importance)
- Additional Duties of Excise (Textiles and Textile Products)
- Additional Duties of Customs (commonly known as CVD)
- Special Additional Duty of Customs (SAD)
- Service Tax
- Central Surcharges and Cesses so far as they relate to supply of goods and services.

(ii) Taxes levied and collected by the States:

- State VAT

- (b) Central Sales Tax
- (c) Luxury Tax
- (d) Entry Tax (all forms)
- (e) Entertainment and Amusement Tax (except when levied by the local bodies)
- (f) Taxes on advertisements
- (g) Purchase Tax
- (h) Taxes on lotteries, betting and gambling
- (i) State Surcharges and Cesses so far as they relate to supply of goods and services.

5.1.4. GST is a tax levied on all types of supply of goods or services or both, made for a consideration and is for the purpose of business or furtherance of business.

5.1.5. The different types of supplies are –

- (i) Taxable supply – Supply of goods or services or both which is leviable to GST.
- (ii) Exempt supply – Supply of goods or services or both which attracts nil rate of tax or which is wholly exempt from tax or is non-taxable supply.
- (iii) Inter-State supplies – Where the location of the supplier and the place of supply is in different states.
- (iv) Intra-State supplies – Where the location of the supplier and the place of supply is in same state.
- (v) Composite supplies – Supplies consisting of two or more taxable supplies of goods or services or both, or any combination thereof.
- (vi) Mixed supplies – Two or more individual supplies of goods or services, or any combination thereof, made in combination with each other for a single price.
- (vii) Zero rated supplies – The following supplies of goods and/or services are ‘zero rate supplies’–
 - (a) export of goods and/or services; or
 - (b) supply of goods and/or services to a Special Economic Zone (SEZ) Developer or a Special Economic Zone (SEZ) Unit.

Under zero rating of supplies, the outward supplies as well as the inputs or input services used in supplying the supplies are free of GST. Meaning, the taxes paid on the supplies which are zero rated are refunded, the credit of inputs/ input services is allowed and wherever the supplies are exempted, or the supplies are made without payment of tax, the taxes paid on the inputs or input services i.e. the unutilised input tax credit is refunded.

5.1.6 Goods and Services tax (GST) is a destination based tax, levied as per Section 9 of the CGST Act, 2017. It is levied at all stages right from manufacture up to final consumption with credit of taxes paid at previous stages available as setoff, called as Input Tax Credit (ITC). In other words, only value addition will be taxed and burden of tax is to be borne by the final consumer. **(Section 9 of CGST Act, 2017)**

5.1.7 As per Section 7 of the CGST Act, 2017, the term ‘supply’ covers all forms of supply of goods or services or both that includes sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. It also includes import of service. **(Section 7 of CGST Act, 2017)**

5.1.8 There are some transactions which do not meet the aforesaid two conditions of supply i.e consideration and for furtherance of business, but still such transactions are considered as supply of goods and/or services. For example, permanent sale or disposal of business assets, supply to related person (defined in Section 15 of CGST Act, 2017) or distinct person (Two or more units/firms holding different GST registrations in India associated with a single PAN, whether located in India or outside India), inter-State stock transfer of goods without consideration or import of services by a person from a related person or any of his other establishments located outside India in the course or furtherance of business. **(Section 15 of CGST Act, 2017)**

5.1.9 The types of transaction/activities to be treated as deemed supply even if made without consideration and on which GST is levied, are covered in SCHEDULE I, which are as under –

- 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 (Individuals with distinct GST Identification Numbers (GSTINs) associated with a single legal entity (single PAN), whether located within the same state, across two different states, or in a different country), when made in the course or furtherance of business:

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

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

5.1.10. Certain activities/transactions where there is a likelihood of a dispute whether it is to be treated as supply of goods or supply of services, are categorically classified in SCHEDULE II, which are as under –

1) Transfer-

- (a) any transfer of the title in goods is a supply of goods;
- (b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;
- (c) any 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, is a supply of goods.

2) Land and Building-

- (a) any lease, tenancy, easement, licence to occupy land is a supply of services;
- (b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

3) Any treatment or process which is applied to another person's goods is a supply of services.

4) Transfer of business assets-

- (a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, such transfer or disposal is a supply of goods by the person;
- (b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, the usage or making available of such goods is a supply of services;
- (c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—
 - (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.

5) Supply of services-

The following shall be treated as supply of services, namely:

- (a) renting of immovable property;
- (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.
- (c) temporary transfer or permitting the use or enjoyment of any intellectual property right;
- (d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;
- (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and
- (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.

6) Composite supply-

The following composite supplies shall be treated as a supply of services, namely:—

- (a) works contract as defined in clause (119) of section 2; and
- (b) supply, by way of or as part of any 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), where such supply or service is for cash, deferred payment or other valuable consideration.

5.1.11 SCHEDULE III contains the list of activities/transactions which shall be treated neither as a supply of goods nor a supply of services, i.e. the Negative List supplies. Details of activities/transactions are as under –

- (1) Services by an employee to the employer in the course of or in relation to his employment.
- (2) Services by any court or Tribunal established under any law for the time being in force.
- (3) (a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
(b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
(c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
- (4) Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
- (5) Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
- (6) Actionable claims, other than “specified actionable claims”
- (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.”

5.1.12. Alcohol for human consumption is kept out of GST. Further, petroleum products viz. Petroleum Crude, Motor Spirit (Petrol), High Speed Diesel, Natural Gas and Aviation Turbine Fuel have temporarily been kept out. These commodities are presently subjected to Central Excise duty and VAT. GST Council shall decide the date from which they shall be included in GST.

5.1.13. Tobacco and tobacco products is leviable to GST. In addition, the Centre has the power to levy Central Excise duty on these products.

5.2. METHODS OF GST LEVY

5.2.1. There are three methods of GST levy –

- (i) **Normal levy** - The CGST and the SGST is levied simultaneously at the applicable rate on every transaction of supply of goods and services made by registered persons in the normal course of business. In the case of intra-state sales, Central GST and State GST are charged. All the inter-state sales are chargeable to the Integrated GST. The tax payment is on **monthly basis** and the taxpayer has to comply with all the prescribed provisions and procedures.
- (ii) **Composition levy** – Composition levy scheme is a simple compliance scheme for small taxpayers with annual aggregate turnover not exceeding Rs. 1.50 Crore (Rs. 75 lakhs for Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Uttarakhand) in goods (including upto 10% value of services) during the previous financial year. As per Notification No. 2/2019-CT (Rate), dated 07.03.2019, for service provider the turnover should not exceed Rs. 50 lakhs during the previous financial year and such supplier is not engaged in making any inter-State outward supply, who is neither a casual taxable person nor a non-resident taxable person, who is not engaged in making any supply through an electronic commerce operator. It is a voluntary and optional scheme. Under the Composition scheme the eligible manufacturer has to pay 1% (0.5% CGST + 0.5% SGST/ UTGST) of turnover, the eligible service providers (or goods and service suppliers) have to pay 6% (3% CGST + 3% SGST / UTGST) of turnover; the eligible supplier of Restaurant Services has to pay 5% (2.5% CGST + 2.5% SGST/UTGST) of turnover and the traders have to pay 1% (0.5% CGST + 0.5% SGST/UTGST) of the taxable turnover.
- (iii) **Levy under Reverse Charge Mechanism** – In normal circumstances, the tax is payable on outward supplies, to be paid by the supplier of goods and/or services. However, in case of certain notified supply of goods and services, including imported goods and services, the tax is required to be paid on the inward supplies by the recipient of such goods and services instead of the supplier of such goods or services. All the provisions of the CGST Act, 2017 shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods and/or services.

- 5.2.2 The provisions and procedures in detail in respect of the above mentioned methods of levy are explained separately in this Chapter as well as other Chapters.

5.3 COMPOSITION LEVY

- 5.3.1 The Composition Levy is an alternative method of levy of tax for small taxpayers whose turnover is up to the prescribed limit. To be eligible to opt for Composition levy, the turnover limit presently prescribed for the manufacturer should not exceed Rs. 1.50 Crore (Rs. 75 lakhs for Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Uttarakhand) and that for the service provider should not exceed Rs. 50 lakhs during the previous financial year.
- 5.3.2 The scheme is optional. The option for Composition Levy has to be given electronically in [FORM GST CMP-02](#), prior to the commencement of the financial year for which the option is exercised.
- 5.3.3 The taxpayer has to declare the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the preceding date on which the Composition Levy starts and has to pay an amount equal to the input tax credit in respect of such stocks. The ITC on inputs shall be calculated proportionately on the basis of corresponding invoices on which credit had been availed by the taxpayer on such inputs. In respect of 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 5 years. The payment can be made by debiting electronic credit ledger, if there is sufficient balance in the electronic credit ledger, or by debiting electronic cash ledger. If any balance remains in the electronic credit ledger, it would lapse. The taxpayer has to furnish the statement for intimation of Input Tax Credit in [FORM GST ITC-03](#), **within a period of sixty days** from the commencement of the relevant financial year.
- 5.3.4 The following taxable persons are not eligible for the Composition Levy scheme:
- (a) A casual taxable person - A person who occasionally undertakes supplies in a State or Union Territory where he has no fixed place of business;
 - (b) A Non-Resident Taxable Person - A person who occasionally undertakes supplies but has no fixed place of business or residence in India;
 - (c) A person engaged in providing inter-state (from one State to another) supply of goods and services or both;
 - (d) A person engaged in supply of non-taxable goods i.e. goods which are not taxable under GST law;
 - (e) A person engaged in supply of goods through an Electronic Commerce Operator (E-Commerce) who is required to collect Tax at source (TCS) under Section 52 of the CGST Act, 2017; (**Section 52 of CGST Act, 2017**)
 - (f) A person engaged in manufacturing of goods notified under Section 10(2)(e) of the CGST Act 2017, viz., Ice Cream and other edible Ice, Pan Masala, Aerated Water, Tobacco and manufactured Tobacco substitutes, Fly Ash Bricks, Fly Ash aggregates, Fly Ash Blocks, Brick Fossil Meals or similar Siliceous earthen building bricks and earthen or roofing tiles. (**Section 10(2) (e) of CGST Act, 2017**)
- 5.3.5 Section 10 of the CGST Act, 2017 is the charging section which provides for levying the tax at the prescribed rate on the turnover of the eligible taxpayers who have opted for Composition Levy scheme. The tax rates prescribed are (**Section 10 of CGST Act, 2017**) –
- (a) An eligible manufacturer has to pay 1% (0.5% CGST + 0.5% SGST/ UTGST) of turnover in a state or Union Territory.
 - (b) All eligible service providers (or goods and service suppliers) have to pay 6% (3% CGST + 3% SGST / UTGST) of turnover in a State or Union Territory.
 - (c) An eligible person engaged in making supply of Restaurant Services [Supply of food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption)], has to pay 5% (2.5% CGST + 2.5% SGST/UTGST) of turnover in a state or Union Territory.
 - (d) All other eligible suppliers, i.e. traders, have to pay 1% (0.5% CGST + 0.5% SGST/UTGST) of the taxable turnover in a State or Union Territory.
- 5.3.6 The taxpayers who have opted for the Composition Levy Scheme have to file return in [FORM GSTR-04](#) on annual basis and the tax has to be paid on **quarterly basis before 18th of the month** succeeding the quarter relating to supplies. The intimation of payment of tax has to be made electronically in [FORM GST CMP 01](#).
- 5.3.7 The taxpayers who have opted for the Composition Levy Scheme cannot issue taxable invoice under GST law but has to issue bill of supply. He has to mention the words “Composition Taxable Person not eligible to collect tax on supplies” at the top of every bill of supply issued by him.
- 5.3.8 The Taxpayers who have opted for Composition Levy Scheme can neither collect GST from the customers nor can claim Input Tax Credit on the purchases. Also, the recipient of supply of goods and services from such taxpayers cannot claim Input Tax Credit on the tax paid on such supplies.

- 5.3.9. The option for Composition Levy shall lapse from the day on which the taxpayer's aggregate turnover during the financial year exceeds the threshold limit. Once the taxpayer reaches the threshold limit, he shall file an intimation for withdrawal from the scheme in [FORM GST CMP-04](#) **within seven days** of the occurrence of such event. After furnishing the said intimation, the taxpayer may electronically furnish on the common portal, a statement in [FORM GST ITC-01](#) containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn, **within a period of thirty days** from the date from which the option is withdrawn.
- 5.3.10. The aggregate turnover shall be computed on the basis of turnover on all India basis, which shall be 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, excluding Central tax, State tax, Union territory tax, integrated tax and cess.
- 5.3.11. If it is found that the taxpayer was not eligible to pay tax under Composition Scheme or has contravened the provisions of the Act or provisions of this Chapter, jurisdictional officer may issue a notice to such person in [FORM GST CMP-05](#) to show cause **within fifteen days** of the receipt of such notice as to why the option to pay tax under this scheme shall not be denied. The taxpayer shall submit reply in [FORM GST CMP-06](#). The proper officer shall issue an order in [FORM GST CMP-07](#) **within a period of thirty days** of the receipt of such reply, either accepting the reply, or denying the option to pay tax under Composition scheme from the date of the option or from the date of the event concerning such contravention, as the case may be.
- 5.3.12. Consequent to an order of withdrawal of option in [FORM GST CMP-07](#), the taxpayer may electronically furnish at the common portal, a statement in [FORM GST ITC-01](#) containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is denied, **within a period of thirty days** from the date of the order passed in [FORM GST CMP-07](#) for availing Input Tax Credit on such stocks.

5.4. REVERSE CHARGE MECHANISM

- 5.4.1. Section 9(3) and 9(4) of the CGST Act, 2017 provide for levy of GST on reverse charge basis. That is, the liability to pay tax is on the recipient of the goods and services instead of the supplier of such goods or services, in respect of notified categories of supply. (**Section 9(3) & 9(4) of CGST Act, 2017**)
- 5.4.2. Normally, 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. For example -
- (i) An agriculturist sells 100 kg Shelled Cashew Nuts to a GST registered person @ Rs. 200/- per kg. The total value of the supply would be Rs. 20,000/-. Shelled Cashew Nuts sold by an Agriculturist directly to a GST registered person is notified under [Notification No. 4/2017-CT \(Rate\), dated 28.06.2017](#), as amended, for payment of tax under Reverse Charge Mechanism (RCM). As such, the liability to pay tax in this case shifts to the recipient of such Cashew Nuts, i.e. the GST registered person. The applicable rate of tax on Cashew Nuts is 5%. Thus, the said GST registered person will pay tax of Rs. 1000/- (Rs. 500/- CGST + Rs. 500/- SGST) on such goods received.
 - (ii) A trader registered under GST takes services of Goods Transport Agency (GTA) for transportation of goods. The amount paid by the trader for transportation is Rs. 10,000/-. Transportation of goods service provided by GTA is notified under [Notification No. 13/2017-CT \(Rate\), dated 28.06.2017](#) for payment of tax under the reverse charge mechanism. Therefore, the trader has to pay tax @ 5% on Rs. 10,000/-, i.e. Rs. 500/- (Rs. 250/- CGST + Rs. 250/- SGST).
 - (iii) In case transportation service is provided to passengers by a radio-taxi through e-commerce platform (aggregator), viz., Ola, Uber, etc., then in such cases the reverse charge will apply to the e-commerce operator and he will be liable to pay GST at the applicable rate.
- 5.4.3. As per Section 9(3) of CGST Act, 2017, the Government on the recommendations of the GST Council notifies the categories of supply of goods and/or services, the tax on which is required to be paid on reverse charge basis by the recipient of such goods and/or services. Section 9(4) of CGST Act, 2017 provides that in respect of the supply of taxable goods and/or services by unregistered supplier (who is not registered under GST), to a registered person, the tax shall be paid by the recipient on reverse charge basis.
- 5.4.4. All the provisions of the CGST Act, 2017 shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods and/or services.
- 5.4.5. Initially from 01.07.2017 to 12.10.2017, in terms of [Notification No. 8/2017-CT \(Rate\) dated 28.06.2017](#) exemption from payment of tax on reverse charge basis was given if total value of the purchases in a day by a taxpayer from all unregistered persons was less than Rs. 5000/-. From 13.10.2017 to 31.01.2019 the exemption from payment of tax under reverse charge mechanism (RCM) on purchases from unregistered persons was

extended till 31.09.2019 without any capping of value, vide various Notifications amending the said Notification No. 8/2017-CT (Rate) dated 28.06.2017.

- 5.4.6 However, by the amendment carried out in the Act through CGST (Amendment) Act, 2018, with effect from 01.02.2019 the RCM on purchases from unregistered persons was made applicable to only notified persons. Accordingly, vide [Notification No. 07/2019-CT \(Rate\) dated 29.03.2019](#), the Builders and Promoters in Real Estate have been notified as persons liable to pay tax under reverse charge on the purchase of goods, viz., Cement and Capital Goods, and services or both which constitute the shortfall from the minimum value of goods or services or both required to be purchased by the promoter for construction of project, i.e. 80% of inputs and input services shall be purchased from the registered persons and on shortfall of purchases tax shall be paid by the builder on reverse charge basis.
- 5.4.7 In terms of [Notification No. 09/2017-CT \(Rate\), dated 28.06.2017](#), Government entities who are TDS Deductors under Section 51 of CGST Act, 2017, need not pay GST under reverse charge in case of procurements from unregistered suppliers.
- 5.4.8 The recipient of goods and/or services making payment of tax under reverse charge has to issue invoice or payment voucher on goods and/or services received from a supplier.
- 5.4.9 The payment of tax under reverse charge is required to be made in cash only. The reason of this provision is that the definition of 'output tax' under Section 2(82) of CGST Act, 2017 categorically excludes tax payable under reverse charge basis and as per Section 49(4) of the CGST Act, 2017, the payment through the electronic credit ledger by utilizing the Input Tax Credit is allowed to be made towards output tax only. **(Section 2(82) & 49(4) of CGST Act, 2017)**
- 5.4.10. The taxpayer making payment under reverse charge is required to issue a self-invoice (invoice in his own name), which are required to be uploaded in GSTR-1 for taking Input Tax Credit.
- 5.4.11. The benefit of exemption from registration for the small scale suppliers with turnover less than the stipulated threshold limit, is not available if they are liable to pay tax under reverse charge. Such suppliers are compulsorily required to obtain registration, as provided in Section 24(iii) of the CGST Act, 2017. **(Section 24(iii) of CGST Act, 2017)**
- 5.4.12. The persons engaged only in supplying goods and/or services on which tax is liable to be paid under reverse charge basis by the recipient, is not required to obtain registration.
- 5.4.13. The registered taxpayer making payment under reverse charge can take input tax credit on the tax paid under reverse charge on the eligible goods and services after making the payment of tax.
- 5.4.14. The goods on which GST is payable on reverse charge basis, i.e. the tax is required to be paid by the GST registered recipient, notified in [Notification No. 4/2017-CT \(Rate\), dated 28.06.2017](#), as amended, are as under-
- (i) Cashew nuts not shelled or peeled, Bidi wrapper leaves (Tendu), Tobacco leaves and Raw cotton, purchased by any registered person from any Agriculturist;
 - (ii) Essential oils other than those of citrus fruit, namely, peppermint (*Mentha piperita*), other mints: Spearmint oil (ex-*mentha spicata*), Water mint-oil (ex-*mentha aquatic*), Horsemint oil (ex-*mentha ylvestries*), Bergament oil (ex-*mentha citrate*), supplied by unregistered person to registered person;
 - (iii) Silk Yarn, supplied by a person manufacturing silk yarn from raw silk or silk worm cocoons;
 - (iv) Lottery supplied by State Government, Union Territory or any local authority to Lottery distributor or selling agent;
 - (v) Used vehicles, seized and confiscated goods, old and used goods, waste and scrap supplied by Central Government, State Government, Union territory or a Local authority to any registered person;
 - (vi) Priority Sector Lending Certificate supplied by any registered person to any registered person.
- 5.4.15. The services on which GST is payable on reverse charge basis notified in [Notification No. 13/2017-CT \(Rate\), dated 28.06.2017](#), are as under-
- (i) Goods Transport Agency Services supplied by a Goods Transport Agency (GTA) in respect of transportation of goods by road to any factory, any registered society, any Cooperative society, any person registered under CGST/ IGST / SGST/or UTGST Act, any Body Corporate, any partnership firm, any casual taxable person located in the taxable territory.
 - (ii) Legal Services provided by an individual advocate or firm of advocates to any business entity located in the taxable territory.
 - (iii) Arbitral Services supplied by an arbitral Tribunal to a business entity located in the taxable territory.
 - (iv) Sponsorship Services provided by way of Sponsorship Service to any Body Corporate or partnership firm.
 - (v) Services supplied by the Central Government, State Government, Union territory or local authority to a business entity, excluding renting of immovable property service, services by the Department of posts,

services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport and transport of goods or passengers.

- (vi) Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under CGST.
- (vii) Services by way of renting of residential dwelling to a registered person.
- (viii) Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.
- (ix) Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter.
- (x) Services supplied by a Director of a company or a Body Corporate to the said company or the Body Corporate.
- (xi) Services provided by an Insurance Agent to person carrying on insurance business.
- (xii) Supply of Services by a music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright relating to original dramatic, musical or artistic works to a music company, producer or the like.
- (xiii) Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright relating to original literary works to a publisher.
- (xiv) Supply of services by the members of Overseeing Committee to Reserve Bank of India.
- (xv) Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate partnership or limited liability partnership firm to bank or non-banking financial company (NBFCs).
- (xvi) Services provided by Business Facilitator (BF) to a banking company.
- (xvii) Services provided by an agent of Business Correspondent (BC) to Business Correspondent (BC).
- (xviii) Security Services (services provided by way of supply of security personnel) provided to a registered person.
- (xix) Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.
- (xx) Services of lending Securities under Securities Lending Scheme, 1997 (Scheme). Securities and Exchange Board of India (SEBI), as amended.

5.4.16 In addition, the following two services have been notified in [Notification No. 10/2017-Integrated Tax \(Rate\), dated 28.06.2017](#) –

- (i) Any service supplied by any person who is located in a non-taxable territory to any recipient in India, other than non-taxable online recipient.
- (ii) 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.

6. PERSONS LIABLE TO PAY GST

- 6.1. GST is payable at the prescribed rate by the registered taxable person on the supply of goods and/or services. The CGST/SGST is payable on all intra-State supply (within the State) of goods and/or services and IGST is payable on all inter-State supply (from one State to another State) of goods and/or services.
- 6.2. The threshold limit of aggregate turnover for exemption from registration and payment of GST for suppliers of goods is Rs. 40 Lakh (Rs. 20 Lakh in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura and Uttarakhand). The threshold limit of aggregate turnover for exemption from registration and payment of GST for suppliers of services is Rs. 20 Lakh. The aggregate turnover shall include the aggregate value of all taxable supplies, exempt supplies and exports of goods and/or services, excluding GST and shall be computed on all India basis.
- 6.3. However, the taxpayers eligible for threshold exemption will have the option of paying tax with input tax credit (ITC) benefits. Taxpayers making inter-State supplies of goods or paying tax on reverse charge basis (where the recipient of the supplies is liable to pay tax) shall not be eligible for threshold exemption, meaning that such taxpayers are liable to pay GST, irrespective of their turnover.
- 6.4. In respect of the notified supply of goods and/or services, the tax is payable by the recipient of such supplies, as prescribed under Section 9(3) of the CGST Act, 2017. This system of payment of tax by the recipient is known as 'reverse charge mechanism'. **(Section 9(3) & 9(5) of CGST Act, 2017)**

- 6.5. In respect of certain supplies of services through the Electronic Commerce (e-commerce) Operator, GST is neither payable by the supplier nor the recipient of such supplies, but by the e-commerce operator, as provided in Section 9(5) of the CGST Act, 2017. The list of services notified in [Notification No. 17/2017-CT \(Rate\) dated 28.06.2017](#), as amended, are as under –
- (i) services by way of passengers by a radio-taxi, motorcab, maxicab, motor cycle or any other motor vehicle, except omnibus;
 - (ii) services by way of providing accommodation in hotel, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the supplier of such service through e-commerce operator is liable for GST registration;
 - (iii) services by way of house-keeping, such as plumbing, carpentering, etc, except where the supplier of such service through e-commerce operator is liable for GST registration;
 - (iv) supply of restaurant service, other than the services supplied by restaurant, eating joints, etc., located at hotel providing accommodation with declared value of any unit above Rs. 7500/- per unit per day.

7. CLASSIFICATION OF GOODS AND SERVICES

- 7.1. Classification is the categorization of goods and services crucial to ascertain whether a subject matter is eligible to tax, exemption and the rate of tax.
- 7.2. Under GST, all goods and services transacted in India are classified as per the HSN (Harmonised System of Nomenclature) code system or SAC (Services Accounting Code) system.
- 7.3. HSN code number is an internationally adopted commodity description and coding system developed by the World Customs Organization (WCO). With the HSN code acting as a universal classification for goods, it is adopted for classification of goods under GST and levy of GST.
- 7.4. There is no separate dedicated Tariff Schedule under GST. However, for the purpose of classification, Customs Tariff has been adopted. The goods are classified from Chapter 1 to Chapter 98A. Services are classified under Chapter 99.
- 7.5. The rate of GST on goods have been prescribed in [Notification No. 1/2017-CT \(Rate\) dated 28.06.2017](#) and [Notification No. 1/2017-Integrated Tax \(Rate\), dated 28.06.2017](#), as amended. The list of goods contained in the said notification provides the description of goods, Chapter/Heading/sub-heading/Tariff Item number and the applicable tax rate mentioned against each goods. Thus, Notification No. 1/2017-CT (Rate) and 1/2017-Integrated Tax (Rate) is useful for determining the appropriate classification of goods and the applicable tax rate.
- 7.6. As per the said Notifications, the following six GST rate slabs are presently applicable for goods –
- (i) 5% (2.50% CGST + 2.50% SGST) in respect of goods specified in Schedule I of the Notification,
 - (ii) 12% (6% CGST + 6% SGST) in respect of goods specified in Schedule II of the Notification,
 - (iii) 18% (9% CGST + 9% SGST) in respect of goods specified in Schedule III of the Notification,
 - (iv) 28% (14% CGST + 14% SGST) in respect of goods specified in Schedule IV of the Notification,
 - (v) 3% (1.50% CGST + 1.50% SGST) in respect of goods specified in Schedule V of the Notification, and
 - (vi) 0.25% (0.125% CGST + 0.125% SGST) in respect of goods specified in Schedule VI of the Notification.
- 7.7. [Notification No. 2/2017-CT \(Rate\) and 2/2017-Integrated Tax \(Rate\), both dated 28.06.2017](#) provides list of goods fully exempted from levy of CGST/IGST.
- 7.8. Services are classified under Chapter 99 of the HSN. This Chapter provides the description of services, Sections, Headings and the notified tax rates. [Notification No. 8/2017-Integrated Tax \(Rate\), dated 26.06.2017](#), as amended, prescribes GST rate of the services. There are six slabs of tax rates prescribed – Nil, 5%, 9%, 12%, 18% and 28%. With effect from 01.04.2019, the rate of tax for some construction services is 1.50% and 7.50%, subject to fulfilling the conditions prescribed.
- 7.9. The [explanatory notes published by GST Council](#) indicate the scope and coverage of the heading, groups and service codes of the Scheme of Classification of Services, which can be used as a guiding tool for classification of services.
- 7.10. The rates applicable to any goods or services are published by CBIC and can be viewed on <https://cbic-gst.gov.in/gst-goods-services-rates.html>.

8. COMPOSITE AND MIXED SUPPLIES

- 8.1. Composite supply is a supply consisting of two or more taxable supplies of goods or services or both or any combination thereof, which are bundled in natural course and are supplied in conjunction with each other in the

ordinary course of business and where one of which is a principal supply (the main goods or service).

For example, when a consumer buys a television set and he also gets warranty and a maintenance contract with the TV, such supply is a composite supply. In this example, supply of TV is the principal supply, warranty and maintenance service are ancillary.

8.2. In Composite supply the principal supply shall be considered for determining the rate of tax.

8.3. Mixed supply is combination of more than one individual supplies of goods or services or any combination thereof made in conjunction with each other for a single price, which can ordinarily be supplied separately.

For example, a shopkeeper selling refrigerator along with storage water bottles. Bottles and the refrigerator can easily be priced and sold separately. Another example is the supply of a package consisting of sweets, chocolates, dry fruits, supplied for a single price. Each of these items can be supplied separately and is not dependent on each other

8.4. Mixed supply would be treated as supply of that particular goods or services which attracts the highest rate of tax.

9. EXEMPTION FROM GST

9.1. Section 11 of the CGST Act, 2017 empowers the Government to exempt either wholly or partly, on the recommendations of the GST Council, the supplies of goods and/or services from the levy of GST either absolutely or subject to conditions. Further the Government can exempt, under circumstances of an exceptional nature, by special order any goods or services or both. **(Section 11 of CGST Act, 2017)**

9.2. The SGST Act and UTGST Act provide that any exemption granted under CGST Act, 2017 shall be deemed to be exemption under these Acts.

9.3. If exemption from whole of tax on goods or services or both has been granted, the person cannot pay tax on his own volition. Further, if the goods are partly exempted, the person supplying exempted goods or services or both shall not collect the tax in excess of the effective rate.

10. TIME OF SUPPLY OF GOODS AND SERVICES

10.1. The time of supply fixes the point when the liability to charge GST arises. It also indicates when a supply is deemed to have been made. The CGST Act, 2017 provides separate time of supply for goods and services.

10.2. In terms of Section 12(1) of the CGST/SGST Act, the time of supply of goods shall be the earlier of the following - **(Section 12(1) & 31 of CGST Act, 2017)**

- (i) the date of issue of invoice by the supplier or the last date on which he is required to issue the invoice as per Section 31 of CGST Act, 2017, with respect to the supply; or
- (ii) the date on which the supplier receives the payment with respect to the supply.

10.3. Section 13(1) of the CGST Act, 2017 provides for time of supply of services. The time of supply of services shall be the earlier of the following - **(Section 13(1) & 31 of CGST Act, 2017)**

- (a) the date of issue of invoice by the supplier if the invoice is issued **within the period prescribed under Section 31** or the date of receipt of payment whichever is earlier; or
- (b) the date of provision of service, if the invoice is not issued **within the period prescribed under Section 31** or the date of receipt of payment whichever is earlier;
- (c) the date on which the recipient shows the receipt of services in his books of account, in case where the clauses do not apply.

10.4. The time of supply of voucher (e.g. Gift Voucher, etc.) in respect of goods and services shall be;

- (a) the date of issue of voucher, if the supply is identifiable at that point; or
- (b) the date of redemption of voucher in all other cases.

10.5. If it is not possible to determine the time of supply in the manner stated above, then as per Section 12(5) and 13(5) of the CGST Act, 2017, if periodical return has to be filed, then the due date of filing of such periodical return shall be the time of supply. In other cases, it will be the date on which the CGST/SGST/IGST is actually paid. **(Section 12(5) and 13(5) of CGST Act, 2017)**

10.6. The time of supply of goods in case of tax payable under reverse charge mechanism will be the earliest of the following dates:

- (a) **date of receipt of goods;** or
- (b) **date on which payment is made;** or
- (c) **the date immediately following 30 days from the date of issue of invoice** by the supplier.

- (d) Where it is not possible to determine the time of supply under the above three clauses, the time of supply shall be the **date of entry in the books of account of the recipient** of supply.
- 10.7. The time of supply of service in case of tax payable under reverse charge mechanism will be the earliest of the following dates:
- date on which payment is made; or
 - the date immediately following **sixty days from the date of issue of invoice** by the supplier.
- 10.8. The time of supply with regard to an addition in value on account of interest, late fee or penalty on delayed consideration shall be the date on which the supplier received such additional consideration.
- 10.9. In cases where supply is completed prior to change in rate of tax, the time of supply will be-
- where the invoice for the same has been issued and the payment is also received after the change in rate of tax, the time of supply shall be the **date of receipt of payment or the date of issue of invoice**, whichever is earlier. For supply of goods payment of tax need to be made only at the time of issue of invoice; or
 - where the invoice has been issued prior to change in rate of tax but the payment is received after the change in rate of tax, the time of supply shall be the **date of issue of invoice**; or
 - where the payment is received before the change in rate of tax, but the invoice for the same has been issued after the change in rate of tax, the time of supply shall be the **date of receipt of payment**. For supply of goods payment of tax need to be made only at the time of issue of invoice.
- 10.10. In cases where supply is completed after change in rate of tax, the time of supply will be-
- where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment. For supply of goods payment of tax need to be made only at the time of issue of invoice; or
 - where the invoice has been issued and the payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier. or;
 - where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice
- 10.11. In respect of services between the associated enterprise, the time of supply in the case of supply of services where the supplier is located outside India will be the earlier of date of entry in the books of account of the recipient of supply or the date of payment. That is, the levy under GST is attracted once such book entries are made even if no actual payment takes place or no invoice is issued.
- 10.12. The time of supply in respect of continuous supply of services will be the date by which the invoice is actually issued or is required to be issued or the date of receipt of payment, whichever is earlier.

11. PLACE OF SUPPLY OF GOODS AND SERVICE

- 11.1. The basic principle of GST is that it should effectively tax the consumption of such supplies at the destination thereof or as the case may be at the point of consumption. Place of supply provision determines the place i.e. taxable jurisdiction where the tax should reach. The place of supply determines whether a transaction is intra-State or interstate. In other words, the place of Supply of Goods or services is required to determine whether a supply is subject to SGST plus CGST in a given State or Union territory or else would attract IGST if it is an inter-state supply.
- 11.2. The place of supply of goods shall be the location of the goods at the time of delivery to the recipient or at the time at which the movement of goods terminates for delivery to the recipient.
- 11.3. The place of supply where the goods are supplied on board a conveyance, such as a vessel, an aircraft, a train or a motor vehicle shall be the location at which such goods are taken on board. For instance, if goods are taken on board at Vadodara, Gujarat on Rajdhani Express from Mumbai to Delhi, the place of supply shall be Vadodara, Gujarat. However, in respect of services, the place of supply shall be the location of the first scheduled point of departure of that conveyance for the journey. For example, in India "Enjoy on wheels" is a train which runs from Jaipur to Kanyakumari and provides entertainment services. For outward journey the place of supply will be Jaipur and for return journey it will be Kanyakumari. The second example is a person travelling from Mumbai to Ranchi by Air watches a movie on board by making the payment. The place of supply will be Mumbai, the place of departure of the conveyance
- 11.4. The place of supply in case of assembly or installation of goods at site will be the place of such installation or assembly.
- 11.5. The place of supply of goods imported into India shall be the location of the importer and the place of supply of goods exported from India shall be the location outside India.
- 11.6. The place of supply of services is the location of recipient of service.

- 11.7. Any service provided directly in relation to an immovable property including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or coordination of construction shall be the location at which the immovable property is situated.
- 11.8. In case of an event, if the recipient of service is registered, the place of supply of services for organizing the event shall be the location of such recipient. However, if the recipient is not registered, the place of supply shall be the place where event is held.
- 11.9. The place of supply of services by way of transportation of goods, including mail or courier, shall be the location of registered recipient. However, if the recipient is not registered, the place of supply shall be the place where the goods are handed over for their transportation.
- 11.10. Where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.
- 11.11. The place of supply of service in respect of goods that are required to be made physically available by the recipient of service to the supplier of service shall be the location where the services are actually performed. For example, if a manufacturer located in Vadodara gets a Electric Pump repaired from a repair service provider located in Mumbai, by sending the Pump to the repairer's location in Mumbai and receives back the Pump after repairs, in such cases the place of supply would be Mumbai, where the repair service was performed.

If the services are performed from a remote location using electronic means on goods, the place of supply shall be the location where the goods are actually located at the time of supply of services. For example, if a manufacturer located in Mumbai wants to get the issues in the software of a CNC machine installed at the factory in Mumbai resolved and the Engineer providing the repair service located in Delhi repairs the software resolves the issue by sitting in Delhi, then in such cases, the place of supply of this service would be Mumbai, the place where the machine is located.
- 11.12. For OIDAR services the place of supply will be the location of recipient of services. For the purpose of determining place of supply, the location of recipient of service shall be deemed to be in the taxable territory if any two of the following seven non-contradictory conditions are satisfied, namely:-
 - (a) the location of address presented by the recipient of services through internet is in the taxable territory;
 - (b) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;
 - (c) the billing address of the recipient of services is in the taxable territory;
 - (d) the internet protocol address of the device used by the recipient of services is in the taxable territory;
 - (e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;
 - (f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory;
 - (g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory.
- 11.13. In the case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process, the place of supply shall be the location of recipient of services. For example, a person located in Dubai sends a machine for repairs by a service provider located in Bengaluru. The service provider has to comply with all the procedures related to import of such machine into India. After carrying out the repairs the said service provider sends the machine back to the sender of the machine located in Dubai, by following export procedure. As the repairs were carried out in Bengaluru and this machine was not put into any use in Bengaluru but returned to the person located in Dubai, the place of supply in this case would be Dubai, as per second proviso to sub-clause (a) to Clause (3) of Section 13 of CGST Act, 2017.

12. TAX INVOICE UNDER GST

- 12.1. As per Section 31 of CGST Act, 2017, a registered taxable person is required to issue a tax invoice showing description, quantity and value of goods, tax charged thereon and other particulars prescribed in Rule 46 of CGST Rules, 2017, before or at the time of- **(Section 31 of CGST Act, 2017 & Rules 46 of CGST Rules, 2017)**
 - (a) removal of goods for supply to the recipient, where supply involves movement of goods; or
 - (b) delivery of goods or making the goods available to the recipient in other cases.
- 12.2. In respect of supply of services, a registered person is required to issue a tax invoice before or after the provision of service, but **within a period of 30 days** from the date of supply of service, showing description, value of goods,

tax payable thereon and other prescribed particulars. For Banking and Insurance companies, **this period is 45 days**. For inter-state self-supplies made by bank, insurance and telecom companies, invoices can be issued before or at the time such supplier records the same in his books of account or **before the expiry of the quarter** during which the supply was made.

- 12.3. A registered person liable to pay tax on reverse charge basis is required to issue invoice on the date of receipt of goods or services or both.
- 12.4. In case of continuous supply of services -
 - (a) where the due date of payment is ascertainable from the contract, the invoice is required to be issued on or before due date of payment;
 - (b) where the due date of payment is not ascertainable from the contract, the invoice is required to 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 is required to be issued on or before the date of completion of that event.
 - (d) where successive statements of account or successive payments are involved, the invoice is required to be issued before or at the time each such statement is issued or each such payment is received.
- 12.5. A registered person supplying exempted goods or services or both or paying tax under the Composition Scheme shall issue a bill of supply instead of a tax invoice.

13. VALUATION OF SUPPLY OF GOODS AND SERVICES UNDER GST

- 13.1. Section 15 of the CGST Act, 2017 deals with the valuation of taxable supply. **(Section 15 of CGST Act, 2017)**
- 13.2. The value of taxable supply of goods and services shall ordinarily be 'the transaction value', which is the price actually paid or payable for the supply of goods and/or services, when the supplier and recipient of such supply are not related and price is the sole consideration. The transaction value includes any amount which the supplier is liable to pay but which has been incurred by the recipient of the supply, but shall not include refundable deposit, discount allowed, subject to certain conditions, before or at the time of supply.
- 13.3. When consideration either wholly or in part is not in money terms, the price of the supply of goods and/or services is influenced by factors like relationship of parties or where certain transactions are deemed to be supply which do not have a price and transaction value declared is not reliable, the value has to be determined in accordance with the Rules prescribed in CGST Rules, 2017, for determination of value of taxable supplies.
- 13.4. As per Section 15(3) of the CGST Act, 2017, post-supply discounts or incentives are to be included in the transaction value. However, where the post-supply discount is established as per the agreement which is known at or before the time of supply and where such discount is specifically linked to the relevant invoice and the recipient has reversed input tax credit attributable to such discount, the discount is allowed as admissible deduction. **(Section 15(3) of CGST Act, 2017)**
- 13.5. Pre-supply discounts allowed before or at the time of supply are not includible in the transaction value, provided it is allowed in the course of normal trade practice and has been duly recorded in the invoice.
- 13.6. The inclusions specified in Section 15(2) of the CGST Act, 2017, which could be added to transaction value are as follows: **(Section 15(2) of CGST Act, 2017)**
 - (a) Any taxes, duties, cesses, fees and charges levied under any statute, other than the SGST/CGST Act, 2017 and the Goods and Services Tax (Compensation to the States for Loss of Revenue) Act, 2016, if charged separately by the supplier to the recipient;
 - (b) Any amount that the supplier is liable to pay in relation to such 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 and/or services;
 - (c) Incidental expenses, such as commission and packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods or as the case may be supply of the services;
 - (d) Interest or late fee or penalty for delayed payment of any consideration for any supply; and
 - (e) Subsidies directly linked to the price excluding subsidies provided by the Central and State Government.
- 13.7. As per Rule 32(5) of the CGST Rules, 2017, 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. **(Rule 32(5) of CGST Rules, 2017)**

- 13.8. In case of supply of Construction service (Works Contract), involving transfer of property in land or undivided share of land, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land. The value of land or undivided share of land, in such supply shall be deemed to be one third of the total amount charged for such supply.
- 13.9. "Open market value" of a supply of goods and/or services 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, to unrelated recipient of the supply and price is the sole consideration. Open market value will be relevant in cases where consideration for the supply is not wholly in money, in cases where supply is between related persons, or between distinct persons (entities having same PAN but different GSTIN) and between principal and agent.
- 13.10. Value of supply where the consideration is not wholly in money will be: -
- (a) Open market value of such supply;
 - (b) If open market value is not available, value shall be the sum total of consideration in money and any amount equivalent to the consideration not in money.
 - (c) if value cannot be determined as above, it shall be the value of supply of goods or services or both of like kind and quality.
 - (d) if value is not determinable as per above clauses, value shall be the sum total of consideration in money and any amount in money equivalent to consideration not in money, as determined by application of Rule 30 or Rule 31 of Valuation Rules in that order.
- 13.11. When a supply does not have money as sole consideration and neither open market value nor consideration involved can be ascertained, then, cost based rule as prescribed in Rule 30 of CGST Rules, 2017 is applied. In such cases, the value shall be one hundred and ten percent of the cost of production or manufacture or cost of acquisition of such goods or cost of provision of such services. **(Rule 30 of CGST Rules, 2017)**
- 13.12. Rule 31 of CGST Rules, 2017, also known as the residual method of Valuation, prescribes that where the value of supply of goods or services or both cannot be determined under Rule 27 to 30, then, the value of supply shall be determined using reasonable means consistent with the principles and general provisions of Section 15 and relevant CGST Rules, 2017. **(Rule 31 of CGST Rules, 2017)**
- 13.13. The value of the supply of goods or services or both between related persons or distinct persons, as per Rule 28 of CGST Rules, 2017, shall, - **(Rule 28 of CGST Rules, 2017)**
- (a) be the open market value of such supply;
 - (b) if 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; **(Rule 30 or Rule 31 of CGST Rules, 2017)**
 - (d) In case the goods are intended for further supply as such by the recipient, the value shall be an amount equivalent to ninety percent 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;
 - (e) In case 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.
- 13.14. "Agent" means a person who carries on the business of supply or receipt of goods or services or both on behalf of another. The meaning of the term and the relationship with principal and agent has been clarified vide [Circular No. 57/31/2018-GST, dated 4th September, 2018](#).
- 13.15. The value of supply of goods between the principal and his agent, as per Rule 29 of the CGST Rules, 2017, shall,-
- (a) be the open market value of the goods being supplied, or at the option of the supplier, be ninety percent 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 cost based method as prescribed in Rule 30 or residual method as prescribed in Rule 31 in that order.
- 13.16. A Del-Credere Agent (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. 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.
- 13.17. The valuation in respect of supplies made through the DCA shall be made as per the guidelines given in [CBIC Circular No. 73/47/2018-GST dated 5th November, 2018](#).

- 13.18 The value of supply of services in relation to purchase or sale of foreign currency, including money changing, shall be determined by the supplier of service in the manner prescribed under Rule 32 of the CGST Rules, 2017, as under:- **(Rule 32 of CGST Rules, 2017)**
- (a) For a currency, when exchanged from or to Indian Rupees (INR), the value shall be equal to the difference in the buying rate or the selling rate, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency.
In case where the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received by the person changing the money. In cases where neither of the currencies exchanged is Indian Rupee, the value shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI.
 - (b) The person supplying the services can also exercise below mentioned option instead of valuation method mentioned as (a) to ascertain the value : -
At the option of supplier of services, the value in relation to supply of foreign currency, including money changing, shall be deemed to be
 - (i) one per cent, of the gross amount of currency exchanged for an amount up to one lakh rupees, subject to a minimum amount of two hundred and fifty rupees;
 - (ii) one thousand rupees and half of a per cent, of the gross amount of currency exchanged for an amount exceeding one lakh rupees and up to ten lakh rupees; and
 - (iii) five thousand rupees and one tenth of a per cent, of the gross amount of currency exchanged for an amount exceeding ten lakh rupees, subject to maximum amount of sixty thousand rupees.
- 13.19. The value of supply of services in relation to booking of tickets for travel by air provided by an air travel agent, shall be an amount calculated at the rate of 5% of the basic fare in the case of domestic bookings, and at the rate of 10% of the basic fare (on which commission is normally paid to the air travel agent by the airline) in the case of international bookings of passage for travel by air.
- 13.20. The value of supply of services in relation to life insurance business shall be :
- (a) the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder, if such amount is intimated to the policy holder at the time of supply of service;
 - (b) in case of single premium annuity policies other than (a), ten per cent of single premium charged from the policy holder; or
 - (c) in all other cases, twenty-five per cent, of the premium charged from the policy holder in the first year and twelve and a half per cent, of the premium charged from policy holder in subsequent years.
- 13.21. 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 and/or services shall be equal to the money value of the goods and/or services redeemable against such token, voucher, coupon, or stamp.
- 13.22. "Pure agent" means a person who -
- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
 - (b) neither intends to hold nor holds any title to the goods or services or both procured or provided as pure agent of the recipient of supply;
 - (c) does not use goods or services procured for his own interest; and
 - (d) receives only the actual amount incurred to procure such goods or services.
- 13.23 The expenditure or costs incurred by the supplier as a pure agent of the recipient of supply of services shall be excluded from the value of supply, if all the following conditions are satisfied, namely :-
- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;
 - (ii) 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
 - (iii) 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.

14. FEATURES OF GST PAYMENT PROCESS

14.1. The payment processes under CGST Act, 2017 have the following features:

- Electronically generated challan from GSTN Common Portal in all modes of payment and no use of manually prepared challan;
- Hassle free, anytime, anywhere mode of payment of tax;
- Convenience of making payment online;
- Logical tax collection data in electronic format;
- Faster remittance of tax revenue to the Government Account;
- Paperless transactions;
- Speedy Accounting and reporting;
- Electronic reconciliation of all receipts;
- Simplified procedure for banks;
- Warehousing of Digital Challan.

14.2. As provided under Section 49 of the CGST Act, 2017, payment can be done by the following methods (**Section 49 of CGST Act, 2017**):

- (i) Through debit of **Credit Ledger** (Input Tax Credit ledger) of the taxpayer maintained on the Common Portal - Only Tax can be paid. Interest, Penalty and Fees cannot be paid by debiting the Credit Ledger. Taxpayers shall be allowed to take credit of taxes paid on inputs (input tax credit) and utilize the same for payment of output tax. However, no input tax credit on account of CGST shall be utilized towards payment of SGST and vice versa. The credit of IGST would be permitted to be utilized for payment of IGST, CGST and SGST in that order.
- (ii) In cash by debit in the **Cash Ledger** (reflecting all deposits made in cash, and TDS/TCS made on account of the taxpayer) maintained on the Common Portal. Money can be deposited in the Cash Ledger by different modes, viz, E-Payment (Internet Banking, Credit Card, Debit Card); Real Time Gross Settlement (RTGS)/ National Electronic Fund Transfer (NEFT); Over the Counter Payment in branches of Banks Authorized to accept deposit of GST.

14.3. Payment of taxes by the normal taxpayer is to be done on monthly basis by the **20th of the succeeding month**. Cash payments will be first deposited in the Cash Ledger and the taxpayer shall debit the ledger while making payment in the monthly returns and shall reflect the relevant debit entry number in his return. Payment can also be debited from the Credit Ledger. Payment of taxes for the month of March shall be paid by the 20th of April. Composition taxpayers need to pay tax on quarterly basis.

14.4. A valid return is a return on which self-assessed tax has been paid in full. Unless the supplier has paid the entire self-assessed tax and filed his return and the recipient has filed his return, the ITC of the recipient would not be confirmed.

14.5. Electronic Ledgers or E-Ledgers are statements of cash and input tax credit in respect of each registered taxpayer. In addition, each taxpayer shall also have an electronic tax liability register (which reflects the total tax liability of a taxpayer (after netting) for the particular month).

14.6. CIN stands for Challan Identification Number. It is a 17-digit number that is 14-digit CPIN plus 3-digit Bank Code. CIN is generated by the authorized banks/Reserve Bank of India (RBI) when payment is actually received by such authorized banks or RBI and credited in the relevant government account held with them. It is an indication that the payment has been realized and credited to the appropriate government account. CIN is communicated by the authorized bank to taxpayer as well as to GSTN.

14.7. Section 49(8) of CGST Act, 2017 prescribes an order of payment where the taxpayer has tax liability outstanding beyond the current return period liability. In such a situation, the order of payment to be followed mandatorily is (**Section 49(8) of CGST Act, 2017**):

- First self-assessed tax and other dues for the previous period has to be paid;
- Then self-assessed tax and other dues for the current period has to be paid; and
- Finally, any other amounts payable, including any confirmed demands under Section 73 or 74 of the CGST Act, 2017 (Demands). (**Section 73 or 74 of CGST Act, 2017**)

14.8. Any payment required to be made by a person who is not registered under the Act, shall be made on the basis of a Temporary Identification Number generated through the Common Portal.

15. TAX DEDUCTED AT SOURCE (TDS) UNDER GST

- 15.1. Government and Government undertakings and other notified entities making contractual payments, where total value of such supply under a contract exceeds Rs. 2.5 Lakhs, to the suppliers of goods and/or services (commonly called as Vendors), are required to deduct TDS (Tax Deducted at Source) @ 2% (1% CGST + 1% SGST) of the total payment made, as per Section 51 of the CGST Act, 2017. **(Section 51 of CGST Act, 2017)**
- 15.2. The TDS amount shall be remitted by the Deductor of tax into the appropriate GST account. Such TDS amount will be reflected in the electronic cash ledger of the concerned supplier, which he can utilize towards discharging his liability towards tax, interest fees and any other amount.
- 15.3. The TDS Deductor will have to get compulsorily registered with GST, deposit the TDS amount in the Government account by debiting the electronic cash ledger and report the same in the GSTR-7 Returns. They are also required to issue certificate of such TDS to the deductee (supplier) **within 5 days** of crediting the TDS to the Government account.

16. COLLECTION OF TAX AT SOURCE (TCS) UNDER GST

- 16.1. Section 52 of the CGST Act, 2017 prescribes collection of tax at source (TCS) by the E-Commerce Operator. The E-Commerce Operator needs to deduct an amount of one percent of the net value of taxable supplies (0.50% CGST + 0.50% SGST) made through it where the consideration with respect to such supplies is to be collected by the operator. **(Section 52 of CGST Act, 2017)**
- 16.2. The TCS amount is required to be deposited by the E-Commerce Operator to the appropriate GST account, by debiting the electronic cash ledger, by the **10th of the next month**, which will be reflected in the electronic cash ledger of the supplier.

17. INPUT TAX CREDIT

- 17.1. As per the definition of 'Input Tax' defined in Section 2(62) of CGST Act, 2017, 'Input Tax' in relation to a registered person means the Central Tax (CGST), State Tax (SGST), Integrated Tax (IGST) or Union Territory tax (UTGST) charged on supply of goods or services or both. It also includes tax paid on reverse charge basis and integrated tax charged on import of goods. However, it does not include tax paid under composition levy.
- 17.2. Input Tax Credit (ITC) means the credit of input tax on the supplies of goods or services or both received by a registered person, which includes taxes paid on input goods, input services and capital goods.
- 17.3. In terms of Section 16(1) of the CGST Act, 2017, a registered person is entitled to take credit of input tax charged on supply of goods and/or services to him, which are used or intended to be used in the course or furtherance of business, on the basis of the Tax Invoice or Debit Note or Bill of Entry or Input Service Distributor invoice or any other prescribed document. **(Section 16(1) of CGST Act, 2017)**
- 17.4. The following four conditions are to be satisfied by the registered taxable person for obtaining ITC:
 - (a) He is in possession of Tax Invoice or Debit Note, Bill of Entry or Input Service Distributor invoice;
 - (b) He has received the goods and/or services;
 - (c) The supplier has actually paid the tax charged in respect of the supply to the government; and
 - (d) He has furnished the return under Section 39 of the CGST Act, 2017. **(Section 39 of CGST Act, 2017)**
- 17.5. The document on the basis of which input tax credit is to be taken should contain all the specified details in it. However, 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.
- 17.6. In case the goods against an invoice are received in lots or installments, the registered person shall be entitled to the credit only upon receipt of the last lot or installment.
- 17.7. The recipient of goods and/or services is required to pay the consideration towards such supply along with tax **within 180 days** from the date of issue of invoice. In case of failure to pay the consideration, the amount of ITC taken by the recipient would be added to the output tax liability of the said recipient and is required to be paid at the time of filing the Return. Such recipient would also be required to pay interest. However, he can take ITC again on payment of consideration and tax. The time-limit specified in Section 16(4) of CGST Act, 2017 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or these rules, that had been reversed earlier. **(Section 16(4) of CGST Act, 2017)**
- 17.8. In cases where the goods have been delivered to a person other than taxable person (third person) it would be deemed that the registered taxable person has received the goods though the goods have been delivered to a third party on the direction of such taxable person. ITC will be available to the person on whose order the goods are delivered to third person, i.e. the said taxable person. Same is the case with services.

- 17.9. As per Section 16(4) of the CGST Act, 2017, a registered person cannot take ITC in respect of any invoice or debit note for supply of goods or services after 30th November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant Annual Return, whichever is earlier. **(Section 16(4) & 39 of CGST Act, 2017)**
- 17.10. In cases of new registration or where a person shifts from Composition Scheme to regular tax payment or where an exempt supply become taxable, the time-limit for taking ITC is **one year from the date of invoice of inward supplies**.
- 17.11. If the registered taxable person has claimed depreciation on the tax component of the cost of Capital Goods under the provisions of the Income Tax Act, then ITC will not be allowed in such cases.
- 17.12. Section 17(5) of the CGST Act, 2017 prescribes certain input goods and input services on which ITC is not admissible. These input goods and input services are mainly items of personal consumption, inputs used in construction of an immovable property (except plant and machinery), telecommunication towers, pipelines laid outside the factory premises, etc. ITC is also not admissible on taxes paid as a result of detection of evasion of taxes. **(Section 17(5) of CGST Act, 2017)**
- 17.13. ITC is also not admissible on goods lost, stolen, destroyed or written off. In addition, ITC with respect of goods given as gifts or free samples are also not allowed.
- 17.14. A person applying for registration can take input tax credit 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. If the person was liable to take registration and he has applied for registration **within thirty days** from the date on which he became liable to registration, then input tax credit of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date on which he became liable to pay tax can be taken. This is subject to further condition that the invoices pertaining to such inward supplies should not be **more than a year old**.
- Similarly, a taxpayer under Composition Scheme, who on crossing the threshold limit has become a regular taxable person, can avail ITC 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 prescribed percentage points). The manner of calculation of eligible credit is provided in Rule 40 of CGST Rules, 2017. This is subject to further condition that the invoices pertaining to such inward supplies should not be **more than a year old**.
- 17.15. As per the provisions of Section 49 of the CGST Act, 2017, the different amounts of input tax credits available in the electronic credit ledger of the registered person shall be utilized as under:
- Integrated tax shall first be utilised towards payment of Integrated tax and the amount remaining, if any, may be utilised towards the payment of Central tax and State tax or UT tax, in that order;
 - The Central/State/UT tax shall first be utilised towards payment of Central/State/UT tax and the amount remaining, if any, may be utilised towards the payment of Integrated tax;
 - The input tax credit on account of State/UT 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;
 - 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, only after the input tax credit available on account of Integrated tax has first been utilised fully towards such payment.
 - The Central tax shall not be utilised towards payment of State tax. Similarly, State tax shall not be utilized towards payment of Central tax.
- 17.16. If the goods or services or both received by a taxable person are used for effecting both taxable and non-taxable/exempt supplies, the input tax credit of goods or services or both attributable only to taxable supplies can be taken by registered person. The manner of calculation of eligible credit is provided in Rule 42 of the CGST Rules, 2017. **(Rule 42 of CGST Rules, 2017)**

18. INPUT SERVICE DISTRIBUTOR IN GST

- 18.1. Input Service Distributor (ISD) means an office of the supplier of goods or services or both which receives tax invoices 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. Section 20 of the CGST Act, 2017, is the governing provision for the manner of distribution of credit by an ISD. **(Section 20 of CGST Act, 2017)**

- 18.2. An ISD is required to obtain a separate registration. The threshold limit of registration is not applicable to ISD as the purpose of ISD is only distribution of input tax credit to different units of the registered taxable supplier with same PAN number.
- 18.3. The distribution of credit would be done through an Input Service Distributor invoice or Input Service Distributor Credit Note or any document issued by an Input Service Distributor. The said document would contain the amount of input tax credit being distributed.
- 18.4. The input tax credit of input services shall be distributed only amongst those registered persons who have used the input services in the course or furtherance of business.
- 18.5. Distribution of input tax credit would be based on a formula. Firstly, distribution would be done only amongst those recipients of input tax credit to whom the input service being distributed are attributable. Secondly, distribution would be done amongst the operational units only. Thirdly, distribution would be done in the ratio of turnover in a State or Union territory of the recipient during the period for which input service being distributed is attributable. Lastly, the credit distributed should not exceed the credit available for distribution.
- 18.6. ISD is required to file monthly return by **13th of the following month** in [FORM GSTR-6](#).
- 18.7. The distribution is to be made by an ISD as per following criteria:
 - (a) Integrated tax as Integrated tax.
 - (b) Central Tax as Central tax (if the recipient and ISD are located in the same State) and as Integrated tax (if the recipient and ISD are not located in the same State).
 - (c) State tax as State tax (if the recipient and ISD are located in the same State) and as Integrated tax (if the recipient and ISD are not located in the same State).
 - (d) In case of distribution of Central/State tax as Integrated tax, it should be ensured that the amount distributed equals the amount of credit of Central and State Tax put together.
- 18.8. The Input Service Distributor has to separately distribute the amount of ineligible input tax credit and the amount of eligible input tax credit.
- 18.9. The ITC available for distribution by an ISD should be distributed to the recipients in the same month itself.
- 18.10. Vide [Circular No. 199/11/2023-GST dated 17th July, 2023](#) it has been clarified that in respect of common input services procured by the Head Office (HO) from a third party but attributable to both HO and Branch Offices (BO) or exclusively to one or more BOs, HO has an option to distribute ITC in respect of such common input services by following ISD mechanism laid down in Section 20 of CGST Act, 2017 read with Rule 39 of the CGST Rules, 2017. However, as per the present provisions of the CGST Act, 2017 and CGST Rules, 2017, HO can issue tax invoices under Section 31 of CGST Act, 2017 to the concerned BOs in respect of common input services procured from a third party and the BOs can avail ITC on the same subject to the provisions of Section 16 and 17 of CGST Act, 2017. The HO registered as ISD can distribute ITC to BOs in respect of such common input services through the ISD mechanism as per the provisions of Section 20 of CGST Act, 2017 read with Rule 39 of the CGST Rules, 2017.

19. [E WAY BILL](#)

- 19.1. E-way bill ([FORM GST EWB-01](#)) is an electronic document generated on the common portal evidencing movement of goods of consignment value more than Rs. 50,000/- under a single invoice/bill/delivery challan. It is mandatory to generate a E-way bill for transporting goods of value more than Rs. 50,000/-.
- 19.2. E-way bill has two Components –
 - (i) Part A comprising of details of GSTIN of supplier and - recipient, place of dispatch (indicated by PIN code), place of delivery (indicating PIN Code also), document (Tax invoice, Bill of Supply, Delivery Challan or Bill of Entry) number and date, value of goods, HSN code, and reasons for transportation; and
 - (ii) Part B -comprising of transport details - transport document number (Goods Receipt Number or Railway Receipt Number or Airway Bill Number or Bill of Lading Number) and Vehicle number for road.
- 19.3. As per Rule 138 of the CGST Rules, 2017, an e-way bill has to be generated prior to the commencement of movement of goods. However, in respect of the following items/cases the E-way bill is not required to be generated- ([Rule 138 of CGST Rules, 2017](#))
 - (a) Transport of following goods:

S/ No.	Description of Goods
1	Liquefied petroleum gas for supply to household and non-domestic exempted category (NDEC) customers
2	Kerosene oil sold under PDS
3	Postal baggage transported by Department of Posts
4	Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71)*
5	Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71)*
6	Currency
7	Used personal and household effects
8	Coral, un-worked (0508) and worked coral (9601)

***Note** - Rule 138F of CGST Rules, 2017 inserted vide Notification No. 38/2023-CT dated 04.08.2023, prescribes that information is to be furnished in case of intra-State movement of gold, precious stones, etc. and generation of e-way bills where a Commissioner of State Tax or Union Territory Tax mandates furnishing of information regarding intra-State movement of goods specified against serial numbers 4 and 5 of the above table and the consignment value of such goods exceeds such amount, not below Rs. Two Lakhs, as may be notified by the Commissioner of State Tax or Union Territory Tax.

- (b) Goods transported by a non-motorised conveyance;
 - (c) Goods transported from the port, airport, air cargo complex and land customs station to an Inland Container Depot (ICD) or a Container Freight Station (CFS) for clearance by Customs;
 - (d) In respect of movement of goods within such notified areas in SGST or UTGST in the concerned State.
 - (e) Transportation of exempted Goods, other than de-oiled cake, specified in [Notification No. 2/2017- Central Tax \(Rate\) dated the 28th June, 2017](#);
 - (f) The goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel;
 - (g) Goods being transported are treated as no supply under Schedule III of the Act;
 - (h) The goods being transported are- (i) under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or (ii) under customs supervision or under customs seal;
 - (i) The goods being transported are transit cargo from or to Nepal or Bhutan;
 - (j) The goods being transported are exempt from tax under [Notifications No. 7/2017-CT \(Rate\), dated 28-6-2017 and No. 26/2017-CT \(Rate\), dated the 21-9-2017](#);
 - (k) Any movement of goods caused by Defence formation under Ministry of Defence as a consignor or consignee;
 - (l) The consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail;
 - (m) Transport of empty cargo containers;
 - (n) Goods are being transported up to a distance of twenty kilometers from the place of the business of the consignor, to a weighbridge for weighment or from the weighbridge back to the place of the business of the said consignor, subject to the condition that the movement of goods is accompanied by a delivery challan;
 - (o) Movement of empty cylinders for packing of liquefied petroleum gas not involving supply.
- 19.4. An e-way bill contains two parts- Part A to be furnished by the registered person who is causing movement of goods of consignment value exceeding Rs. 50,000/- and Part B (transport details) is to be furnished by the person who is transporting the goods.
- 19.5. If the goods are transported by a registered person- whether as consignor or recipient, the said person will have to generate the e-way bill. Where the e-way is not generated by registered person and the goods are handed over to the transporter for transportation of goods by road, the registered person shall furnish the information relating to the transporter in Part B of [FORM GST EWB-01](#) on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A of [FORM GST EWB-01](#).

- 19.6. Non-issuance of e-way bills will be considered as contravention of Section 68 of the CGST Act, 2017 and Rule 138 of the CGST Rules, 2017 and hence penal provisions provided in Section 122(l)(xiv) of CGST Act, 2017, are attracted and the goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure as per Section 129(1) of CGST Act, 2017. **(Section 68 & 129(1) of CGST Act, 2017 and Rule 138 of CGST Rules, 2017)**
- 19.7. If the goods are supplied by an unregistered supplier to a registered recipient, such recipient shall be liable to generate e-way bill.
- 19.8. In terms of Rule 58 of the CGST Rules, 2017 read with Section 35(2) of the CGST Act, 2017, a transporter and operator of godown or warehouse has to enroll on the common portal by filing **GST ENR-01**. The transporter enrolled in any one State or UT shall be deemed to be enrolled in other States as well. Rule 58 of CGST Rules, 2017 & **(Section 35(2) of CGST Act, 2017)**
- 19.9. If an e-way bill has been generated, but goods are either not being transported or are not being transported as per the details furnished in the e-way bill, the e-way bill can be cancelled electronically on the common portal, within 24 hours of generation of the e-way bill. However, if the e-way has been verified in transit the same cannot be cancelled.
- 19.10. If the goods are transferred from one conveyance to another, the consigner or the recipient, who has provided information in Part-A of the **FORM GST EWB-01**, or the transporter shall, before such transfer and further movement of goods, update the details of conveyance in the e-way bill on the common portal in **FORM GST EWB-01**. Any transporter transferring goods from one conveyance to another in the course of transit shall, before such transfer and further movement of goods, update the details of the conveyance in the e-way bill on the common portal in **FORM GST EWB-01**.
- 19.11. If multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in **FORM GST EWB-02** may be generated by him on the common portal prior to the movement of goods.
- 19.12. The validity of e-way bill is based on distance to be travelled by the goods as mentioned below:

Distance	Validity Period
Up to 100 Km	One day in cases other than Over Dimensional Cargo
For every 100 km or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo
Up to 20 km	One day in case of Over Dimensional Cargo
For every 20 km. or part thereof thereafter	One additional day in case of Over Dimensional Cargo :

- 19.13 The Commissioner or an officer empowered by him may authorise the proper officer to intercept any conveyance to verify the e-way bill or the e-way bill number in physical form for all inter-State and intra-State movement of goods. Physical verification of a specific conveyance can also be carried out by any officer, on receipt of specific information on evasion of tax, after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.

A summary report of every inspection of goods in transit shall be recorded online on the common portal by the proper officer in Part A of **FORM GST EWB-03** **within twenty-four hours** of inspection and the final report in Part B of **FORM GST EWB-03** shall be recorded **within three days** of such inspection. Once physical verification of goods being transported on any conveyance has been done during transit at one place within the State or in any other State, no further physical verification of the said conveyance shall be carried out again in the State, unless a specific information relating to evasion of tax is made available subsequently.

20. CROSS EMPOWERMENT OF OFFICERS OF STATE AND CENTRAL GOVERNMENT UNDER GST

- 20.1 GST is levied concurrently by the Centre as well as the States on supply of goods and/or services. Tax Administration authority is with the Central Government officials as well as with the State Government officials. This duality can result in situations leading to the potential scrutiny of a single transaction or entity by both, Central and State Tax authorities, leading to parallel proceedings. To achieve the goal of a harmonised tax structure, Section 6 of the CGST Act, 2017 provides for cross empowerment of the Central and State Tax officers.
- 20.2 As per Section 6(1) of CGST Act, 2017, the officers appointed under the SGST/UTGST Act are authorised to be the proper officers for the purposes of CGST/IGST Act, subject to conditions specified. Similar provisions in the SGST/UTGST Act empower the Central Government officials to be the proper officers under the SGST/UTGST Act. Since both, the Central and the State Tax authorities can exercise jurisdiction over a taxpayer, Section 6(2)(b) of the CGST Act, 2017 stipulates that where a Proper Officer under the SGST Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the corresponding Proper Officer under the CGST Act, 2017 on the same subject matter. Similar provision is reciprocated in the State/Union Territories GST Laws. **(Section**

6(1) & 6(2)(b) of CGST Act, 2017)

- 20.3. [Notification No. 39/2017-Central Tax, dated 13-10-2017, as amended, and Notification No. 11/2017-Integrated Tax, dated 13-10-2017](#), as amended, provides cross-empowerment to State Tax officers for processing and grant of refund.

21. CENTER AND STATE CO-ORDINATION COMMITTEE

- 21.1 GST Council Secretariat, vide [Office Memorandum dated 19.07.2023 issued under F.No. 820/GRC/GSTC/2019](#), has instructed for creation of State Co-ordination Committee, comprising of the GST Authorities from the State Tax administration and Central Tax administration.
- 21.2. As per the mandate prescribed in the above mentioned Office Memorandum, the Committee shall engage in data sharing, promote coordinated efforts in checking fake ITC cases, curbing tax evasion, referring issues requiring change in Act/Rules/Notification/Form/Circular/Instruction, etc.
- 21.3. The Committee shall meet once every quarter, which shall be followed by the National Co-ordination Committee Meeting.

02 REGISTRATION

1. INTRODUCTION

- 1.1. Registration is the process through which a supplier enters into the GST ecosystem. It is the most fundamental requirement of identification of the business for tax purposes and for monitoring compliance requirements.
- 1.2. The provisions of CGST Act, 2017 and CGST Rules, 2017, relevant to this Chapter are as under –

Sr. No.	Section/Rule	Provision pertaining to
1	Section 2(6)	Definition of Aggregate Turnover
2	Section 2(20)	Definition of Casual Taxable Person
3	Section 2(47)	Definition of Exempt supply
4	Section 2(77)	Definition of Non-resident taxable person
5	Section 2(78)	Definition of Non-taxable Supply
6	Section 2(108)	Definition of Taxable supply
7	Section 7	Scope of supply
8	Section 9	Levy and collection
9	Section 11	Power to grant exemption from tax
10	Section 18(3) and Rule 41	Availability of credit in special circumstances
11	Section 22	Persons liable for registration
12	Section 23	Persons not liable for registration
13	Section 24	Compulsory Registration in certain cases
14	Section 25 and Rule 8	Procedure for registration
15	Rule 9	Verification of application and approval
16	Section 27 and Rule 15	Special provisions relating to casual taxable person and non-resident taxable person
17	Section 28 and Rule 19	Amendment of registration
18	Section 29 and Rule 20	Cancellation or suspension of registration
19	Section 30 and Rule 23	Revocation of cancellation of registration
20	Section 51 and Rule 12	Tax deduction at source
21	Section 52 and Rule 12	Collection of tax at source
22	Rule 21	Registration to be cancelled in certain cases
23	Rule 21A	Suspension of Registration
24	Rule 22	Cancellation of registration
25	Rule 25	Physical verification of business premises of certain cases

- 1.3. The GST law provides a minimum threshold in terms of aggregate turnover on pan India basis below which a supplier is not required to obtain registration. There are different threshold limits for suppliers exclusively supplying goods and for suppliers exclusively providing services or supplying both goods and services. Therefore, the GST law has provisions to ensure that the suppliers crossing the specified turnover threshold obtain registration and pay GST to the exchequer.
- 1.4. The registration in GST is PAN based and State specific. Supplier has to register in each of such State or Union territory from where he effects supply. Area upto 12 nautical miles in the sea is considered part of the nearest coastal State where the nearest point of appropriate base line is located. Area beyond 12 nautical miles and upto 200 nautical miles, which is not covered under any Union Territory is considered as a separate Union territory for the GST law. A person registered in one State is considered 'unregistered person' outside the State.

- 1.5. If a person has unit in SEZ or is a SEZ developer and also unit in domestic tariff Area (i.e. outside the SEZ) in the same State, then he has to take separate registration for his SEZ unit/ SEZ developer and DTA unit as a separate place of business of him.
- 1.6. If a supplier also wants to distribute credit to his same-PAN entities, then he will take separate registration as 'input service distributor' (ISD) in addition to his registration as 'supplier'.
- 1.7. In GST registration, the supplier is allotted a 15-digit GST identification number called Goods and Services Tax Identification Number "(GSTIN)" and a certificate of registration incorporating therein this GSTIN is made available to the applicant on the GSTN common portal. The first 2 digits of the GSTIN is the State code, next 10 digits are the PAN of the legal entity, the next two digits are for entity code, and the last digit is checking code. Registration under GST is not tax specific which means that there is a single registration for all the taxes i.e. CGST, SGST/UTGST, IGST and cesses.
- 1.8. A given PAN based legal entity would have one GSTIN per State, that means a business entity having its branches in multiple States will have to take separate State-wise registration for the branches in different States. But a person having multiple places of business in a State or Union territory may be granted a separate registration for each such place of business.

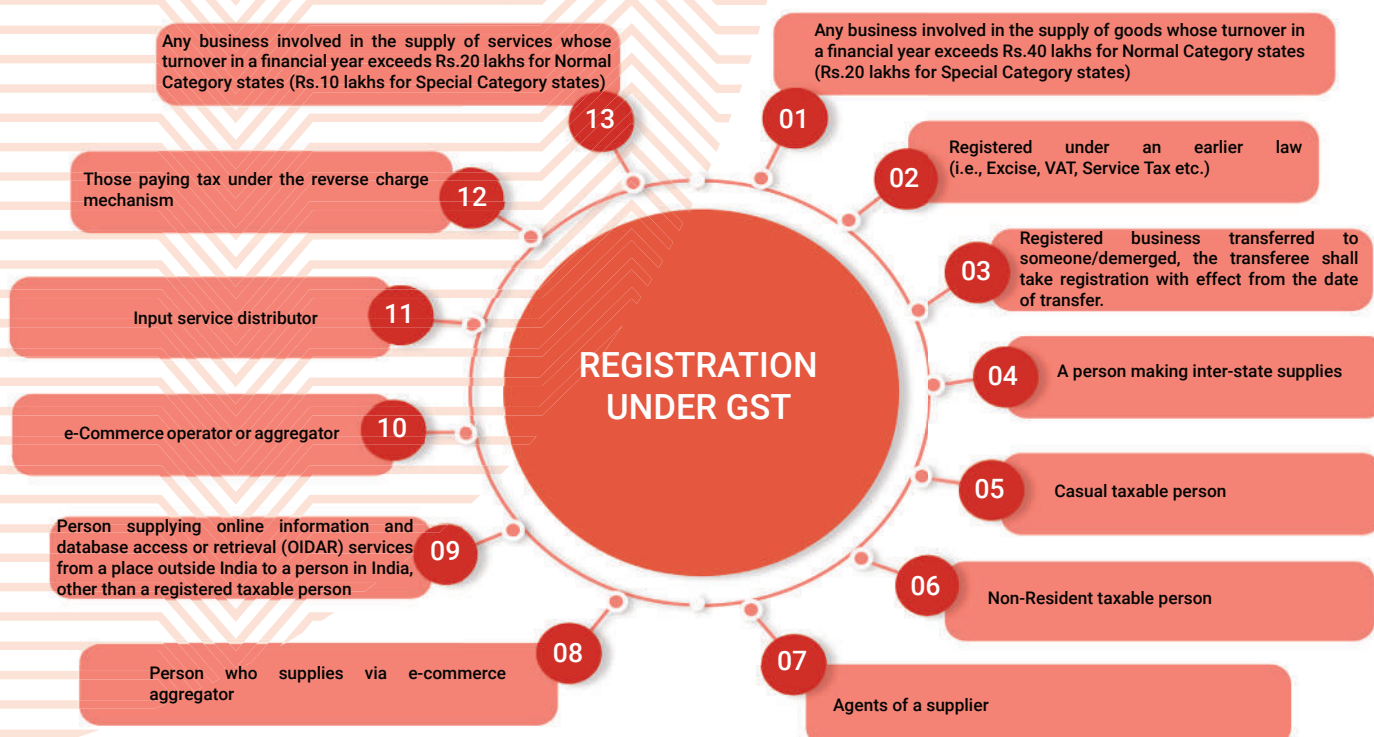
2. PERSON REQUIRED TO TAKE REGISTRATION

- 2.1. GST registration can be obtained voluntarily by any person or entity who is engaged in supply of goods or services or both irrespective of turnover. However, GST registration becomes mandatory if a person or entity supply goods or services or both beyond a certain turnover. Chapter VI of CGST Act, 2017 contains legal provisions related to Registration. The threshold limit for availing exemption from registration is as follows -

Service Providers: Any person or entity engaged in supply of services having aggregate turnover of more than Rs. 20 lakhs in a year is required to obtain GST registration. In special category states, the GST turnover limit for service providers is Rs. 10 lakhs.

Goods Suppliers: Any person who is engaged in the exclusive supply of goods, whose aggregate turnover crosses Rs. 40 lakhs in a year is required to obtain GST registration.

- 2.2. The following categories of persons are required to be registered under the GST Act:-



- 2.3. **Aggregate Turnover:** Aggregate turnover is calculated based on the PAN income. Hence, if one person has multiple places of business in one or more states, the turnover of each place of business must be summed up to arrive at the aggregate turnover on all India basis. Aggregate Turnover has been defined in Section 2(6) of the

CGST Act, 2017. If the aggregate turnover crosses the threshold limit, then registration under GST has to be taken. As per Section 22 of CGST Act, 2017 the aggregate turnover **includes all supplies** made by the taxable person on his own or on behalf of his principles. The following elements are included in the aggregate turnover **(Section 2(6) of CGST Act, 2017) (Section 22 of CGST Act, 2017)**



- 2.3.1. **Taxable Supplies** as per Section 2(108) of the CGST Act, 2017 means a supply of goods or services or both which is leviable to tax under this Act. Activities/transactions undertaken shall be considered as taxable supplies only when such activities/transactions qualify as a “supply” in terms of Section 7 of CGST Act, 2017 and such supplies are chargeable to tax in terms of Section 9 of CGST Act, 2017. **(Section 2(108), 7 & 9 of CGST Act, 2017)**
- 2.3.2. **Exempt supply** as per Section 2(47) of the CGST Act, 2017 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. **(Section 2(47), & 11 of CGST Act, 2017) and (Section 6 of IGST Act, 2017)**
- 2.3.3. **Non-taxable supply** as defined in Section 2(78) of the CGST Act, 2017 means a supply of goods or services or both which is not leviable to tax under the CGST Act, 2017 or under the Integrated Goods and Services Tax Act, i.e., supplies which are not leviable to tax are known as non-taxable supplies. Supplies which are excluded from the charging section i.e. Section 9 of CGST Act, 2017 are to be considered as non-taxable supplies as they are not leviable to tax under this Act. **(Section 2(78) & 9 of CGST Act, 2017)**
- 2.3.4. **Export of goods or services** or both is treated as a zero-rated supply under GST. Export of goods means taking goods out of India to a place outside India. Export of services means the supply of any service when-
- (i) the supplier of service is located in India;
 - (ii) the recipient of service is located outside India;
 - (iii) the place of supply of service is outside India;
 - (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
 - (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8 of Integrated Goods And Services Tax Act (IGST), 2017.

- 2.3.5. **Inter-State supplies to persons having same PAN.** This covers the supply of goods or supply of services or

both to persons located in other States/Union Territories but are under the same legal entity. These are taxable supplies under GST and are liable to tax even if such supplies are made without consideration.

3. Compulsory Registration under GST

- 3.1 The GST law enlists certain categories of suppliers who are required to get compulsory registration irrespective of their turnover that is to say, the specified threshold exemption limit is not available to them. Section 24 of CGST Act, 2017 makes it mandatory for certain type of persons to obtain registration irrespective of their turnover. They are: - **(Section 24 of CGST Act, 2017)**

- (a) **Supplier of inter-state supply:** 'Inter-state supply' means the location of the supplier and the place of supply are in different States or different territories. Persons engaged in such supplies shall be covered under compulsory registration criteria and they have to take GST number before making inter-state supplies.

Exceptions - Any person making the following inter-state supplies shall not be covered under compulsory registration eligibility criteria:

- Inter-state supply of services where the aggregate value of such supplies is not exceeding the exemption limit.
- Inter-state supply of hand-crafted goods, the aggregate value of such supplies does not exceed the exemption limit
- Job-workers having a turnover of less than the exemption limit. This clause shall not be applicable to jewellery, goldsmiths, and silversmith's wares, and other articles manufactured on a job work basis.

- (b) **Casual Taxable Person:** 'Casual taxable person' is defined under Section 2(20) of CGST Act, 2017 and it includes 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. GST registration is compulsory under Section 24 of the CGST Act for a Casual Taxable Person (CTP) before supplying goods or services in the taxable territory. However, CTP is exempted from this requirement if he is engaged in the supply of handicraft goods and the aggregate turnover of such supplies does not cross the GST threshold. **(Section 2(20) & 24 of CGST Act, 2017)**

- (c) **Taxpayer under Reverse Charge Mechanism:** Under the reverse charge mechanism (RCM), the recipient of goods or services is liable to pay tax and all provisions of GST law shall be applicable to him. It is compulsory to get registered under GST law for a person, who is liable to pay tax under the reverse charge mechanism (RCM).

- (d) **Non-resident taxable person:** "Non-resident taxable person" is defined under Section 2(77) of the CGST Act 2017. "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. **(Section 2(77) of CGST Act, 2017)**

Registration under the GST is compulsory for the Non-resident taxable person if he is engaged in any kind of taxable supply in the taxable territory. Every Non-Resident Taxable Person (NRTTP), whether an individual or company, making taxable supplies in India has to register under the GST regime irrespective of the frequency and amount of the transaction.

- (e) **E-Commerce Operator:** Electronic Commerce Operator means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce. Hence, a person who is providing a platform for others to sell goods or services is considered an e-commerce operator. Main examples of such operators selling goods are Amazon, Flipkart etc. and operators selling services are Uber, Ola, Swiggy etc.

Registration under the Goods and Service Tax Act is compulsory for the e-commerce operator if he is engaged in any kind of taxable supply in the taxable territory.

- (f) **Supplier of OIDAR Services:** Online Information and Database Access or Retrieval services (OIDAR) is a category of services provided through the medium of internet and received by the recipient online

without having any physical interface with the supplier of such services, for example, downloading of an e-book online for a payment. The IGST Act defines OIDAR to mean services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply impossible to ensure in the absence of information technology. For example, advertisement on the Internet, providing cloud services, online supply of digital content (movies, television shows, music and the like); provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet; providing data or information, retrievable or otherwise, to any person in electronic form through a computer network; digital data storage; online gaming, excluding the online money gaming as defined in clause (80B) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017); etc.

Registration under the Goods and Service Tax Act, 2017 is compulsory for the supplier of OIDAR Services.

- (g) Persons who are required to deduct tax (TDS) under Section 51 of the CGST Act, 2017 whether or not separately registered under this Act; **(Section 51 of CGST Act, 2017)**
- (h) Persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;
- (i) Input Service Distributor (ISD), whether or not separately registered under the CGST Act, 2017;
- (j) Persons who supply goods or services or both, other than supplies specified under sub-section (5) of Section 9, through such electronic commerce operator who is required to collect tax at source under Section 52; **(Section 9(5) & 52 of CGST Act, 2017)**
- (k) Every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person;
- (l) Every person supplying online money gaming from a place outside India to a person in India;
- (m) Such other person or class of persons as may be notified by the Government on the recommendations of the Council.

4. PERSONS NOT LIABLE FOR REGISTRATION

As per Section 23 of the CGST Act, 2017, persons who are engaged in supplying goods or services or both that are not liable to tax or wholly exempted from tax, are not required to obtain GST Registration. The following kind of persons are exempted from GST Registration **(Section 23 of CGST Act, 2017):** -

- (i) Small businesses having all India aggregate turnover below Rupees 40 Lakhs, in case of supply of goods (Rupees 20 lakhs if business is in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura and Uttarakhand) and Rupees 20 lakhs, in case of supply of services or in case of mixed supplies (Rupees 10 lakh if business is in States of Manipur, Mizoram, Nagaland and Tripura) need not register. The small businesses, having turnover below the threshold limit can, however, voluntarily opt to register. **(Section 22 of the CGST Act, 2017)**
- (ii) Persons who are engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax or an agriculturist, to the extent of supply of produce out of cultivation of land are not liable to register under GST. (Section 23 of the CGST Act, 2017)
- (iii) In case the supplies being made by a supplier are taxable under reverse charge, there is no requirement for such a supplier to register in light of **Notification No. 5/2017-Central Tax dated 19.06.2017.**
- (iv) Supplier of handicraft goods will not be required to register, if the turnover of the handicraft supplier is less than specified threshold limit, making inter-state supply. They will also not be required to obtain registration as a casual taxable person in other States for making supply of the handicraft goods.
- (v) Small suppliers of services, including job workers (except in relation to jewellery, goldsmiths' and silversmiths' wares) whose aggregate turnover is less than Rupees 20/10 lakhs limit are exempted from registration, even if they supply services outside the State.

- (vi) Supplier of services making inter-state supplies, whose aggregate turnover is less than Rupees 20 lakhs (10 lakh limit in case of specified states) are exempted from registration. ([Notification No. 10/2017-Integrated Tax dated 13.10.2017](#), as amended by [Notification No. 3/2019-Integrated Tax dated 29.01.2019](#))
- (vii) Furthermore, persons supplying services through e-commerce operators are not required to register under GST if their aggregate turnover is less than Rs. 20 lakhs per annum (Rs. 10 lakhs in case of specified states) subject to the conditions mentioned in [Notification No. 34/2023- Central Tax dated 31.07.2023](#).

5. **PROCEDURE FOR REGISTRATION**

- 5.1. Any person can apply for GST Registration in [FORM GST REG-01](#) in every State or Union territory in which he is liable, **within thirty days** from the date on which he becomes liable to registration. The applicant has to declare his Permanent Account Number (PAN), mobile number, e-mail address and place of registration in Part A of Form GST REG-01 at the GST common portal and on successful verification, a Temporary Reference Number (TRN) is generated. **Using the Temporary Reference Number (TRN), the applicant has to submit an application in Part B of Form GST REG-01 with required documents at the common portal duly signed and verified with Digital Signature. The proper officer at Central Processing Cell (CPC) examines the application and the documents and if the same are found to be in order, shall approve the grant of registration to the applicant.** While examining, if the officer requires any additional information/ document/ clarification, notice in [Form GST REG-03](#) will be issued. On verification, the proper officer shall issue certificate of registration in [Form GST REG-06](#).
- 5.2. A total of 31 forms/ formats have been prescribed in the GST Rules, for every process in the registration chain such as application for registration, acknowledgment, query, rejection, registration certificate, show cause notice for cancellation, reply, cancellation, amendment, field visit report etc., which are standard formats. Strict timelines have been stipulated for completion of different stages of registration process. (**Rule 8 of CGST Rules, 2017**)
- 5.3. In accordance with the provisions of Section 25 of CGST Act, 2017 read with Rule 8 of CGST Rules, 2017 an application in [FORM GST REG-01](#) has to be submitted online through the common portal Goods and Services Tax Network (GSTN) within thirty days from the date when liability to register arose. The casual and non-resident taxable persons need to apply at least five days prior to the commencement of the business. (**Section 25 of CGST Act, 2017**)
- 5.4. A transferee or the successor of a business on-going concern basis shall be liable to be registered with effect from the date of such transfer or succession. In a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or demerger of two or more companies by an order of a High Court, the transferee shall be liable to be registered with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court. This means that the Registration Certificate issued to a person is not transferable to any other person. (**Rule 9 of CGST Rules, 2017**) (**Section 27 of CGST Act, 2017**)
- 5.5. The proper officer shall examine the application and the accompanying documents and if the same are found to be in order, approves the grant of registration to the applicant **within a period of seven working days** from the date of submission of the application as per Rule 9 of CGST Rules, 2017. A person applying for registration as a casual taxable person shall be given a temporary reference number by the common portal for making advance deposit of tax in accordance with the provisions of Section 27. An acknowledgement shall be issued electronically to the applicant in [FORM GST REG-02](#) only after the said deposit.
- 5.6. Where the application is found to be deficient, or where the Proper Officer requires any clarification, Proper Officer may issue a notice in [FORM GST REG-03](#) **within a period of seven working days** from the date of submission of the application as per Rule 9(2) of CGST Rules, 2017 and the applicant shall furnish such clarification, information or documents electronically, in [FORM GST REG-04](#), **within a period of seven working days** from the date of the receipt of such notice as per Rule 9(4) of CGST Rules, 2017. (**Rule 9(2), 9(4) of CGST Rules, 2017**)
- 5.7. However, if the applicant fails to undergo authentication of Aadhaar number or does not opt for authentication of Aadhaar number; or having undergone authentication of Aadhaar, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or the Proper Officer deems it fit to carry out physical verification of places of business, the notice in [FORM GST REG-03](#) may be issued not later than thirty days from the date of submission of the application as per Rule 9(2) of CGST Rules, 2017. (**Rule 9(2) of CGST Rules, 2017**)
- 5.8. The provisions of Aadhaar authentication are not applicable to a person who is:
 - (a) not a citizen of India; or

- (b) a department or establishment of Central or State Government; or
 - (c) a local authority; or
 - (d) a statutory body; or
 - (e) a PSU; or
 - (f) a person applying for registration under Section 25 (9) of the CGST Act, 2017. **(Section 25(9) of CGST Act, 2017)**
- 5.9. Where the Proper Officer is satisfied with the clarification, information or documents furnished by the applicant, he may approve the grant of registration to the applicant **within a period of seven working days** from the date of the receipt of such clarification or information or documents as per Rule 9(3) of CGST Rules, 2017. **(Rule 9(3) of CGST Rules, 2017)**
- 5.10. Where no reply is furnished by the applicant in response to the notice or where the Proper Officer is not satisfied with the clarification, information or documents furnished, he may for reasons to be recorded in writing, reject such application and inform the applicant electronically in FORM GST REG-05 as per Rule 9(4) of CGST Rules, 2017. **(Rule 9(4) of CGST Rules, 2017)**
- 5.11. If the Proper Officer fails to take any action within the aforementioned timelines, the application for grant of registration shall be deemed to have been approved as per Rule 9(5) of CGST Rules, 2017. **(Rule 9(5) of CGST Rules, 2017)**
- 5.12. **Physical verification (PV) in connection with registration:** Where the proper officer is satisfied that the physical verification of the place of business of a person is required after the grant of registration, he may get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal **within a period of fifteen working days** following the date of such verification as per Rule 25 of CGST Rules, 2017. **(Rule 25 of CGST Rules, 2017)**
- 5.13. Where the application for grant of registration has been approved under Rule 9 of CGST Rules, 2017, a certificate of registration in FORM GST REG-06 showing the principal place of business and additional place or places of business shall be made available to the applicant on the common portal and a Goods and Services Tax Identification Number (GSTIN) shall be assigned. **(Rule 9 of CGST Rules, 2017)**
- 5.14. Any person required to deduct tax in accordance with the provisions of Section 51 of the CGST Act, 2017 or collect tax at source in accordance with the provisions of Section 52 of the CGST Act shall electronically submit an application, duly signed or verified through electronic verification code, in form GST REG-07 for grant of registration as per Rule 12(1) of CGST Rules. **(Section 51 & 52 of CGST Act, 2017) (Rule 12(1) of CGST Rules, 2017)**
- 5.15. When the proper officer is satisfied that the TDS deductor/ TCS collector is no longer liable to deduct TDS or TCS, then the proper officer may cancel the GST registration and inform the same to the TDS deductor/ TCS collector in Form GST REG-08 as per Section 52 of CGST Act, 2017. **(Section 52 of CGST Act, 2017)**
- 5.16. As per Section 24 of the Central Goods and Services Tax Act, 2017, any non-resident taxable person engaged in providing taxable supply is compulsorily required to obtain GST registration. In order to obtain GST registration, the non-resident taxable person is required to electronically file an application in Form GST REG-09. **(Section 24 of CGST Act, 2017)**
- 5.17. As per Section 24 of the CGST Act, 2017 the person engaged in supplying 'online information and database access or retrieval services' to obtain compulsory registration, when the services are supplied from a place outside India to a person in India (other than a registered person). Such a person can obtain GST registration by filing an application in Form GST REG-10.
- 5.18. The casual taxable person and/or a non-resident taxable person willing to extend his GST registration is required to file an application in Form GST REG-11 as per Rule 15 of the CGST Rules, 2017. **(Rule 15 of the CGST Rule, 2017)**

6. AMENDMENT OF REGISTRATION

- 6.1 Every registered person and a person to whom UIN has been granted shall inform the proper officer of any changes in the information furnished at the time of registration, as prescribed as per Section 28(1) of CGST Act, 2017. **(Section 28(1) of CGST Act, 2017)**
- 6.2 If there is any change in any of the particulars furnished in the application for registration in form GST REG-01 or form GST REG-07 or form GST REG-09 or form GST REG-10 or for UID in form GST REG-13, the registered person shall, **within fifteen days** of such change, submit an application, duly signed or verified electronically in form GST REG-14, along with documents relating to such change as per Rule 19(l)(a) of CGST Rules, 2017. **(Rule 19(1)(a) of CGST Rules, 2017)**

7. APPLICATION FOR CANCELLATION OF REGISTRATION

- 7.1 The applicant shall apply for cancellation of registration electronically in FORM GST REG-16 and shall furnish the details of inputs, inputs contained in semi-finished or finished goods and of capital goods held in stock on the date from which cancellation of registration is sought and liability thereon.
- 7.2 The applicant shall also furnish details of the payment against such liability. Application should be submitted **within thirty days** of occurrence of the event warranting cancellation, either directly or through a Facilitation Centre as per Rule 20 of CGST Rules, 2017. **(Rule 20 of CGST Rules, 2017)**
- 7.3 In case of death of sole proprietor, application for cancellation of registration shall be made by legal heir/successor in FORM GST REG-16.
- 7.4 CBIC Circular No. 96/15/2019-GST dated 28-3-2019 states that the transfer or change of ownership of business will include transfer or change in ownership of business due to death of sole proprietor.
- 7.5 If the legal heirs continue the business, it will be considered as transfer of business. Credit shall be allowed to be transferred as per Section 18(3) of CGST Act, 2017 read with Rule 41 of CGST Rules, 2017. The registered person shall file FORM GST ITC-02 in respect of registration which is required to be cancelled. Form GST ITC-02 should be filed before filing application for cancellation of registration. On acceptance by transferee/ successor, unutilized ITC as specified in form GST ITC-02 shall be credited to electronic credit ledger of transferee. The transferee is liable to pay tax, interest and penalties of the deceased person, as per Sections 85(1) and 93(1) of CGST Act, 2017. **(Rule 41 of CGST Rules, 2017) (Section 18(3), 85(1) & 93(1) of CGST Act, 2017)**

8. CANCELLATION OF REGISTRATION

- 8.1 The proper officer may, either on his own motion or on an application filed by registered person or his legal heir (in case of death of such person) may cancel the registration as per Section 29 of CGST Act, 2017. The proper officer will have regard to the following, while cancelling registration- **(Section 29 CGST Act, 2017)**
- whether the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or
 - whether there is any change in the constitution of the business; or
 - where the taxable person is no longer liable to be registered under Section 22 or Section 24 of the CGST Act, 2017 or intends to opt out of the registration voluntarily made under Section 25 [voluntary registration]. **(Section 22, 24, 25 of CGST Act, 2017)**
- 8.2 Superintendent of Central Tax has been specified as 'proper officer' for this purpose.
- 8.3 No cancellation of registration if all dues paid- If a taxable person files earlier returns with late fee, pay taxes and other dues, the proper officer shall drop the proceedings of cancellation of registration and pass an order in FORM GST REG-20 as per provisions of Rule 22(4) of CGST Rules, 2017. **(Rule 22(4) of CGST Rules, 2017)**
- 8.4 CBIC vide Circular No. 69/43/2018-GST dated 26.10.2018 has issued clarifications with regard to processing of the application for cancellation in FORM GST REG-16.

9. SUSPENSION OF REGISTRATION PENDING CANCELLATION

- 9.1 **Where** a registered person has applied for cancellation of registration under Rule 20 of CGST Rules, 2017 the registration shall be deemed to be suspended from the date of submission of the application or the date from which the cancellation is sought, whichever is later, pending the completion of proceedings for cancellation of registration under Rule 22 and Rule 21 of CGST Rules, 2017. **(Rule 20, 21, 22 of CGST Rules, 2017)**
- 9.2 Once application for cancellation of registration is filed, no return is to be filed, except final return in FORM GSTR-10, as per [CBIC Circular No. 69/43/2018-GST dated 26.10.2018](#).
- 9.3 A registered person, whose registration has been suspended shall not be granted any refund under Section 54 of CGST Act, 2017 during the period of suspension of his registration. **(Section 54 of CGST Act, 2017)**
- 9.4 **Revocation of suspension** - The suspension of registration shall be deemed to be revoked upon completion of the proceedings by the proper officer under Rule 23 of CGST Rules, 2017 and such revocation shall be effective from the date on which the suspension had come into effect. The suspension of registration under this rule may be revoked by the proper officer, anytime during the pendency of the proceedings for cancellation, if he deems fit. **(Rule 23 of CGST Rules, 2017)**

10. SUO MOTO CANCELLATION OF REGISTRATION UNDER GST BY PROPER OFFICER

- 10.1 The proper officer may cancel the registration of taxable person from such date, including any retrospective date, as he may deem fit, where,-
- the registered taxable person has contravened the provisions of the Act or the rules made thereunder, as may be prescribed; or
 - a person paying tax under Section 10 [Composition Scheme] has not furnished the return for a financial year beyond three months from the due date of furnishing the said return; or **(Section 10, 25(3) & 29(2) of CGST Act, 2017)**
 - any taxable person, other than a person under a Composition Scheme, who has not furnished **returns for continuous period of six months**.
 - any person who has taken voluntary registration under Section 25(3) of the CGST Act, 2017 has not commenced business **within six months** from the date of registration; or
 - registration has been obtained by means of fraud, wilful misstatement or suppression of facts as per Section 29(2) of CGST Act, 2017.
- 10.2 Superintendent of Central Tax has been specified as 'proper officer' for this purpose vide CBEC [Circular No. 1/1/2017, dated 26.06.2017](#) and can suspend the registration as per Section 29(2) of CGST Act, 2017.
- 10.3 **Opportunity of hearing before cancellation of registration** - The proper officer shall not cancel the registration without granting the person an opportunity of being heard as per Section 29(2) of CGST Act, 2017.
- 10.4 **Procedure for Suo moto cancellation of registration** - If the proper officer has reasons to believe that the registration of a person is liable to be cancelled under Section 29, he shall issue a notice to such person in [FORM GST REG-17](#), requiring him to show cause **within seven working days** from the date of service of such notice as to why his registration should not be cancelled as per Rule 22(1) of CGST Rules, 2017. **(Section 29 of CGST Act, 2017) (Rule 22(1) of CGST Rules, 2017)**
- 10.5 The reply to the show cause notice issued shall be furnished in [FORM GST REG-18](#) **within seven days** as per Rule 22(2) of CGST Rules, 2017. The proper officer shall drop the proceedings, if the reply is found to be satisfactory and pass an order in [FORM GST REG-20](#) as per Rule 22(4) of CGST Rules, 2017. **(Rule 22(2), (4) of CGST Rules, 2017)**

11. FINAL ORDER OF CANCELLATION OF REGISTRATION

- 11.1 If a person, who has submitted an application for cancellation of his registration, is no longer liable to be registered or his registration is liable to be cancelled, the proper officer shall issue an order in [FORM GST REG-19](#),

within a period of thirty days from the date of application or the date of the reply to the show cause issued under Rule 22 or Rule 21 of CGST Rules, 2017 to cancel the registration. The proper officer shall determine effective date of cancellation of registration and notify the taxable person, directing him to pay arrears of any tax, interest or penalty including the amount liable to be paid under Section 29(5) of CGST Act, 2017 and Rule 22(3) of CGST Rules, 2017. **(Rule 20,21, 22, of CGST Act, 2017)**

- 11.2 Standard Operating Procedure for cancellation of registration has been specified in CBIC [Circular No. 69/43/2018-GST dated 26-10-2018](#). Once application for cancellation is filed, it is not necessary to file any return, except final return in form GSTR-10 as specified in CBIC [Circular No. 88/07/2019- GST dated 1-2-2019](#).

12. Revocation of Cancellation of Registration

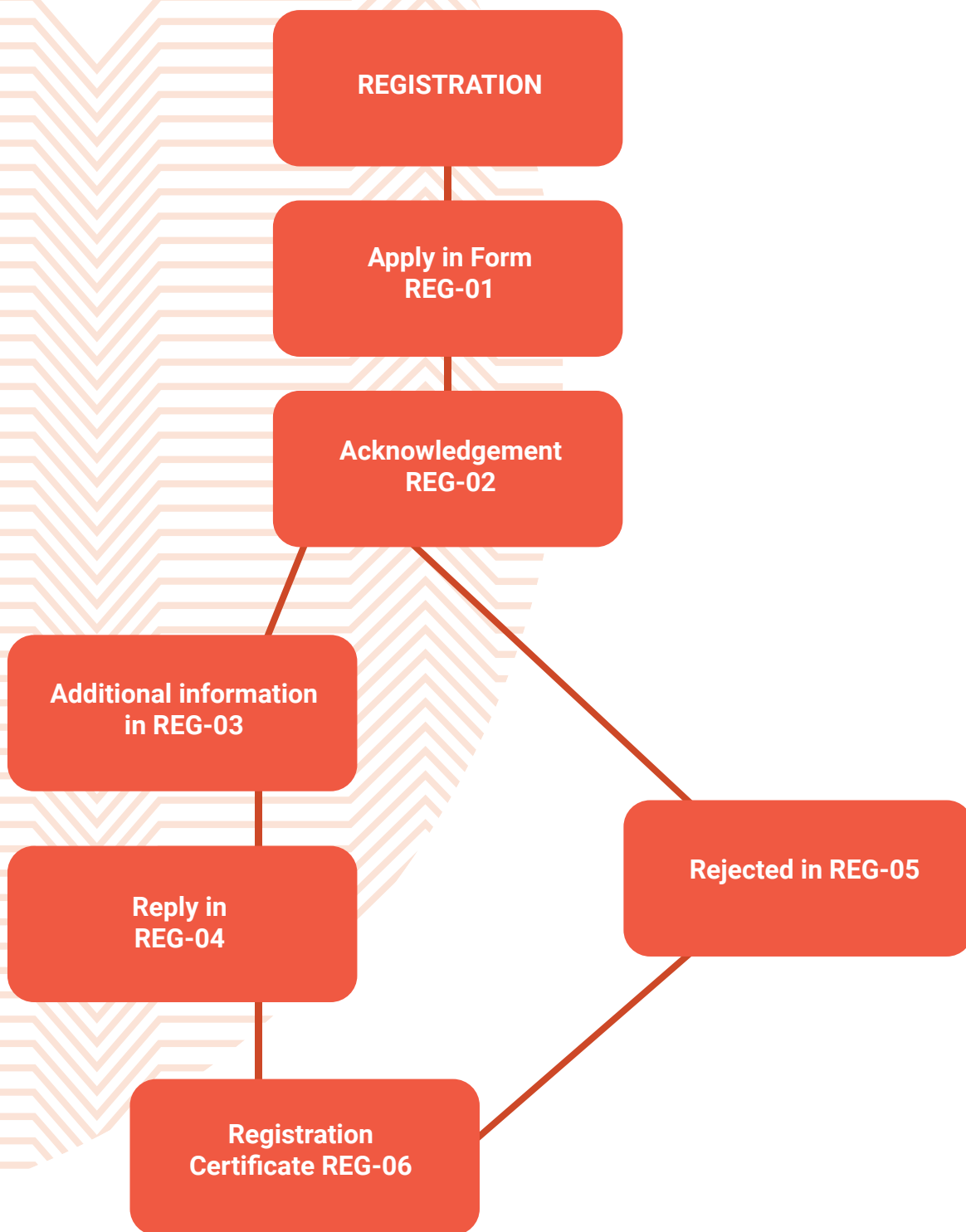
- 12.1 If registration is cancelled under Section 29 of CGST Act, 2017 read with Rule 21 of CGST Rules, 2017 but if person is continuing to carry on business, he should apply for revocation of cancellation of registration under Section 30 of CGST Act, 2017 read with Rule 23 of CGST Rules, 2017. He should not apply for fresh registration under CGST Act, 2017 as he may be having tax liability under earlier cancelled registration. **(Section 29, & 30 of CGST Act, 2017) (Rule 21, 23 of CGST Rules,2017)**
- 12.2 When the registration has been cancelled by the Proper Officer (Superintendent of Central Tax) on his own motion and not on the basis of an application, then the registered person, whose registration has been cancelled, can submit an application for revocation of cancellation of registration, in [FORM GST REG-21](#), to the Proper Officer (Assistant or Deputy Commissioners of Central Tax), **within a period of thirty days** from the date of the service of the order of cancellation of registration at the common portal.
- 12.3 However, if the registration has been cancelled for failure to furnish returns, application for revocation shall be filed, only after such returns are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, penalty and late fee in respect of the said returns.
- 12.4 On examination of the application if the Proper Officer is satisfied, for reasons to be recorded in writing, that there are sufficient grounds for revocation of cancellation of registration, then he shall revoke the cancellation of registration by an order in [FORM GST REG-22](#) **within a period of thirty days** from the date of the receipt of the application and communicate the same to the applicant.
- 12.5 However, if on examination of the application for revocation, if the Proper Officer is not satisfied then he will issue a notice in [FORM GST REG-23](#) requiring the applicant to show cause as to why the application submitted for revocation should not be rejected and the applicant has to furnish the reply **within a period of seven working days** from the date of the service of the notice in [FORM GST REG-24](#).
- 12.6 Upon receipt of the information or clarification, the Proper Officer shall dispose of the application **within a period of thirty days** from the date of the receipt of such information or clarification from the applicant. In case the information or clarification provided is satisfactory, the Proper Officer shall revoke the cancellation. In case, it is not satisfactory, the applicant will be mandatorily given an opportunity of being heard, after which the Proper Officer reject the application for revocation of cancellation of registration and communicate the same to the applicant.

13. FUNCTIONS OF CENTRAL PROCESSING CELL OFFICERS

- 13.1 The registration applications filed at the GST common portal (GSTN) are forwarded to the Central and State tax authorities as per GST Law and defined algorithms. **The applications will be routed to the concerned CPC zone based on the address of the principal place of business.**
- 13.2 **The CPC officer views the application falling under category either 'With PV or 'without PV'**. If the Aadhar has not been authenticated while filing for registration then the application will land on the dashboard under category 'with PV'. Even, if the Aadhar has been authenticated, based on data analysis and risk parameters, certain applications will land on the CPC dashboard under category 'with PV'.
- 13.3 CPC views the attached documents and can either approve or raise query **within 7 working days** (if application falling under 'without PV' category). If no response to query is received **within next 7 working days** or the response to query is not satisfactory, the officer can reject the application. In other cases, CPC verifies the attached documents and can either approve or raise query **within 30 days** (if application falling under 'with PV' category). If no response to query is received **within next 7 working days** or the response to query is not satisfactory, the officer can reject the application.

- 13.4 Registration application sent to Divisional AC/DC for physical verification. If the physical verification report is not sent to CPC within thirty days from the date of submission of the application so as the notice in [FORM GST REG-03](#) may be issued not later than thirty days from the date of submission of the application, it will get deemed approved. A detailed [Standard Operating Procedure dated 27.11.2020](#) has been issued by GST Policy Wing for verification of taxpayers granted deemed registration.
- 13.5 In terms of Rule 25 of CGST Rules, 2017, when the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication or due to not opting for Aadhaar authentication before the grant of registration, or due to any other reason after the grant of registration, he may get such verification of the place of business, in the presence of the said person, done and the verification report along with the other documents, including photographs, shall be uploaded in [FORM GST REG-30](#) on the common portal **within a period of fifteen working days** following the date of such verification. (**Rule 25 of CGST Rules, 2017**)
- 13.6 **Physical verification of business premises in certain cases –**
- (i) The Physical Verification is carried out by the Inspector/ Superintendent at Division Level. The CBIC notified the Standard Operating Procedure (SOP) for verification of taxpayers granted deemed registration vide [Instruction No. 4/3/2020-GST](#) dated 27.11.2020. After the completion of Physical Verification, the officer has to submit the Visit Report and on the basis of the same the Superintendent shall submit the Physical Verification report in [FORM GST REG-30](#) along with recommendation to CPC for further processing of registration.
 - (ii) The said Inspector/ Superintendent conduct physical verification of the principal place of business and wherever possible, additional place of business, indicated in GST registration FORM REG-01 of the concerned registrant. During the physical verification, the officer, among other things, would also verify the following details:
 - (a) In case the applicant intends to carry out manufacturing activity, whether capital goods, if required for the said manufacturing activity, have been installed.
 - (b) Electricity connection, bills paid in the relevant period.
 - (c) Size of the premises – whether it is commensurate with the activity to be carried out by the applicant.
 - (d) Whether premises is self-owned or is rented and documents relating to ownership/ registered lease of the said property. In case of doubt, enquiry may also be made from the landlord/ owner of the property in case of rented / leased premises.
 - (e) No. of employees already employed and record of their employment.
 - (f) Aadhaar and PAN of the applicant and its Proprietor, Partners, Karta, Directors as the case may be and the authorised signatories.
 - (g) Bank's letter for up-to-date KYC.
 - (iii) In addition to the physical verification conducted, the said Inspector/ Superintendent, in the interest of revenue, would carry out the preliminary financial verification of the registrants by seeking the following documents and carrying out its scrutiny:
 - (a) ITRs of the company / LLP from the date of incorporation or for last three financial years, whichever is less. ITRs of proprietor, partners, Karta, etc. may be taken in other cases.
 - (b) The status of activity from the date of registration of all the bank account(s) linked to registration; the same may be taken through a letter / undertaking from the applicant. Phone number declared / linked to each of the bank accounts may also be obtained.
 - (c) Quantum of capital employed/proposed to be employed.

- (d) Out of the amount mentioned at (c) above: (i) Own Funds: (ii) Loan Funds: (indicate the names, complete address, PAN and amount borrowed from each such lender separately):
- (e) In case of own funds, also check the audited balance sheet for previous financial year, where available, in addition to the Income Tax Returns mentioned in (a) above.
- (f) In case of loan funds check the proposal submitted to the Bank/FI for approval of the loan and the maximum permissible bank finance as per such proposal, where the amount is proposed.



03 RETURNS & SCRUTINY THEREOF

1. INTRODUCTION

- 1.1 In every taxation system the liability of tax payable by a person has to be determined and assessed. The GST law provides for various kinds of assessment. Self-assessment of the tax liability is one of them. Every registered taxable person is required to himself assess his liability of taxes payable and furnish a return for each tax period.
- 1.2 The provisions of CGST Act, 2017 and CGST Rules, 2017 relevant to this Chapter are as under –

Sr. No.	Section/Rule	Provision pertaining to
1	Section 37 and Rule 59	Furnishing details of outward supplies
2	Section 38 and Rule 60	Furnishing details of inward supplies
3	Section 39 and Rule 61	Furnishing of returns
4	Section 10	Annual return filed by Composition Scheme taxpayers
5	Section 40	First return
6	Section 44 and Rule 80	Filing annual returns
7	Section 45 and Rule 81	Filing of return by taxpayers whose registration is cancelled
8	Section 46 and Rule 68	Notice to return defaulters
9	Section 47	Levy of late fee
10	Section 50	Interest on delayed payment of tax
11	Section 61	Scrutiny of returns
12	Section 62	Assessment of Non-Filers of returns
13	Section 83	Provisional attachment to protect revenue in certain cases
14	Rule 63	Submission of return by non-resident taxable person
15	Rule 64	Submission of return by persons providing online information and data-base access or retrieval services
16	Rule 65	Submission of return by Input Service Distributor
17	Rule 67	Form and manner of submission of statement of supplies through an e-commerce operator
18	Rule 67A	Manner of furnishing of return or details of outward supplies by SMS facility
19	Rule 68	Notice to Non-Filer
20	Section 125	Delay in filing GSTR-9C attracts general penalty
21	Rule 82	Details of inward supplies of persons having UIN
22	Rule 99	Scrutiny of returns

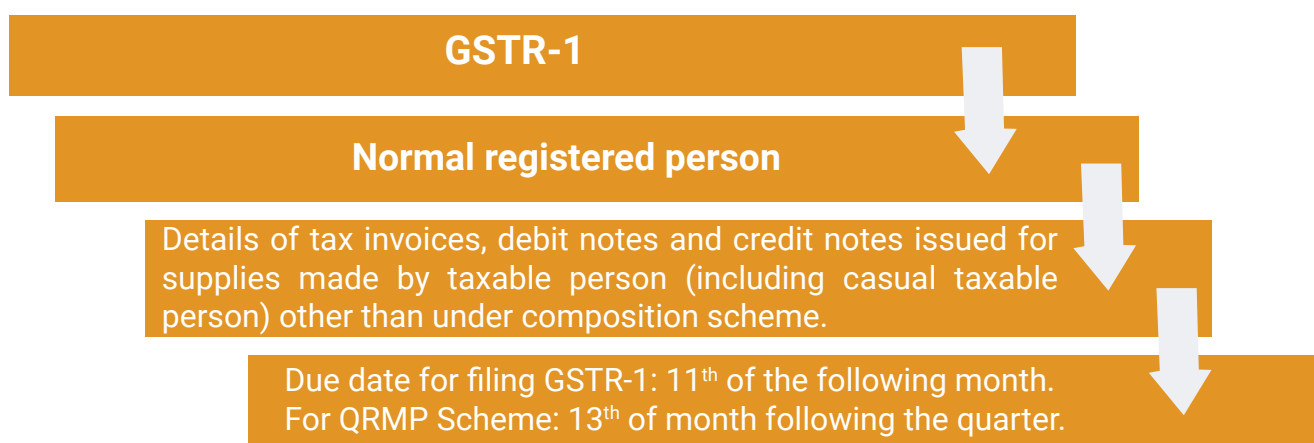
- 1.3 A GST return is a document containing details of all purchases, sales, taxes paid on purchases (input tax) and taxes collected on sales (output tax). A GST Taxpayer (every taxpayer holding GSTIN) is required to file the return electronically on the GST Common Portal. Return is the basis for assessment and an important aspect under GST law, as all control over the tax paid and input tax credit availed is on the basis of return filed by the Taxpayer.
- 1.4 There are a whole lot of activities that form a part of the process of Returns under GST. These include:
- Filing different types of GST returns electronically.
 - Uploading invoice wise details.

- Auto-population of details with regards to input tax credit from returns filed by suppliers to return filed by recipients.
- Matching of invoice information.
- Automatic reversal of ITC in the event of mismatch of the invoice information.

- 1.5 The returns filed by the Taxpayer are scrutinised by the proper officer to verify the correctness of the tax liability discharged on the supplies made by such Taxpayer. If any discrepancies are observed, then the officer may ask for an explanation from the Taxpayer and if the explanation is not found satisfactory then he may initiate further proceedings, as provided under the CGST Act, 2017 and the rules made thereunder for recovery of the tax short-paid or not paid or input tax credit wrongly availed.
- 1.6 In GST the basic features of the return mechanism includes electronic filing of returns, uploading of invoice level information, auto-population of information relating to input tax credit from returns of supplier to that of recipient, invoice level information matching and auto-reversal of input tax credit in case of mismatch. The returns mechanism is designed to assist the taxpayer to file returns and avail ITC.
- 1.7 The provisions under Section 37 to Section 40 of the CGST Act, 2017 stipulate the various types of Returns to be filed under the GST law. The type (Form) and manner of furnishing the returns by various class of Taxpayers is provided under Rule 59 to 67A of the CGST Rules, 2017.
- 1.8 A regular Taxpayer has to furnish monthly returns and one annual return. The GST law also provides a facility called Quarterly Return Monthly Payment (QRMP), for the Taxpayers with turnover less than Rs. 5 Crore during the preceding financial year and current financial year, under which the returns in [FORM GSTR-3B](#) and [FORM GSTR-01](#) are required to be filed on Quarterly basis with monthly payment of tax. As per Notification No. 84/2020-Central Tax, dated 10.11.2020, a registered person who is required to furnish a return in **FORM GSTR-3B** and has an aggregate turnover upto Rs. 5 Crore in the preceding financial year, is eligible for the QRMP scheme, whereunder such person can opt to file the return on Quarterly basis. However, the tax payment shall be on monthly basis. [Circular No. 143/13/2020-GST](#), dated 10.11.2020, issued by CBIC provides the details of the QRMP Scheme and the clarifications thereof.
- 1.9 Taxpayers are mandatorily required to file returns, depending on the activities they undertake. There are separate returns for the 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), a person granted Unique Identification Number, etc.

2. **TYPES OF RETURNS UNDER GST LAW**

2.1 **FORM GSTR-1 for furnishing details of outward supplies:**

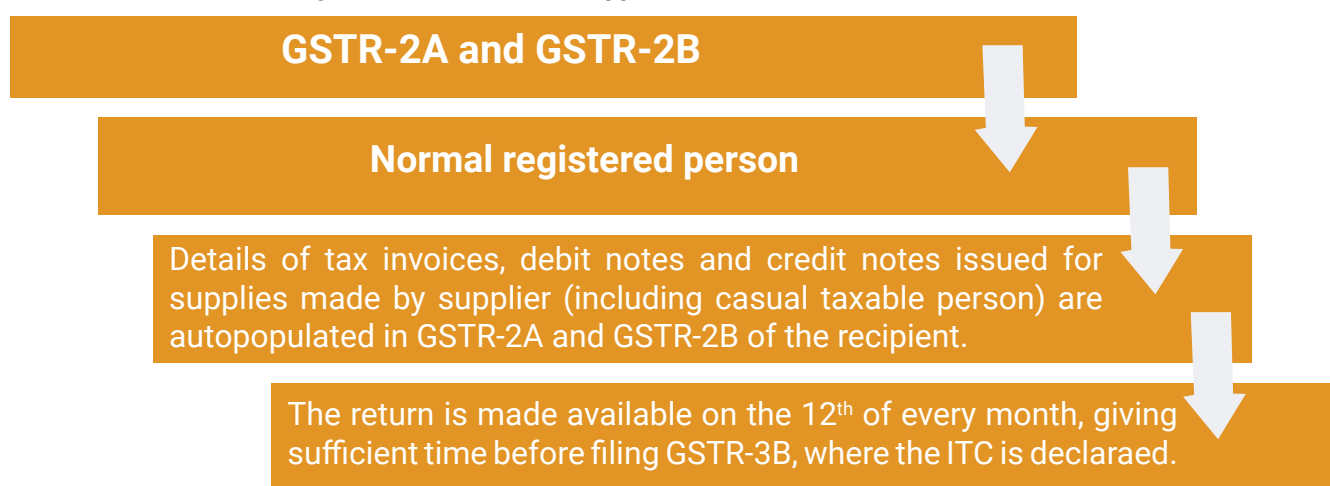


- (I) [FORM GSTR-1](#) is the return prescribed under Section 37(1) of the CGST Act, 2017 for reporting details of all outward supplies of goods and services made during the relevant period of the return, in the manner prescribed under Rule 59 of the CGST Rules, 2017. **(Section 37(1) of the CGST Act, 2017) (Rule 59 of CGST Rules, 2017)**
- (II) As per Section 37(1) of the CGST Act, 2017, every registered Taxpayer (other than an input service distributor, a non-resident taxable person and a person paying tax under Composition Scheme in terms of the provisions of Section 10, persons registered as 'deductor of tax' (TDS) in terms of Section 51 or the e-commerce Operator collecting tax at source (TCS) in terms of Section 52 of the CGST Act, 2017) has to file the GSTR-1 return in the prescribed manner and time and shall be communicated to the recipient of the said supplies. **(Section 10, 51 and**

52 of CGST Act, 2017)

- (III) The frequency of filing the return is monthly. However, the class of Taxpayers who have opted for filing of return on Quarterly basis in terms of the proviso to Section 39(1) of the CGST Act, 2017 under the Quarterly Return Monthly Payment Scheme (QRMP), can furnish the return in [FORM GSTR-1](#) on Quarterly basis. **(Section 39(1) of CGST Act, 2017)**
- (IV) Details of outward supplies include details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies during any tax period.
- (V) GSTR-1 is to be filed by all normal taxpayers who are registered under GST, including casual taxable persons. Delay in filing the return attracts penalty, as applicable.
- (VI) 'Nil' return is mandatory even if there are no transactions in a month/quarter.
- (VII) Any amendment to sales invoices made, even pertaining to previous tax periods, must be reported in the GSTR-1 return by all the suppliers or sellers registered under GST.
- (VIII) The due date for filing GSTR-1 return is:
 - (a) For Monthly return filers, by 11th of every month.
 - (b) For Quarterly return filers under the QRMP scheme, by 13th of the month following every quarter.

2.2. **FORM GSTR-2A containing details of all inward supplies:**



- (I) Section 38 of the CGST Act, 2017, stipulates that the details of outward supplies furnished by the registered persons in GSTR-1 return and of such other supplies, containing the details of input tax credit, shall be made available electronically by an auto-generated statement through the common portal, to the recipients of such supplies. **(Section 37 and 38 of CGST Act, 2017)**
- (II) Rule 60 of the CGST Rules, 2017 prescribes that the details of the inward supplies is required to be made available to the recipient in [FORM GSTR-2A](#). **(Rule 60 of CGST Rules, 2017)**
- (III) GSTR-2A is relevant for the recipient or buyer of goods and services and is a read only document. This document gets auto-populated once the corresponding supplier uploads the details in GSTR-1. In other words, GSTR-2A enables the recipient to verify the details uploaded by the supplier in GSTR 1.
- (IV) GSTR-2A contains the details of all inward supplies of goods and services i.e., purchases made from GST registered suppliers during a tax period.
- (V) Data filed in the Invoice Furnishing Facility (IFF) by the QRMP Taxpayer, also get auto-filled.
- (VI) Since GSTR-2A is a read-only return, no action can be taken in it. However, it is referred by the buyers to claim an accurate Input Tax Credit (ITC) for every financial year, across multiple tax periods.
- (VII) The data made available in GSTR-2A enables the recipient to accept, reject, modify or keep the invoices pending

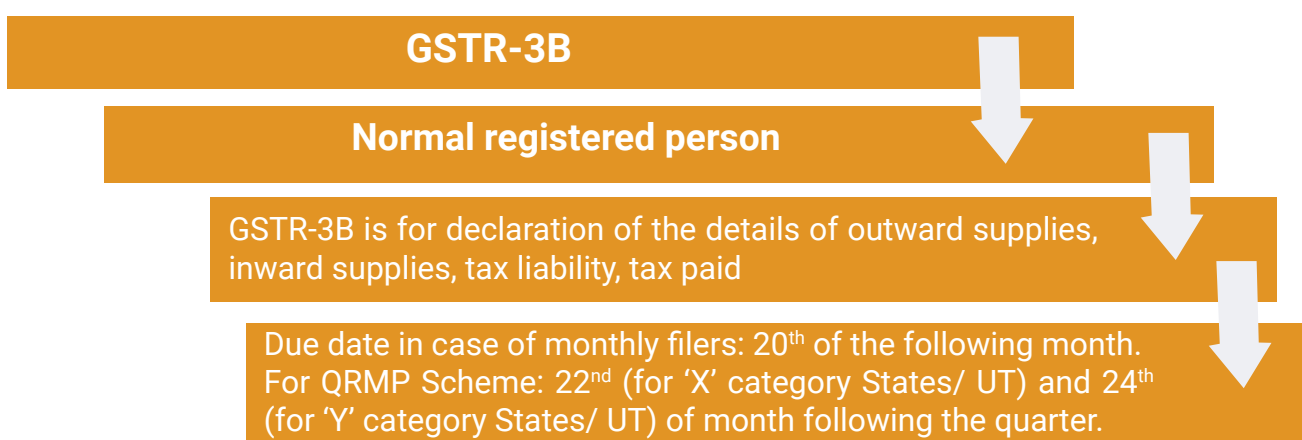
using the said details. In case any invoice is missing, the buyer can communicate with the seller to upload it in their GSTR-1 on a timely basis.

- (VIII) GSTR-2B was introduced w.e.f. July, 2020 on trial basis and has been statutorily provided w.e.f. 1-1-2021.
- (IX) Besides the details of outward supplies provided by the registered supplier in [FORM GSTR-1](#), Rule 60 of CGST Rules, 2017, also provides as under – **(Rule 60 of CGST Rules, 2017)**
 - (i) The details of invoices furnished in [FORM GSTR-5](#) by the non-resident Taxpayer shall be made available to the recipient electronically in Part A of [FORM GSTR-2A](#);
 - (ii) The details of invoices furnished by Input Service Distributor in his return in [FORM GSTR-6](#) shall be made available to the recipient electronically in [Part B of GSTR-2A](#);
 - (iii) The details of TDS furnished by the deductor in [FORM GSTR-7](#) shall be made available to the concerned person electronically in [Part C of FORM GSTR-2A](#);
 - (iv) The details of the TCS furnished by an e-commerce operator in [FORM GSTR-8](#) shall be made available to the concerned person in [Part C of GSTR-2A](#).
 - (v) The details of the IGST paid on the import of goods or goods brought in Domestic Tariff Area (DTA) from Special Economic Zone (SEZ) unit or a SEZ Developer, on a Bill of Entry, shall be made available in [Part D of GSTR-2A](#).

2.3 **FORM GSTR-2B containing details of all inward supplies:**

- (I) Rule 60(7) of the CGST Rules, 2017 prescribes that an auto-generated statement containing the details of input tax credit shall be made available electronically through the common portal, to the registered Taxpayer in [FORM GSTR-2B](#) every month. **(Rule 60(7) of CGST Rules, 2017)**
- (II) GSTR-2B is a static auto-drafted statement for regular taxpayers. It is available month wise and was introduced on the GST portal from the August 2020 tax period onwards.
- (III) ITC details covered in the return is from the date of filing GSTR-1 for the preceding month up to the date of filing GSTR-1 for the current month.
- (IV) The details of ITC in this return do not get altered for a particular tax period, even if the seller makes revisions. Hence, the taxpayers can refer to the ITC appearing in this return for eligible ITC claims in [GSTR-3B](#) for a tax period.
- (V) The return is made available to the registered Taxpayer on the 12th of every month, giving sufficient time before filing GSTR-3B, where the ITC is declared.
- (VI) The GSTR-2B provides the action to be taken against every invoice reported, such as, to be reversed, ineligible, subject to reverse charge, references to the table numbers in GSTR-3B.
- (VII) ITC cannot be claimed if it is restricted in GSTR-2B.

2.4 **GSTR-3B return –Details of outward supplies, inward supplies, tax liability, tax paid:**



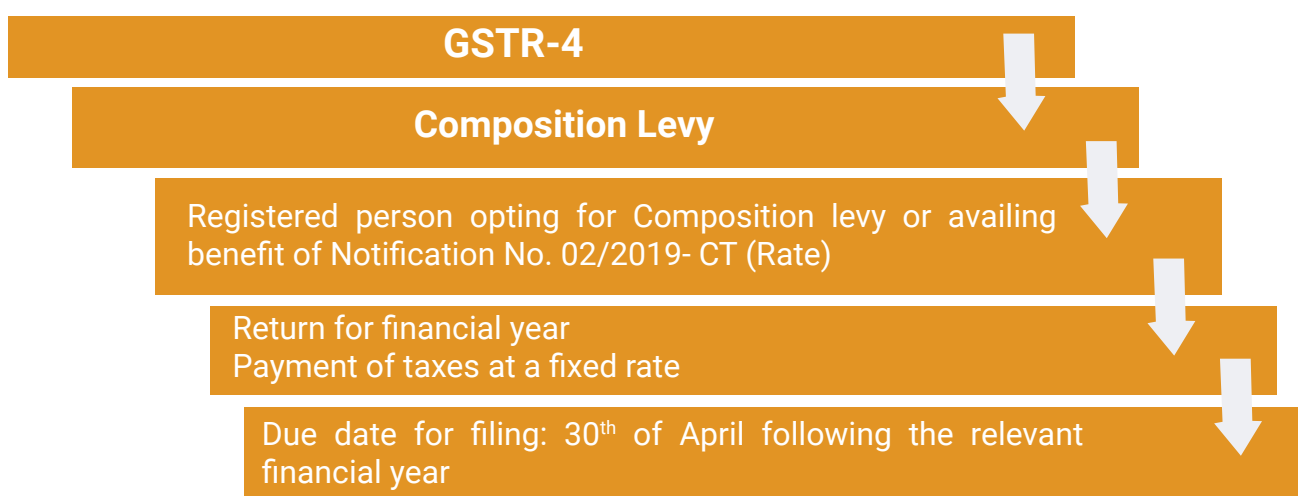
- (I) Section 39(1) of the CGST Act, 2017 states that every registered person (other than an Input Service Distributor or a non-resident taxable person or a person paying tax under Composition Scheme or a person deducting tax at source or a person collecting tax at source) is required to furnish a return electronically through the common portal, consisting details of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars. **(Section 39(1) of CGST Act, 2017)**
- (II) Rule 61 of the CGST Rules, 2017 prescribes the manner in which the details are to be provided in **FORM GSTR-3B**. **(Rule 61 of CGST Rules, 2017)**
- (III) GSTR-3B is a monthly self-declaration to be filed, for furnishing summarised details of all outward supplies made, inward supplies received, input tax credit claimed, tax liability ascertained and taxes paid.
- (IV) Proviso to Section 39(1) of CGST Act, 2017 read with Rule 61(1)(ii) of the CGST Rules, 2017 prescribes filing of return in **FORM GSTR-3B** on Quarterly basis for taxable persons with turnover of less than Rs. 5 Crore during the last and current financial year and who have opted for the QRMP Scheme. **(Rule 61(1)(ii) of CGST Rules, 2017)** **(Section 39(1) of CGST Act, 2017)**
- (V) Facility to avail the QRMP Scheme on the common portal would be available throughout the year. The facility for opting out of the QRMP Scheme for a quarter is also available in the prescribed manner. (CBIC [Circular No. 143/13/2020-GST dated 10-11-2020](#)).
- (VI) GSTR-3B is to be filed mandatorily by all normal Taxpayers registered under GST.
- (VII) Taxpayers registered under the Composition Scheme, as Input service distributors, as Non-resident suppliers of OIDAR service and as Non-resident taxable persons are not required to file return in **FORM GSTR-3B**, as separate FORMS of Return have been prescribed for these type of Taxpayers.
- (VIII) The sales and input tax credit details must be reconciled with GSTR-1 and GSTR-2B every tax period before filing GSTR-3B. Reconciliation is crucial to identify mismatches in data.
- (IX) A separate GSTR-3B must be filed for every GSTIN.
- (X) The filing frequency of GSTR-3B is as follows:
 - (a) For Taxpayers with an aggregate turnover in the previous financial year of more than Rs. 5 Crore or have been otherwise eligible but still opted out of the QRMP scheme the filing frequency is Monthly, by 20th of the succeeding month.
 - (b) For the taxpayers with aggregate turnover equal to or below Rs.5 crore, eligible and remain opted into the QRMP scheme, the due date is 22nd of the month following the quarter for 'X' category of States and 24th of the month following the quarter for 'Y' category of States

'X' category States/UT – Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep.

'Y' category States/UT- Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union Territories of Jammu and Kashmir, Ladakh, Chandigarh and New Delhi.
- (XI) The registered Taxpayer shall not be eligible for the QRMP Scheme of filing quarterly return, unless he has furnished the return for a complete tax period of preceding month in which he has opted for the said scheme. **(Notification No. 84/2020-CT dated 10.11.2020)**
- (XII) The liability of tax, interest and penalty, if any, as calculated in the return, must be paid on or before the date of filing GSTR-3B return, by debiting the tax payable in the Electronic Cash Ledger or Electronic Credit Ledger. The GSTR-3B for a particular period return cannot be filed without discharging the entire liability, as calculated in the return.
- (XIII) The registered Taxpayer under the QRMP Scheme is required to pay the tax due in each of the first two months of the quarter, by depositing the due amount in **FORM GST PMT-06**, by the twenty fifth day of the month succeeding such month. While generating the challan, taxpayers should select "Monthly payment for quarterly taxpayer" as reason for generating the challan **(CBIC Circular No. 143/ 13/2020-GST dated 10.11.2020)**.

- (XIV) The GSTR-3B return once filed cannot be revised.
- (XV) GSTR-3B must be compulsorily filed even in case of a zero liability for any tax period.
- (XVI) The late filing of GSTR-3B attracts a late fee and interest at 18% per annum.
- (XVII) In case the tax was paid within the due date but the GSTR-3B was filed after the deadline, both late fees and interest will apply.
- (XVIII) CBIC has issued a detailed [Circular No. 26/26/2017-GST dated 29.12.2017](#) giving instructions to correct errors made in filing GSTR-3B. The error may be Liability under reported, Liability over reported, Liability wrongly reported, Input Tax Credit under reported, Input tax credit over reported, Input tax credit of wrong tax taken and Cash Ledger wrongly updated. The adjustment can be made only in return of next month, as there is no provision to amend the GSTR-3B return after filing.
- (XIX) As per Rule 67A of CGST Rules, 2017, 'Nil' GSTR-3B return can be filed by the Taxpayer registered as Normal taxpayer/Casual taxpayer/SEZ Unit/ SEZ Developer through SMS, anytime on or after the 1st of the subsequent month for which the return is being filed for. **(Rule 67A of CGST Rules, 2017)**
- (XX) The common portal does not allow filing of GSTR-1 and GSTR-3B returns for the subsequent period if these returns for the earlier period are not filed.
- (XXI) Detailed instruction on various aspects for filing the GSTR-3B return is provided in CBIC [Circular No. 170/02/2022-GST dated 06.07.2022](#).

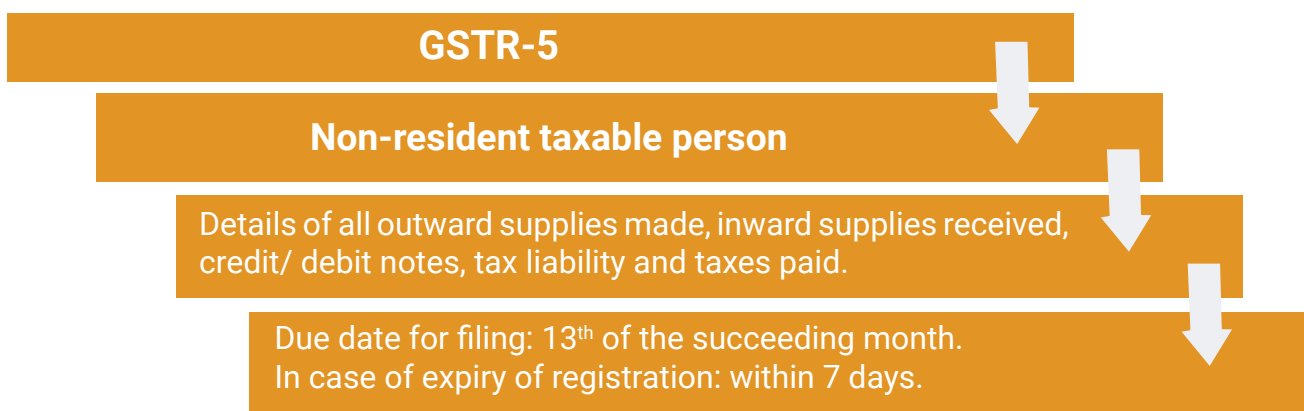
2.5 FORM GSTR-4– Annual Return to be filed by the Taxpayers paying tax under Composition Levy:



- (I) Taxpayer involved in intra-state trade and having turnover less than the stipulated limit, are only entitled to opt for payment of tax under Composition Levy scheme. The tax rate under the Composition Levy scheme is 1% of turnover for traders and manufacturers and 5% for restaurants.
- (II) Section 39(2) of the CGST Act, 2017 stipulates that a registered Taxpayer paying tax under the Composition Levy scheme in terms of the provisions of Section 10 ibid, shall furnish a return electronically in the prescribed manner for each financial year or part thereof, declaring the turnover in the State or Union territory, inward supplies of goods or services or both, import of services, supplies attracting reverse charge, tax payable, tax paid and other particulars. **(Section 39(2) of CGST Act, 2017)**
- (III) The Composition Levy is a scheme in which Taxpayers dealing with goods and having a turnover up to Rs.1.5 Crore can opt and pay taxes at a fixed rate on the turnover declared. The service providers too can avail a similar scheme as per CGST (Rate) [Notification No. 02/2019 dated 7th March 2019](#), if their turnover is up to Rs.50 lakhs.
- (IV) As per Rule 62(1)(i) of the CGST Rules, 2017, the Taxpayer under the Composition Levy scheme is required to furnish a statement, every quarter of the year or part thereof declaring the details of payment of self-assessed tax in FORM GST CMP-08, till the 18th day of the month succeeding such quarter. **(Rule 62(1)(i) of CGST Act, 2017)**

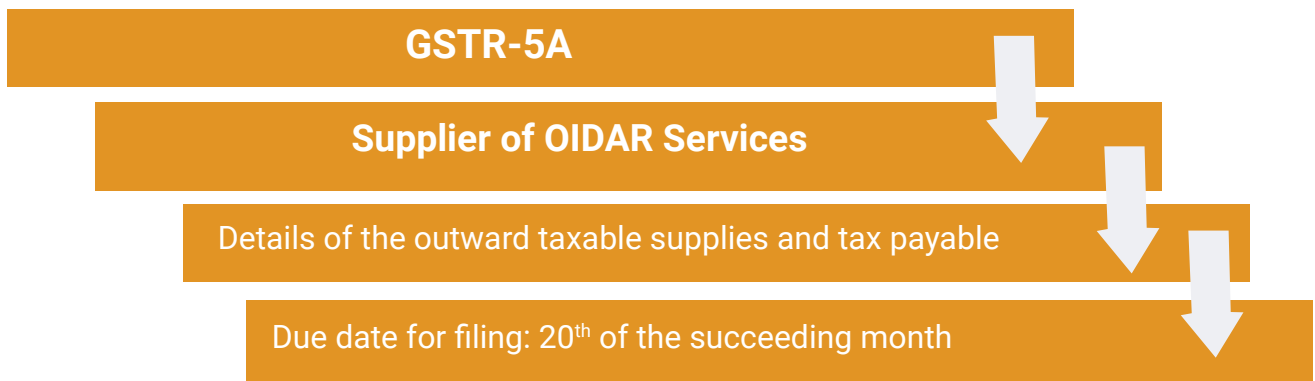
- (V) As per Rule 62(1)(ii) of the CGST Rules, 2017, the Taxpayer under the Composition Levy scheme shall furnish the return in **FORM GSTR-4**, by 30th April following the end of the financial year, electronically. It has replaced the erstwhile **GSTR-9A** (Annual Return) for the taxpayers under Composition Levy Scheme from FY 2019-20 onwards. **(Rule 62(1)(ii) of CGST Act, 2017)**
- (VI) Prior to FY 2019-20, this return had to be filed on a quarterly basis. Thereafter, a simple challan in **FORM CMP-08** filed by 18th of the month succeeding every quarter replaced it.
- (VII) Annual return in Form GSTR-4 cannot be filed without filing Form CMP-08, for the applicable period/periods, of the relevant financial year.
- (VIII) Filing of GSTR-4 is mandatory and even a 'Nil' return has to be filed mandatorily. Failure to file the return on or before the due date will attract Late Fees, as applicable.

2.6 **FORM GSTR-5 –Return for Non-Resident Taxpayer:**



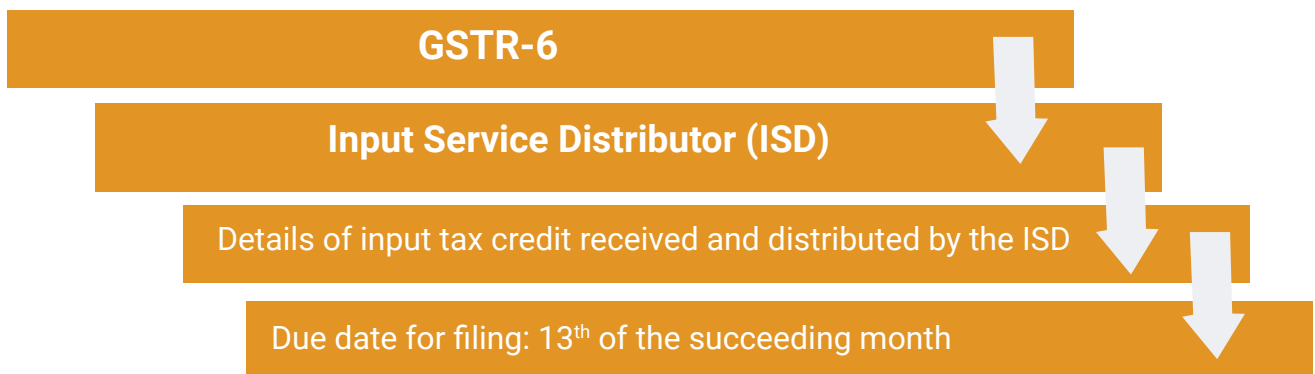
- (I) Non-resident Taxpayers are the suppliers who do not have a business establishment in India and have come for a short period to make supplies in India.
- (II) The registration issued to a Non-resident Taxpayer is temporary and is valid for the period specified in the application or 90 days from the effective date of registration, whichever is earlier. Such a person can make taxable supplies only after the issuance of the certificate of registration.
- (III) Section 39(5) of the CGST Act, 2017 states that every registered non-resident taxpayer shall furnish a return for every calendar month or part thereof electronically **within thirteen days** after the end of a calendar month or **within seven days** after the last day of the period of registration, whichever is earlier. **(Section 39(5) of CGST Act, 2017)**
- (IV) Rule 63 of the CGST Rules, 2017 prescribes that the return is to be filed by registered Non-resident Taxpayer in **FORM GSTR-5**, electronically through the common portal, which should include therein the details of outward supplies and inward supplies credit/debit notes, tax liability and taxes paid. The Non-resident Taxpayer should pay the tax, interest, penalty, fees or any other amount payable under the Act within twenty days after the end of a tax period or **within seven days** after the last day of the validity period of registration, whichever is earlier. **(Rule 63 of CGST Rules, 2017)**
- (V) The GSTR-5 return is required to be filed on or before 20th of the following month and **within seven days** after the last date of validity of the registration. Delay in filing the return attracts Late Fees.
- (VI) If GSTR-5 for a particular month is not filed then the return for the subsequent month cannot be filed.

2.7. **GSTR-5A - Summary return of tax payable by Non-Resident Online Information and Database Access or Retrieval (OIDAR) Services provider:**



- (I) Online Information and Database Access or Retrieval services (OIDAR) are primarily a category of services, provided by using the internet as a medium. These services are even received by the service recipient without having a physical interface with the service provider.
- (II) The taxes on services received by a registered Taxpayer are imposed through a reverse charge mechanism, i.e., the recipient of services is liable to pay GST. In respect of the OIDAR services received by unregistered persons or Government or Local Authority, the OIDAR service providers are liable to pay GST.
- (III) Section 39(1) of the CGST Act, 2017 read with Rule 64 of the CGST Rules, 2017 provides for filing of a monthly return in **FORM GSTR-5A**, by the Taxpayer providing Online Information and Database Access or Retrieval services, from a place outside India to a person, other than a registered Taxpayer, located in India. **(Section 39(1) of CGST Act, 2017) (Rule 64 of CGST Rules, 2017)**
- (IV) GSTR-5A is a summary return for reporting the outward taxable supplies and tax payable by OIDAR Service provider under GST.
- (V) The due date to file GSTR-5A is the 20th of the following month. Delay for non-filing of GSTR-5A return attracts interest, Late Fees and penalty, as applicable.
- (VI) If there are no transactions of supply of OIDAR services during a particular period even then filing of a 'Nil' return is mandatory. Failure to file the 'Nil' return attracts Late Fees.
- (VII) The OIDAR service providers located overseas can have their authorized representatives to make payment of tax and to file GSTR 5A return on their behalf as their agents.

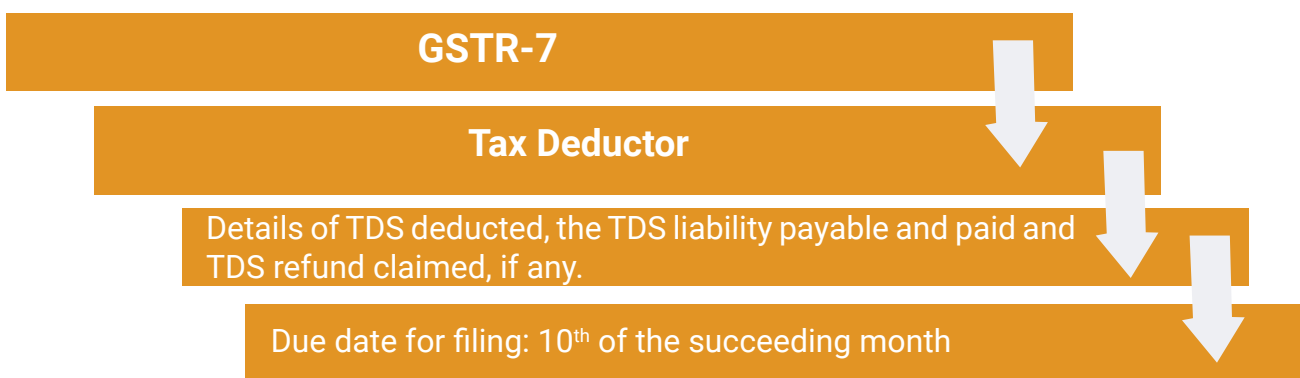
2.8 **GSTR-6 – Return to be filed by an Input Service Distributor (ISD):**



- (I) An Input Service Distributor (ISD) is a taxpayer who receives invoices for services used by its branches.
- (II) ISD distributes the Input Tax Credit (ITC) to their branches on a proportional basis by issuing ISD invoices.
- (III) Section 39(4) of CGST Act, 2017 provides that every Taxpayer registered as an Input Service Distributor shall furnish a return for every calendar month or part thereof, electronically, **within thirteen days** after the end of such month. **(Section 39(4) of CGST Act, 2017)**
- (IV) Rule 65 of the CGST Rules, 2017 prescribes that the return is to be filed by ISD in **FORM GSTR-6**, containing the details of tax invoices on which input tax credit has been received and those issued to their branches. **(Rule 65 of CGST Rules, 2017)**

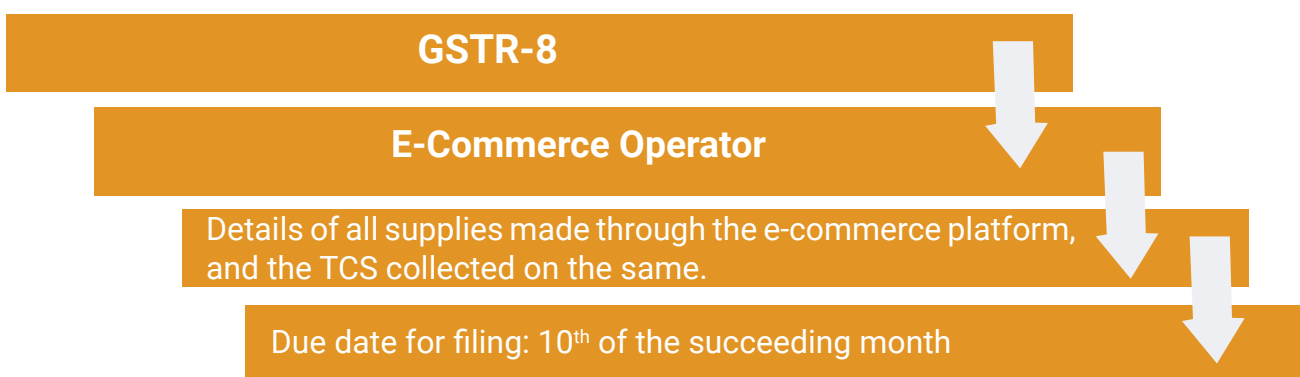
- (V) Most of the details in GSTR 6 are auto-populated from the details approved in GSTR-6A generated from the details provided by the suppliers of an ISD in their GSTR 1.
- (VI) The due date to file GSTR-6 is the 13th of succeeding month. GSTR 6 has to be filed by every ISD even if it is a 'Nil' return.
- (VII) Failure to file GSTR-6 within the due date attracts late fees at the prescribed rates.
- (VIII) There is no provision for revising the GSTR 6 return. Any errors made in the return can be corrected while filing GSTR 6 of the following month.

2.9. **GSTR-7 - Return to be filed by persons required to deduct Tax at source (TDS) under GST:**



- (I) The provisions under GST provides for deduction of TDS (Tax Deducted at Source) at the time of making/crediting payment to suppliers towards the inward supplies received, at the prescribed rate, by the notified persons under GST.
- (II) Section 39(3) of the CGST Act, 2017 read with Rule 66 of the CGST Rules, 2017 stipulate that every registered taxpayer required to deduct tax at source (deductor) shall furnish a return in **FORM GSTR-7**, electronically through the common portal, for the month in which such deductions have been made, **within ten days** after the end of such month. **(Section 39(3) of CGST Act, 2017) (Rule 66 of CGST Rules, 2017)**
- (III) The GSTR-7 return contains details of TDS deducted, the TDS liability payable and paid and TDS refund claimed, if any.
- (IV) The details furnished by the deductor in **FORM GSTR-7** shall be made available electronically on the common portal to each of the deductee in **FORM GSTR-7A** (System generated TDS Certificate), for claiming the amount of tax deducted in his Electronic Cash Ledger.
- (V) GSTR-7 is required to be filed every month **within 10 days** after the end of a particular month. Late fees is applicable for the delay in filing the return.

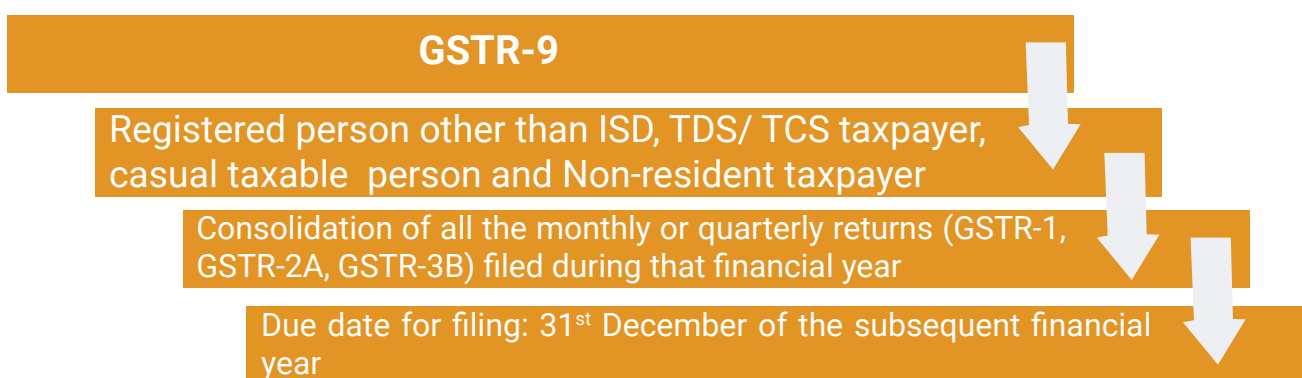
2.10 **GSTR-8 - Monthly return for e-commerce operators, required to collect tax at source (TCS) under GST:**



- (I) Tax Collected at Source (TCS) is the tax collected by the e-commerce operator when a supplier supplies some goods or services through its portal and the payment for that supply is collected by the e-commerce operator.

- (II) On placing the order for a particular product/service, the actual supplier supplies the selected product/ service to the consumer but the price/consideration for the product/service is collected by the e-commerce operator from the consumer and passed on to the actual supplier after deducting the commission by the Operator. The e-commerce operator collects the tax at the prescribed rate from the supplier and deposited in the Government Account.
- (III) Section 39(1) of CGST Act, 2017 read with Rule 67 of the CGST Rules, 2017 stipulates that every e-commerce operator required to collect tax at source shall furnish a statement in **FORM GSTR-8**, electronically on the common portal, containing details of supplies effected, the amount of tax collected and tax paid. **(Section 39(1) of CGST Act, 2017) (Rule 67 of CGST Rules, 2017)**
- (IV) The details furnished by the e-commerce operator in **FORM GSTR-8** shall be made available electronically in Part C of **FORM GSTR-2A**, to each of the suppliers on the common portal, for claiming the amount of tax collected in his Electronic Cash Ledger.
- (V) GSTR-8 is a monthly return and the due date for filing the return for a particular month is 10th of the following month. Delay in filing the return attracts Late Fees at the applicable rate, besides the interest payable towards late deposit of tax amount into the Government account.
- (VI) GSTR-8 once filed, cannot be revised. Mistakes, if any, can be revised in the next month's return.

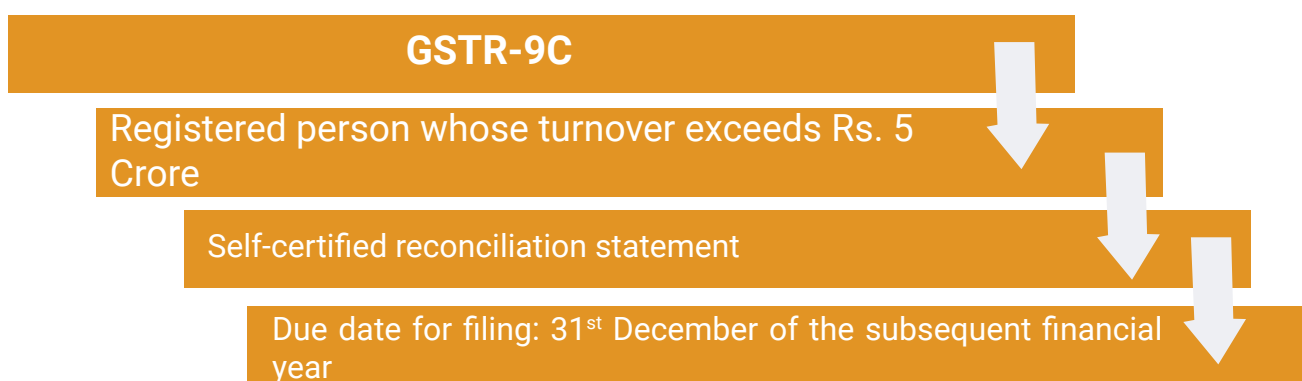
2.11 **GSTR-9–Annual Return**



- (I) GSTR 9 is an annual return to be filed yearly by regular taxpayers registered under GST, including SEZ units and SEZ developers. The return consists of details of the outward supplies made, inward supplies received and their HSN codes, under different tax heads i.e. CGST, SGST & IGST, for the relevant financial year
- (II) Section 44 of the CGST Act, 2017 read with Rule 80 of the CGST Rules, 2017, outline the provisions for furnishing annual return. Section 44 of the CGST Act, 2017 stipulates the provisions of filing annual returns by every registered person, which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement for every financial year. Rule 80 of the CGST Rules, 2017 prescribes **FORM GSTR-9** as the form of Annual Return for a registered Taxpayer. **(Section 44 of CGST Act, 2017) (Rule 80 of CGST Rules, 2017)**
- (III) Taxpayers who have opted for the Composition scheme, Casual taxable persons, Input Service Distributors, non-resident taxable persons and persons paying TDS under Section 51 of the CGST Act, 2017 and person collecting TCS under Section 52 ibid are not required to file the Annual Return. Further, to ease the compliance burden for small businesses, exemption is given from filing of GSTR-9 for businesses with turnover up to Rs 2 Crore from FY 17-18 onwards. **(Section 51 and 52 of CGST Act, 2017)**
- (IV) Filing of annual returns is also not applicable in the case of any department of the Central Government, State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed to audit the accounts of local authorities.
- (V) The Annual Return needs to be filed if the taxpayer was registered for even a single day in a particular financial year.
- (VI) If a Taxpayer has obtained multiple GST registrations, under the same PAN, whether in the same State or different States, he is required to file the Annual Return for each registration separately, where the GSTIN was registered as a normal taxpayer for some time during the financial year or for the whole of the financial year.

- (VII) GSTR-9 is a consolidation of all the monthly/quarterly returns (GSTR-1, GSTR-2A, GSTR-3B) filed in the relevant year. This return is a complete document that summarises information on outward supplies made, inward supplies received, Input tax credits availed, and tax payments made during the financial year and helps in extensive reconciliation of data.
- (VIII) The common portal allows the Taxpayers to obtain a system-computed consolidated summary of GSTR-9, GSTR-1 and GSTR-3B. This summary is based on the monthly returns filed by the registered person and includes details like, the taxable value, liabilities paid through ITC and cash, ITC claims and reverse charge. GSTR-9 is auto-populated based on GSTR-1 & 3B and is for reference purpose only. It provides with an option to edit the auto-populated data with certain exceptions, so as to enable the Taxpayer to report the correct figures of liability in GSTR-9, which is matching with the accounts and other records.
- (IX) The Taxpayer can report additional liability that was not reported in GSTR-1 or GSTR-3B and pay such liability through FORM DRC-03. However, the Taxpayer is not allowed to avail additional ITC through GSTR-9.
- (X) The GSTR-9 return has to be filed electronically on the GST common portal by 31st December, following the end of the financial year. Delay in filing the Annual Return attracts Late Fees at the applicable rate.
- (XI) No revision of the GSTR-9 return filed is permissible.

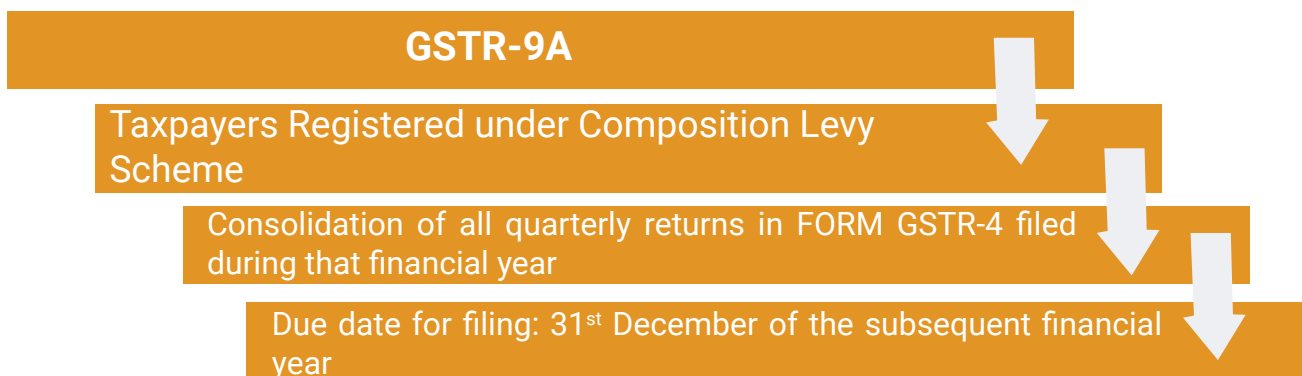
2.12 **GSTR-9C – Self Certified Reconciliation Statement:**



- (I) GSTR-9C is a self-certified reconciliation statement between the books of account and the GSTR-9 return to be filed by every registered Taxpayer under GST, whose turnover during a financial year exceeds the prescribed limit of Rs. 5 Crore. Besides the category of Taxpayers exempt from filing GSTR-9 Annual Return, all foreign companies which are in the airline business and compliant with the relevant provisions and rules of the Companies Act 2013, are exempted from the GSTR-9C requirement.
- (II) Rule 80(3) read with [Notification No 49/2018-CT, dated 13-9-2018](#), substituted vide [Notification No 74/2018-Central Tax dated 31-12-2018](#), has notified the **FORM GSTR-9C** under Section 44 of CGST Act, 2017, for filing a self-certified reconciliation statement by a registered taxpayer filing Annual Return in FORM GSTR-9. For the financial year 2022-23, the Annual return forms have been notified vide [Notification No. 38/2023-Central Tax dated 04.08.2023](#). **(Rule 80(3) of CGST Rules, 2017) (Section 44 of CGST Act, 2017)**
- (III) The certification by a Cost Accountant or Chartered Accountant has been done away vide [Notification No. 56/2019- CT dated 14-11-2019](#) and self-certification has been introduced.
- (IV) GSTR-9C is to be filed along with the GSTR-9 and audited Financial Statement, by 31st December following the end of the financial year. Delay in filing GSTR-9C attracts general penalty under Section 125 of the CGST Act, 2017. **(Section 125 of CGST Act, 2017)**
- (V) GSTR-9C is a self-certified reconciliation statement that reconciles the value of supplies declared in the return furnished for the financial year with the audited Annual Financial Statement and GSTR-9 return. In GSTR-9C a registered Taxpayer is required to reconcile turnover, tax paid, and ITC availed as per books of accounts with GSTR-9 and provide reasons for the difference. Differential tax, if any, has to be paid vide FORM GST DRC-03.
- (VI) GSTR-9C is to be filed for every GSTIN with one PAN, registered in different States or Union Territory.

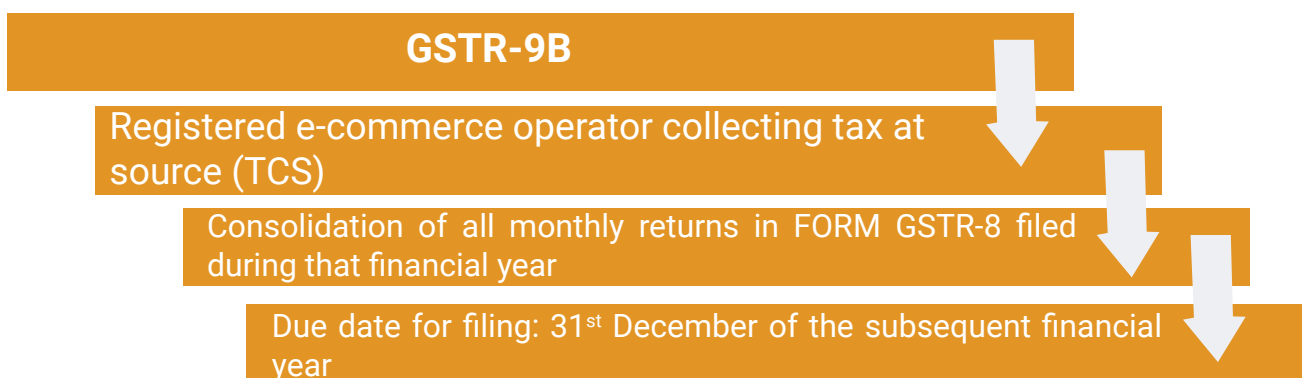
- (VII) GSTR-9C acts as a base for the Proper Officer to verify the correctness of the GST returns filed by the taxpayers after a self-certification.

2.13. **GSTR-9A – Annual Return for Taxpayers under Composition Scheme:**



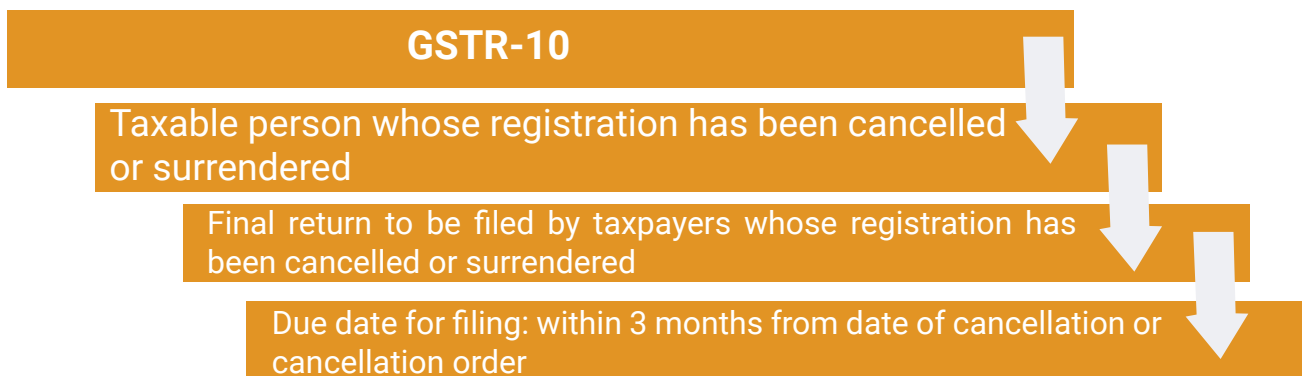
- (I) **GSTR-9A** is the Annual Return and was filed once in a financial year by taxpayers opting for the Composition Scheme under Section 10 of CGST Act, 2017, for a specific fiscal year. **(Section 10 of CGST Act, 2017)**
- (II) GSTR-9A is consolidation of all the Quarterly returns filed in FORM GSTR-4 or **CMP-08** upto FY 2018-19 and included all the data furnished within the quarterly returns filed by the Composition taxpayers during a financial year.
- (III) GSTR-9A form has been scrapped with effect from FY 2019-20 after being replaced by Annual Return in revised FORM GSTR-4.
- (IV) Filing of GSTR-9A was made optional for the financial years 2017-18 and 2018-19.

2.14. **GSTR-9B – Annual Return to be filed by e-commerce operator collecting tax at source (TCS):**



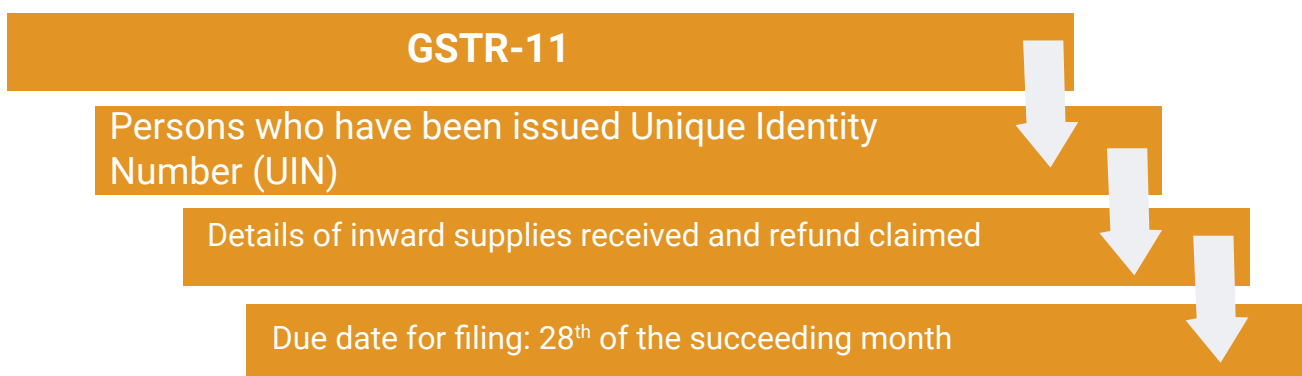
- (I) GSTR-9B is an annual return to be filed by every E-commerce operator who is required to collect tax at source as per Section 52 (5) of the CGST Act, 2017. **(Section 52(5) of CGST Act, 2017)**
- (II) GSTR-9B contains the details of outward supplies of goods and services, returns if any, and the amount collected during the financial year. It summarises the details filed in the monthly return GSTR-8 to be filed by E-Commerce operators.
- (III) Section 44 of CGST Act, 2017 stipulates that every e-commerce operator required to collect tax at source shall furnish annual statement electronically through common portal, in **FORM GSTR -9B**, prescribed in Rule 80 of CGST Rules, 2017. **(Section 44 of CGST Act, 2017) (Rule 80 of CGST Rules, 2017)**
- (IV) However, the format of **FORM GSTR-9B** is yet to be released.

2.15. **GSTR-10 – Return to be filed by a taxpayer whose registration is cancelled or surrendered:**



- (I) **GSTR-10** is the Final Return to be filed by the registered taxpayers who have opted for the cancellation or surrender of the GST registration.
- (II) Section 45 of CGST Act, 2017 states that every registered person who is required to furnish a return under Section 39(1) and whose registration has been cancelled, shall furnish a final return in FORM GSTR-10 prescribed in Rule 81 of the CGST Rules, 2017, **within three months** of the date of cancellation or date of order of cancellation, whichever is later. **(Section 45 of CGST Act, 2017) (Rule 81 of CGST Rules, 2017) (Section 39(1) of CGST Act, 2017)**
- (III) GSTR-10 is a statement of stocks held by the taxpayer, whose registration has been cancelled or ordered to be cancelled, on day immediately preceding the date from which cancellation is made effective.
- (IV) In case if invoices are not present for the declared stock of inputs and inputs contained in semi-finished or finished goods, then the amount must be estimated differently and must be certified by a practising Chartered Accountant or Cost Accountant and uploaded along with GSTR-10.
- (V) If GSTR-10 is not filed within the due date, a notice will be sent to the taxpayer. If the person still fails to file the Final Return then the proper officer will pass the final order for the cancellation and the amount of tax payable along with interest or penalty.

2.16. **GSTR-11 - Return for persons having Unique Identity Number (UIN):**



- (I) Unique Identity Number (UIN) is a special classification made for foreign diplomatic missions and embassies like, specialized agency of the United Nations Organization, Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries, who are not liable to taxes in Indian territory.
- (II) The purpose of issuing UIN is to claim refund of the tax collected from the organisation/person holding UIN.
- (III) Rule 82 of CGST Rules, 2017 stipulates that every person holding a Unique Identity Number and claiming refund of the taxes paid on his taxable inward supplies, shall furnish the details of such supplies, electronically on common portal, in FORM GSTR-11, along with application for the refund claim in FORM GST RFD-10. The Rule also provides that the person holding Unique Identity Number for purposes other than refund of the taxes paid, shall furnish the details of inward supplies of taxable goods or services or both in **FORM GSTR-11. (Rule 82 of CGST Rules, 2017)**

- (IV) Deputy/Assistant Commissioner of Central Tax has been designated as 'proper officer' for the purpose of specifying the details of inward supplies ([Circular No. 3/3/2017-GST dated 05.07.2017](#)).
- (V) GSTR-11 is required to be filed by 28th of the month following the month in which inward supply is received by the UIN holder. Thus GSTR-11 filing is not a monthly process, but a case-to-case basis filing, depending on supplies received by the UIN holders.
- (VI) The GSTR-11 return is auto populated based on GSTR-1/5 filed by the suppliers of goods and services to the UIN holders.

3. NON-FILERS OF RETURNS

- (I) Return is an important aspect of GST and is the base for the authority to keep track over the tax paid and input tax credit availed. Tax is said to have been paid only when the return is filed after making debits in the Electronic Credit Ledger and/or Electronic Cash Ledger, as the case may be.
- (II) A Non-filer is a person who is registered and is liable to file the GST return or statement periodically but has failed to do so within the due dates prescribed. There are chances that the non-filer has some liability of tax to pay, which he has not paid.
- (III) Section 46 of the CGST Act, 2017 read with Rule 68 of the CGST Rules, 2017 stipulates issuance of a notice in [FORM GSTR-3A](#) to a registered taxpayer, who fails to furnish return under Section 39 or Section 44 or Section 45 of CGST Act, 2017 (GSTR-3B, GSTR-4, GSTR-5, GSTR-6, GSTR-7, GSTR-8, GSTR-9 and GSTR-10) asking him to furnish such return **within fifteen days**. (**Section 46 of CGST Act, 2017**) (**Rule 68 of CGST Rules, 2017**)
- (IV) If the registered person fails to furnish return even after notice in [FORM GSTR-3A](#) is issued then for such cases, Section 62 of CGST Act, 2017 provides for assessment of non-filers of return on best judgement basis. (**Section 62 of CGST Act**)
- (V) CBIC has issued [Circular No. 129/48/2019 dated 24.12.2019](#) laying down the guidelines to deal with the cases of non-filers and for the purpose of maintaining uniformity. The said Circular prescribes the following guidelines on the issue of non-filers-
 - (i) A system generated message would be sent to all the registered taxpayers **3 days before the due date** to remind them about filing of the return for the tax period by the due date.
 - (ii) Once the due date for furnishing the return under Section 39 is over, a system generated mail / message would be sent to the authorized signatory as well as the proprietor/partner/director/karta, etc. of all the defaulters immediately after the due date to the effect that he has not furnished his return for the said tax period.
 - (iii) **Five days after the due date of furnishing the return**, a notice in [FORM GSTR-3A](#) in terms of Section 46 of the CGST Act, 2017 read with Rule 68 of the CGST Rules, 2017, shall be issued electronically through common portal to such registered taxpayer who fails to furnish return under section 39, asking him to furnish such return **within fifteen days**.
 - (iv) In case the return is still not filed by the defaulter **within 15 days of the notice**, the proper officer may proceed to assess the tax liability of the said person under Section 62 of the CGST Act, 2017, to the best of his judgement taking into account all the relevant material which is available or which he has gathered and will issue order under Rule 100 of the CGST Rules, 2017 in [FORM GST ASMT-13](#). (**Section 62 of CGST Act**) and (**Rule 100 of the CGST Rules, 2017**)
 - (v) The proper officer has to upload the summary thereof in [FORM GST DRC-07](#).
 - (vi) For the purpose of assessment of tax liability, the proper officer may take into account the details of outward supplies available in the statement furnished under Section 37, i.e. [FORM GSTR-1](#), details of supplies auto populated in [FORM GSTR-2A](#), information available from e-way bills, or any other information available from any other source, including from inspection under Section 71. (**Section 71 of CGST Act**) (**Section 37 of CGST Act**)
 - (vii) In case the defaulter furnishes a valid return **within thirty days** of the service of assessment order in [FORM GST ASMT-13](#), the said assessment order shall be deemed to have been withdrawn in terms of provision of sub-section (2) of Section 62 of the CGST Act, 2017. However, if the return remains unfurnished **within**

the statutory period of 30 days from issuance of order in [FORM GST ASMT-13](#), then proper officer may initiate proceedings under Section 78 and recovery under Section 79 of the CGST Act, 2017. **(Section 62 of CGST Act) (Section 78 of CGST Act) (Section 79 of CGST Act)**

- (viii) In appropriate cases, based on the facts of the case, the Commissioner may resort to provisional attachment to protect revenue under Section 83 of the CGST Act, 2017 before issuance of [FORM GST ASMT-13](#). **(Section 83 of CGST Act)**
- (ix) Further, the proper officer would initiate action under Section 29(2) of the CGST Act, 2017 for cancellation of registration in cases where the return has not been furnished for the period specified in Section 29. **(Section 29 of CGST Act)**
- (VI) [FORM GSTR-3A](#) contains notice for best judgment assessment. Hence, no separate notice is required to be issued for best judgment assessment under Section 62 of CGST Act, 2017. In case of failure to file return **within 15 days** of issuance of [FORM GSTR-3A](#), the best judgment assessment in FORM ASMT-13 can be issued without any further communication.
- (VII) The proper officer is required to upload the summary in [FORM GST DRC-07](#).

4. DUE DATE FOR FILING THE RETURNS

- (I) Every registered Taxpayer who is required to furnish return, shall discharge his liability towards tax, interest, penalty, fees or any other amount payable under the CGST Act, 2017, by debiting the Electronic Cash Ledger or Electronic Credit Ledger and include the details in the respective return to be filed. Since the details of tax paid have to be included in the return, the same cannot be filed unless the taxes are paid.
- (II) The provisions of CGST Act, 2017 and the rules made thereunder, as applicable to the respective returns, mandate filing of the GST Returns within the prescribed due dates. Failure to file the returns within the due date will lead to recovery of Late Fees, imposition of penalty, as applicable, and recovery of interest on the delayed payment of tax. Therefore, filing of returns on or before the due date is very essential.
- (III) The types of GST return that a supplier of goods and services or both is required to file is based on the type of taxpayer registered. These types include regular taxpayer, composition taxable persons, e-commerce operators, TDS deductor, non-resident taxpayer, Input Service Distributor (ISD), casual taxable persons, etc.
- (IV) The following Table illustrates the types of returns to be filed and its due date:

Form of Return	Applicable provision	Description	Due date
GSTR-1	Section 37(1) of CGST Act, 2017 and Rule 59 of the CGST Rules, 2017	Details of tax invoices, debit notes and credit notes issued for supplies made by taxable person (including casual tax-able person) other than under composition scheme.	Monthly – 11th of the following month. For those who opt to file GSTR-3B return on quarterly basis under QRMP Scheme - 13th of month following the quarter. Nil return is required even if there are no transactions in a month/quarter.
GSTR-2A & GSTR-2B	Rule 60 of CGST Rules, 2017	These are not returns to be filed but are auto-populated. Details of tax invoices, debit notes and credit notes issued for supplies made by supplier (including casual taxable person) appear in GSTR-2A and GSTR-2B of recipient.	Invoices uploaded by supplier get auto-populated in form GSTR-2A of recipient within 2 days but they get populated in GSTR-2B only after GSTR-1 return is filed.
GSTR-3B	Section 39(1) of CGST Act, 2017 and Rule 61 of CGST Rules, 2017	To be filed by Taxable person (including casual taxable person), other than those under composition scheme. Return consists of details of outward supplies, inward supplies, value of supplies, ITC availed, tax payable, tax paid, etc.	Monthly – 20 th of the following month. Quarterly under QRMP Scheme – 22 nd or 24 th of the following month after end of Quarter, depending upon the State in which the taxpayer is registered.

GSTR-4	Section 39(2) of CGST Act, 2017 and Rule 62 of CGST Rules, 2017	Taxable person under Composition scheme. Return consists of details of outward supplies, inward supplies, value of supplies, tax payable, tax paid, etc.	Yearly - 30th of the month following the end of the year.
GSTR-5	Section 39(5) of CGST Act, 2017, and Rule 63 of CGST Rule, 2017	Return by Non-resident taxable person, consisting details of outward supplies, value, tax paid, etc.	Monthly, within 13 days from end of taxable period or 07 days after end of validity period of registration.
GSTR-5A	Section 39(1) of CGST Act, 2017 and Rule 64 of CGST Rules, 2017	Taxable person supplying OIDAR services. consisting details of outward supplies, value, tax paid, etc.	Monthly, within 20 days from end of the month.
GSTR-6	Section 39(4) of CGST Act, 2017 and Rule 65 of CGST Rules, 2017	Input Service Distributor, consisting details of ITC availed, ITC distributed, etc.	Monthly, within 13days from end of the month.
GSTR-7	Section 39(3) of CGST Act, 2017 and Rule 66 of CGST Rules, 2017	Return by persons required to deduct Tax at Source (TDS) under Section 51, consisting details of TDS.	Monthly, within 10 days from end of the month.
GSTR-8	Section 39(1) of CGST Act, 2017 and Rule 67 of CGST Rules, 2017	Return by e-commerce opera-tor, consisting details of tax collected at source (TCS) under Section 52	Monthly, within 10 days from end of the month.
GSTR-9	Section 44 of CGST Act, 2017 and Rule 80 of CGST Rules, 2017	Annual Return for normal taxpayer with turnover more than Rs. 2 Crore.	Yearly, by 31 st December after the end of the financial year.
GSTR-9A		Annual Return by taxable person under Composition scheme.	Yearly, by 31 st December after the end of the financial year.
GSTR-9B	Section 44 of CGST Act, 2017 and Rule 80 of CGST Rules, 2017	Annual Return by e-commerce operator who are required to collect TCS under Section 52	Form of return is not yet notified.
GSTR-9C	Rule 80(3) of CGST Rules, 2017.	Self certified reconciliation statement by registered taxpayers whose aggregate turnover during financial year exceeds Rs. five Crore	Yearly, to be filed along with Annual Return in form GSTR-9 by registered per-sons whose aggregate turnover during financial year exceeds Rs five Crore.
GSTR-10	Section 45 of CGST Act, 2017 and Rule 81 of CGST Rules, 2017	Final Return after cancellation of GST registration	Once, within three months from the date of cancellation.
GSTR-11	Rule 82 of CGST Rules, 2017	Inward supply details by per-sons having UIN	The return is auto populated on quarterly basis based on GSTR-1 /5 filed by the input or input services sup-pliers to UIN Agencies.

5. INTEREST AND LATE FEES DUE TO DELAY OR NON-FILING OF RETURNS

- (I) Filing of returns is mandatory under GST. Even if there is no transaction, a 'Nil' return must be filed.
- (II) Filing returns for previous month/ quarter is a pre-requisite for filing returns for current month/ quarter.
- (III) The late fee in respect of GSTR-1 is populated in the liability ledger of GSTR-3B filed immediately after a delay.
- (IV) Interest @ 18% per annum has to be calculated by the taxpayer on the amount of outstanding tax to be paid. It shall be calculated on the net tax liability identified in the ledger at the time of payment. The time period will be from the next day of filing due date till the actual date of payment.
- (V) As per the CGST Act, 2017, the late fee is Rs.100/- per day per Act, i.e., Rs.100/- under CGST & Rs.100/- under SGST (Total Rs. 200/- per day), subject to maximum of Rs. 5000/- per Act (Rs. 5000/- CGST + Rs. 5000/- SGST) per Return.
- (VI) There is no late fee separately prescribed under the IGST Act, 2017.
- (VII) For GSTR-9/9C, the maximum late fee per Act is capped at 0.25% of the turnover in the State or Union Territory.

6. SCRUTINY OF RETURNS BY PROPER OFFICER

- (I) The provisions for scrutiny of GST returns are specified under Section 61 of the Central Goods and Service Tax Act, 2017 and Rule 99 of the CGST Rules, 2017. (**Section 61 of CGST Act, 2017**) (**Rule 99 of CGST Rules, 2017**)
- (II) A Scrutiny Module for online scrutiny of returns is available for scrutiny of returns filed in FY 2019-20 onwards.
- (III) The Superintendent of Central Tax is assigned as a proper officer for performing functions, as stated under Section 61 of the CGST Act, 2017.
- (IV) Central Board of Indirect Taxes and Customs (CBIC) has issued SOP (Standard Operating Procedures) to ensure uniformity in selecting returns for scrutiny in 2022 for FY 2017-18 and FY 2018-19 vide [Instruction No. 02/2022-GST dated 22.03.2022](#) and in 2023 for FY 2019-20 onwards vide [Instruction No. 02/2023-GST dated 26.05.2023](#).
- (V) As per Section 61 of the CGST Act, 2017, the proper officer, i.e the Superintendent shall scrutinise the return filed by the registered taxpayer for its correctness of input tax credit availment and discharge of tax liability and notify the discrepancies identified to the taxpayer. If the proper officer is satisfied with the taxpayer's explanation on discrepancies pointed out, no further action will be taken.
- (VI) The Directorate General of Analytics and Risk Management (DGARM) selects the GSTIN whose returns are to be scrutinised and communicate the same to the field formations through the DDM portal. The DGARM will make the list of GSTINs available through the DG systems on the scrutiny dashboard of the officers on the ACES-GST application.
- (VII) The list of parameters for selection of GST returns for scrutiny are as follows-
 - (i) The tax liability in Tables 3.1(a) and (b) of GSTR-3B must match with tax liability in Tables 4, 5, 6, 7A(1), 7B(1), 11A and 11B of GSTR-1 [Net of amendments in Tables 9, 10, and 11(II)].
 - (ii) Advances adjusted are accurately reflected by reporting the same in Table 11B and Tables 4, 5, 6 and 7 of GSTR-1.
 - (iii) Reporting and paying in cash the exact tax liability under the reverse charge mechanism using Tables 3.1(d) for tax liability and 4(A)(2) and 4(A)(3) for ITC claimed on it in GSTR-3B. The value in GSTR-3B should be more than the eligible ITC in Tables 3, 4, 5 and 6 of GSTR-2A.
 - (iv) ITC claimed in Table 4(A)(4) of GSTR-3B should match with amounts marked as eligible ITC in Table 7 of GSTR-2A (Net of amendments in Table 8).
 - (v) Sales subjected to TCS or TDS under GST in GSTR-3B should match the TDS and TCS credit reflected under Column 6 of Table 9 of the GSTR-2A.

- (vi) In Table 3.1(a) and (b) of the GSTR-3B the tax liability should match with the corresponding e-way bills.
- (vii) ITC is ineligible for claims for the period after the effective date of cancellation of the supplier's GST registrations, especially in case of retrospective cancellation of GST registrations.
- (viii) The GSTR-3B filing status of respective vendors must not be 'No' while claiming ITC of such invoice or debit note in the GST returns, despite it appearing in the GSTR-2A.
- (ix) No ITC should be claimed if the relevant period's GSTR-3B is filed after the last date allowed under Section 16(4) of the CGST Act, 2017, i.e. 30th November of the year following the financial year in which such invoice/debit note is raised or date of filing annual returns, whichever is earlier. **(Section 16(4) of CGST Act)**
- (x) ITC on import of goods in Table 4(A)(1) of GSTR-3B should match with amounts in Tables 10 and 11 of GSTR-2A and data on ICEGATE.
- (xi) Adherence to Rule 42 and 43 of CGST Rules, 2017 for accurate reversals of ITC in Table 4(B) of GSTR-3B. **(Rules 42 and 43 of CGST Rules, 2017)**
- (xii) Computation and payment of late fee/interest as per Sections 47 and 50 of the CGST Act, 2017, wherever return filing/tax payment is delayed. **(Sections 47 and 50 of CGST Act, 2017)**
- (VIII) A month-wise schedule shall be prepared by the proper officer for scrutiny regarding all GSTINs selected. The priority may be based on the revenue implication involved. GSTINs with a higher revenue implication shall be prioritised.
- (IX) The proper officer shall scrutinise the return for its correctness based on the information available on the system in various forms and statements filed by the registered taxpayer and other sources, such as, DGARM, ADVAIT, E-way Bill portal, etc.
- (X) The proper officer is expected to depend on the information available to the Department. He should have a minimal interface with the taxpayer and normally should not ask for documents from the taxpayer before the issuance of **Form GST ASMT-10**.
- (XI) As per Rule 99 of the CGST Rules, 2017, when a return is selected for scrutiny, the proper officer shall scrutinise the same as per Section 61 based on information available to him.
- (XII) **Relevant factors for Scrutiny of Returns:**

While scrutinising the returns, certain vital factors need proper verification to ascertain whether the tax liability has been discharged properly and whether the other compliances like availment of ITC, payment of interest, Late fee, etc. is in order. Some of such factors that need to be considered by the Officer while scrutinising the returns, are as under-

- (i) Tax liability on account of "Outward taxable supplies (other than zero rated, nil rated and exempted)" and "Outward taxable supplies (zero rated)" declared in FORM GSTR-3B may be verified with corresponding tax liability in respect of outward taxable supplies declared in FORM GSTR-1. If the tax liability in respect of supplies declared in FORM GSTR-1 exceeds the liability declared in FORM GSTR-3B, it may indicate short payment of tax. All amendments to invoices need to be checked to confirm whether they are appropriately reflected in GSTR-1 and GSTR-3B. Also, it has to be verified whether the liability reported in GSTR-1 matches the liability reported in the GSTR-9 return.
- (ii) Tax liability on account of "Inward supplies liable to reverse charge" declared in FORM GSTR-3B may be verified with the ITC availed in respect of inward supplies attracting reverse charge, available in FORM GSTR-2A. In respect of inward supplies attracting reverse charge received from a registered person, the details of corresponding invoices and debit/credit notes are available in FORM GSTR-2A. However, the details of such inward supplies from unregistered persons are not available in FORM GSTR-2A, as only registered persons furnish FORM GSTR-1. Also, details of ITC on account of import of services are not available in FORM GSTR-2A. As such, the reverse charge supplies declared in FORM GSTR-3B cannot be less than the inward supplies attracting reverse charge as available in FORM GSTR-2A.

- (iii) ITC availed in respect of "Inward supplies from ISD" in FORM GSTR-3B should be verified with FORM GSTR-2A. Also, the ITC availed in respect of "All other ITC" in FORM GSTR-3B should be verified with FORM GSTR-2A.
 - (iv) The taxable value declared on account of "Outward taxable supplies (other than zero rated, nil rated and exempted)" should be verified in FORM GSTR-3B to ascertain that it is not less than the net amount liable for TCS and TDS credit as per FORM GSTR-2A. The details of such TDS and TCS are furnished by the deductors and operators in their FORM GSTR-7 and FORM GSTR-8, respectively, and made available to the registered person in FORM GSTR-2A. Besides such supplies, the registered person may have other supplies also. Liability on account of outward supplies in FORM GSTR-3B should also be verified with the Tax liability as declared in e-way bills.
 - (v) In case of retrospective cancellation of registration of a supplier, the recipient is not entitled to claim ITC in respect of invoices or debit notes issued after the effective date of cancellation of the registration. The effective date of cancellation of registrations of the suppliers is available in FORM GSTR-2A. It may be verified whether the registered person has availed ITC in respect of such invoices or debit notes issued by the suppliers after the effective date of cancellation of their registrations.
 - (vi) FORM GSTR-2A of the registered person contains the details of "GSTR-3B filing status" of the supplier in respect of each invoice / debit note received by the registered person. Where the said status is "No", it indicates the supplier has furnished invoice details in his FORM GSTR-1, but has not furnished the return in FORM GSTR-3B for the corresponding tax period. The availment of ITC in respect of such invoices / debit notes should be checked and appropriate action as per the law should be taken.
 - (vii) If GSTR-3B of a tax period is filed after the last date of availment of ITC in respect of any invoice / debit note then in such cases, no ITC shall be availed in the return, as Section 16(4) of CGST Act, 2017 provides for availment of ITC only till the 30th day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier. If any return in FORM GSTR-3B is furnished after such time by the registered person, any ITC availed therein is inadmissible.
 - (viii) ITC availed in respect of "Import of goods" in FORM GSTR-3B may be verified with corresponding details in FORM GSTR-2A. Also, the details of such imports be cross-verified from ICEGATE portal.
 - (ix) Rule 42 of the CGST Rules, 2017 provides for manner of determination of input tax credit in respect of inputs or input services and reversal thereof. Rule 43 provides for manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases. It is necessary to verify whether requisite reversals have actually been made by the registered person.
 - (x) In case of delay in payment of tax, it has to be verified whether interest payable as per the provisions of Section 50 of the CGST Act, 2017 has actually been paid by the registered person.
 - (xi) In case of delay in filing of returns / statements, it has to be verified whether late fee payable as per the provisions of Section 47 of the CGST Act, 2017 has actually been paid by the registered person.
- (XIII) The proper officer shall issue a notice to the taxpayer indicating all the discrepancies noticed and seek his explanation thereon in [FORM GST ASMT-10](#) **within 30 days** of notice. He shall quantify the tax, interest, and other such sums payable regarding the discrepancies noticed. If the registered taxpayer has already made the additional tax payment through FORM GST DRC-03, then the same should be considered while communicating discrepancies to the taxpayer in FORM GST ASMT-10.
- (XIV) If the registered taxpayer accepts the discrepancy, he has to make the payment of tax through [FORM GST DRC-03](#), if he does not accept the discrepancy, he has to submit his explanation in respect of the discrepancy vide [FORM GST ASMT-11](#).
- (XV) If the response is found to be satisfactory, then the proper officer may inform the taxpayer vide [FORM GST ASMT-12](#).
- (XVI) If no explanation is provided by the taxpayer or he fails to pay the tax **within 30 days** of intimation, the proper officer may proceed to determine the tax and other dues as per Sections 73/Section 74 of CGST Act, 2017, as the case may be. The officer may refer the matter to the Jurisdictional Principal Commissioner or Commissioner, if he believes that an audit or investigation is required to determine the correct amount of liability. The Principal

Commissioner or Commissioner can decide the appropriate action, like audit by the tax officers under Section 65, special audit by a Chartered Accountant or a Cost Accountant nominated by Commissioner under Section 66 or inspection, search and seizure in terms of Section 67 and to be accordingly referred to the Audit Commissionerate or Anti Evasion Wing. **(Section 65, 66, 67, 73 & 74 of CGST Act, 2017)**

(XVII) For each selected GSTIN, the proper officer must scrutinise all the returns of the corresponding financial year and issue a single notice vide FORM GST ASMT-10.

(XVIII) The scrutiny of returns shall be completed in a specified period to safeguard revenue. Below are some of the timelines:

Sr. No.	Process	Time Line
1	Communicating the list of GSTINs selected for scrutiny by the DGARM to the nodal officer	From time to time
2	Communicating the list of GSTINs selected for scrutiny by the nodal officer to the proper officer	Within 3 working days from the date of receipt of the list of GSTINs from the DGARM (not applicable for online scrutiny from FY 2019-20 onwards)
3	Finalisation of scrutiny schedule with the Assistant/ Deputy Commissioner	Within 7 working days of receipt of the list of GSTINs from the nodal officer (from 19-20 scrutiny onwards, it is available online on ACES portal)
4	Sharing the scrutiny schedule with the DGGST	Within 30 days of receipt of the list of GSTINs from DGARM
5	Issue of notice in Form GST ASMT-10	Within a month as specified in the scrutiny schedule
6	Issue of response in GST ASMT-11	Within 30 days of receipt of notice under GST ASMT-10
7	Issue of order in Form GST ASMT-12	Within 30 days of receipt of response in Form GST ASMT-11
8	Initiating action for determining tax under section 73 and section 74	If the reply is received: Within 30 days from receipt of reply in GST ASMT-11. If the reply is not received: Within 15 days of completion of 30 days of service of notice in GST ASMT-10 or further period as may be notified by the proper officer.
9	Reference to Commissioner for taking appropriate action under section 65, section 66 or section 67	If the reply is received: Within 30 days from receipt of reply in GST ASMT-11. If the reply is not received: Within 45 days of service of notice in GST ASMT-10.

(XIX) A Scrutiny Register shall be maintained by the proper officer, i.e. the Superintendent for all the GSTINs allotted for scrutiny in the format prescribed in [Instruction No. 02/2022-GST, dated 22.03.2022](#), issued in GST Policy Wing of CBIC. For scrutiny from the FY 2019-20 onwards, MIS report of scrutiny register along with the 'Monthly Scrutiny Progress Report' is available on the dashboard of the officer over the ACES portal.

(XX) The progress of the scrutiny shall be monitored by the jurisdictional Principal Commissioner every month. The proper officer shall prepare a scrutiny progress report at the end of every month in the prescribed format in Instruction No. 02/2022-GST, dated 22.03.2022, issued in GST Policy Wing of CBIC. This report shall be forwarded to the Director-General of Goods and Service Tax by the Principal Chief Commissioner of the concerned zone by the 10th of the succeeding month. The DGGST shall submit this report to the Board by the 20th of the corresponding month.

(XXI) [Instruction No. 02/2022-GST](#) issued by GST Policy Wing of CBIC on 22.03.2022 shall be followed for the scrutiny of returns for the financial years 2017-18 and 2018-19 whereas the [Instruction No. 02/2023-GST](#) issued on 26.05.2023 will be followed along with the previous instruction for FY 2019-20 onwards.

7. **TASKS OF RANGE OFFICERS:**

The Range Officer is required to undertake the following functions with regard to scrutiny of returns:

(I) Superintendent is the proper officer for scrutiny of Returns to verify the correctness of returns and issue Notice of discrepancies. He shall verify the correctness of input tax credit availment, tax liability payable by the taxpayer

and the payment of tax in the manner prescribed.

- (II) Superintendent shall take corrective measures in terms of Section 65 / 66 / 67 and 73/74 of CGST Act, 2017.
- (III) Superintendent shall issue Notice to return defaulters under Section 46 of the CGST Act, 2017 read with Rule 68 of CGST Rules, 2017.
- (IV) Superintendent shall follow up with non-filers for filing pending periodic returns through various means, including emails. In deserving cases, he shall issue GSTR-3A as per Rule 68 of the CGST Rules, 2017.
- (V) The records of the scrutiny of returns, completed and pending, along with all relevant details are to be maintained by Range Officer.
- (VI) The Inspector in Range has to assist the Superintendent in performing the task of scrutiny of returns.

8. SOPS ISSUED IN RESPECT OF RETURNS

- (I) Standard Operating Procedure (SOP) is issued by CBIC vide [Instruction No. 02/2022-GST, dated 22.03.2022](#) for Scrutiny of returns for Financial Year 2017-18 and 2018-19.
- (II) Standard Operating Procedure (SOP) is issued by CBIC vide [Instruction No. 02/2023-GST issued on 26.05.2023](#) for Scrutiny of Returns for Financial Year 2019-20 onwards.
- (III) Standard Operating Procedure issued by CBIC vide [Circular No. 129/48/2019 dated 24.12.2019](#) is to be followed in case of non-filers of returns.





04 ASSESSMENT

1. INTRODUCTION

- 1.1 GST law is a voluntary compliance-based taxation system. One of the key features of GST is its self-assessment system. The entire responsibility for assessment of tax liability has been entrusted upon with the taxable person or the Business entity in line and spirit of the GST laws.
- 1.2 The standard norm in tax laws is to make the supplier responsible for tax assessment, because the supplier alone is aware of the details of his supply and all elements of value that are relevant for arriving at taxable value. This means that taxpayers are required to self-assess their tax liability and file their returns accordingly.
- 1.3 The provisions of the CGST Act, 2017 and CGST Rules, 2017, relevant to this Chapter of Assessment, are as under –

Sr. No.	Section/Rule	Provision pertaining to
1	Section 2(11)	Definition of Assessment
2	Section 59	Self-Assessment
3	Section 60 and Rule 98	Provisional assessment
4	Section 61 and Rule 99	Scrutiny of returns
5	Section 62 and Rule 100	Assessment of non-filers of returns
6	Section 63 and Rule 100	Assessment of unregistered persons
7	Section 64 and Rule 100	Summary assessment in certain special cases
8	Section 65 and Rule 101	Audit by tax authorities
9	Section 66 and Rule 102	Special audit.
10	Section 67 and Rule 139	Power of inspection, search and seizure.
11	Section 16 and Rule 36	Eligibility and conditions for taking input tax credit
12	Rule 68	Notice to non-filers of returns
13	Rule 100	Assessment in certain cases

- 1.4 Assessment under GST is a crucial process that helps to ensure that taxpayers are complying with the GST laws and regulations. The law has put onus of self-assessment on the taxpayers with a strong compliance verification mechanism in place to ensure that the tax liabilities are discharged appropriately and in time. The officer will step into the area of assessment of tax liabilities only in cases the legislation warrants him to do so in specified situations.
- 1.5 As per Section 2(11) of CGST Act, 2017 'assessment' means determination of tax liability and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment. Such assessments are subject to proceedings involving observance of principles of natural justice. **(Section 2(11) of CGST Act, 2017)**
- 1.6 The word assessment is used in a comprehensive sense and includes all proceedings, starting with the filing of the return or issue of notice and ending with the determination of the tax payable by the taxpayer and its recovery by the proper officer.

2. IMPORTANCE OF ASSESSMENT UNDER GST

Assessment under GST is important for various reasons. It ensures that taxpayers are complying with the GST laws and regulations, which enables the taxpayer to run his business smoothly. Assessment also helps in detecting any errors or discrepancies in the returns filed by the taxpayers, thus, preventing tax evasion. Besides, assessment helps educate taxpayers on the correct procedures for calculating and paying their taxes and thus, improves GST compliance.

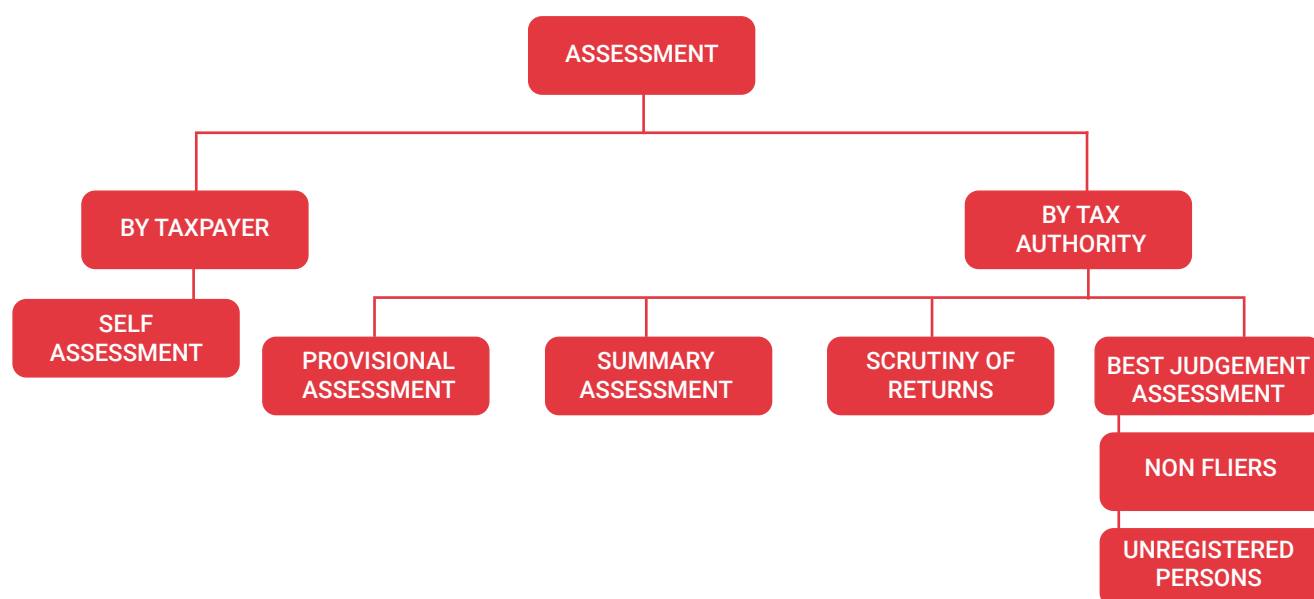
3. ERRORS COMMONLY COMMITTED WHILE DISCHARGING TAX LIABILITY

It is crucial to understand the common errors the taxpayers are making while filing the statutory returns. These errors can result in incorrect assessment which ultimately lead to short payment or non-payment of tax. Some of the common errors made while filing the returns are as under:

- (i) **Incorrect classification of goods and services:** GST rates vary depending on the classification of goods and services. It has to be ensured from the returns that the supply of goods and services are correctly classified and the tax rate applied for determining the tax payable is correct.
- (ii) **Delayed filing of returns:** The statutory GST returns should be filed on or before the due dates, failing which interest is attracted at prescribed rate and penal clauses are attracted.
- (iii) **Failure to report input tax credit:** Taxpayers are allowed to claim the input tax credit on their purchases goods (inputs) and/or services (input services), which are utilised for discharging the tax liability on supply of goods and/or services. Failure to report input tax credit correctly can result in incorrect assessment and in case of wrong availment of the input tax credit, interest at prescribed rate and besides recovery of such wrongly availed input tax credit, penalty is also attracted.
- (iv) **Incorrect reporting of turnover:** It has to be ensured that the taxpayers report their turnover correctly to avoid incorrect assessment.

4. TYPES OF ASSESSMENT UNDER GST

The following are the types of assessment under GST:



5. SELF-ASSESSMENT

- 5.1 Section 59 of the CGST Act, 2017, provides that every registered person shall self-assess the taxes payable and furnish the prescribed return for each tax period. This is the first level of assessment, which is done by the taxpayers themselves. In self-assessment, the taxpayer calculates and declares his tax liability in the returns filed and pays his tax liability at the time of filing the return. This is done on a monthly, quarterly or annual basis, depending on the turnover of the taxpayer. **(Section 59 of CGST Act, 2017)**
- 5.2 Self-Assessment does not confer authority of an assessing officer on the taxpayer. A taxpayer is required to exercise this liberty to assess tax liability voluntarily with the risk of interest and penalty for any miscalculations or misinterpretations without usurping the role of proper officer.
- 5.3 If the taxpayer discovers any omission or incorrect particulars in the returns furnished by him, other than the omissions or commissions pointed out by the proper officer consequent to scrutiny of return or audit or inspection or incorrect particulars, then the taxpayer has to rectify such omissions or incorrect particulars and pay the differential tax, if any, along with interest.

- 5.4 The rectification mentioned above is allowed to be carried out only till the 30th day of November following the end of financial year to which such omissions or incorrect particulars pertain to or the actual date of filing of the Annual Return of the relevant financial year, whichever is earlier.

6. PROVISIONAL ASSESSMENT

6.1 General features of Provisional Assessment:

- (i) The major factors for determining the tax liability are generally the applicable tax rate and the value. There may be situations when these factors might not be readily ascertainable and may be subject to the outcome of a process that requires deliberation and time. In such scenario it may not be possible for the taxpayer to carry out the self-assessment and determine the exact duty liability.
- (ii) To deal with such scenario, Section 60 of the CGST Act, 2017 provides for provisional assessment in two possible situations **(Section 60 of CGST Act, 2017)**–
 - (a) when the taxpayer is unable to determine the value of supply; and
 - (b) when the taxpayer is unable to determine the rate of tax.

Apart from the above two scenarios, provisional assessment cannot be applied by the taxpayer for any other purpose.

- (iii) The taxpayer has to make request in writing, along with the relevant documents and giving reasons for payment of tax on provisional basis.
- (iv) The proper officer shall pass an order, allowing payment of tax on a provisional basis at such rate or on such value, as may be specified by him, if the taxpayer executes a bond in the prescribed form with surety or security as determined by the proper officer, binding himself for payment of the differential tax amount on finalization of the assessment.
- (v) The final assessment order should be passed by the proper officer **within six months** from the date of communication of provisional assessment order. The period of six months can be extended by the Joint Commissioner or Additional Commissioner for further period not exceeding six months and by the Commissioner for further period not exceeding four years, if sufficient cause is shown and reasons are recorded in writing.
- (vi) On finalization of the provisional assessment, any amount that has been paid on the basis of such assessment is to be adjusted against the amount that has been finally determined as payable. In case of short payment, the same has to be paid with interest from the first day after the due date of payment of tax in respect of the supplies subjected to provisional assessment till the date of actual payment.
- (vii) The taxpayer is entitled for refund of tax paid in excess consequent to the order of final assessment and interest is payable to the taxpayer on such refund in terms of Section 56 of the CGST Act, 2017. **(Section 56 of the CGST Act, 2017)**

6.2 Procedure for Provisional Assessment:

- (i) The procedure for provisional assessment is laid down in Rule 98 of the CGST Rules, 2017. **(Rule 98 of CGST Rules, 2017)**
- (ii) As per Rule 98(1) of the CGST Rules, 2017 the taxpayer has to make request to the proper officer, i.e. the jurisdictional Assistant/ Deputy Commissioner of Central Tax, electronically in **FORM GST ASMT-01** on common portal, along with the relevant documents and giving reasons for payment of tax on provisional basis.
- (iii) The proper officer will scrutinize the application of the taxpayer made in FORM GST ASMT-01. In case additional information or documents in support is required to decide the case, then in terms of Rule 98(2) of the CGST Rules, 2017 the proper officer shall issue notice in **FORM GST ASMT-02** to the taxpayer requesting for submission of the same. As provided under Rule 98(2) of the CGST Rules, 2017 the taxpayer may file a reply to the notice in **FORM GST ASMT-03**, and can also appear in person before the said proper officer, if he so desires, to explain his case.
- (iv) As per Rule 98(3) of the CGST Rules, 2017, the proper officer, on being satisfied with the reasons given by the taxpayer for seeking provisional assessment, will issue an order in **FORM GST ASMT-04** **within a period of ninety days** from the date of receipt of the request, allowing the payment of tax on a provisional basis. The order should

indicate the value or the rate or both on the basis of which the assessment is to be allowed on a provisional basis and the amount (including the amount of Integrated tax, Central tax, State tax or Union territory tax and cess payable in respect of the transaction), for which the bond is to be executed along with the security to be furnished. The security will not exceed twenty-five percent of the amount covered under the bond. **(Rule 98(3) of the CGST Rules, 2017)**

- (v) In terms of Rule 98(4) of the CGST Rules, 2017 the taxpayer has to execute the bond in **FORM GST ASMT-05** along with a security in the form of a bank guarantee for an amount, as mentioned in **FORM GST ASMT-04**. The bond furnished to the proper officer under the State Goods and Services Tax Act or Integrated Goods and Services Tax Act shall be deemed to be a bond furnished under Central Goods and Services Tax Act 2017. **(Rule 98(4) of CGST Rules, 2017)**
- (vi) On executing the bond, the process of the provisional assessment is complete and the supplier can supply the goods or services or both and pay the tax at the rate or on the value that has been indicated in the order in **FORM GST ASMT-04**.

6.3 Finalisation of provisional assessment:

- (i) The provisional assessment will be finalized **within a period of six months** from the date of issuance of FORM GST ASMT-04. The time limit for finalization of provisional assessment can be extended by the Joint Commissioner or Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding four years, if sufficient cause is shown and reasons are recorded in writing.
- (ii) As per Rule 98(5) of the CGST Rules, 2017, the proper officer, i.e. the jurisdictional Asst. Commissioner/Dy. Commissioner of Central Tax will issue a notice in **FORM GST ASMT-06**, calling for information and records required for finalization of assessment. He shall issue a final assessment order, specifying the amount payable by the taxpayer or the amount refundable, if any, in **FORM GST ASMT-07**. **(Rule 98(5) of the CGST Rules, 2017)**

6.4 Interest liability:

- (i) In case any tax amount becomes payable subsequent to finalization of the provisional assessment, then interest at the specified rate will also be payable by the taxpayer from the first day after the due date of payment of the tax till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.
- (ii) In case any tax amount becomes refundable subsequent to finalization of the provisional assessment, then interest at the specified rate will be payable to the taxpayer, subject to the eligibility of refund and absence of unjust enrichment.

6.5 Release of Security:

- (i) Rule 98(6) of the CGST Rules, 2017 provides that after issuance of the order in **FORM GST ASMT-07** mentioned above, the taxpayer has to file an application in **FORM GST ASMT-08** for the release of the security furnished. **(Rule 98(6) of the CGST Rules, 2017)**
- (ii) On receipt of the application in **FORM GST ASMT-08**, the proper officer shall issue an order in FORM GST ASMT-09 prescribed in Rule 98(7) of the CGST Rules, 2017 **within a period of seven working days** from the date of the receipt of the application, releasing the security after the amount payable as per the order, if any, as specified in FORM GST ASMT-07, has been paid. **(Rule 98(7) of the CGST Rules, 2017)**

7. **SCRUTINY ASSESSMENT BY PROPER OFFICER**

- 7.1 Scrutiny assessment is a cross check and verification done by the proper officer to verify the correctness of the returns filed by taxpayers. This is applicable for only registered persons and not to unregistered persons.
- 7.2 Section 61 (1) of the CGST Act, 2017 provides that the proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in the prescribed manner and seek explanation on the same. **(Section 61(1) of CGST Act, 2017)**
- 7.3 Section 61(2) of the CGST Act, 2017 provides that in case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard. However, if no satisfactory explanation is furnished within the stipulated time of thirty days or where the registered person, after accepting

the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the tax authorities may initiate the following actions- **(Section 61(2) of CGST Act, 2017)**

- Conduct a tax audit under Section 65 of CGST Act, 2017; or **(Section 65 of CGST Act, 2017)**
- Start a special audit under Section 66 of CGST Act, 2017; or **(Section 66 of CGST Act, 2017)**
- Inspect and search the places of the taxpayer's business under Section 67 of CGST Act, 2017; or
- Initiate demand and recovery provisions; or
- Send notices under Section 73 of CGST Act, 2017 for outstanding demand or shortfall of tax, when there is no wilful intention of doing fraud or suppression of facts or wilful misstatement of facts; or **(Section 73 of CGST Act, 2017)**
- Send notices under Section 74 of CGST Act, 2017 for outstanding demand or shortfall of tax when there is wilful intention of fraud or suppression of facts or wilful misstatement of facts. **(Section 74 of CGST Act, 2017)**

7.4 **Procedure for Scrutiny Assessment:**

- (i) A Scrutiny Module for online scrutiny of returns is available for scrutiny of returns filed in FY 2019-20 onwards.
- (ii) The Superintendent of Central Tax is assigned as a proper officer for performing functions, as stated under section 61 of the CGST Act, 2017. **(Section 61 of CGST Act, 2017)**
- (iii) Central Board of Indirect Taxes and Customs (CBIC) has issued two SOPs (Standard Operating Procedures), Instruction No. 02/2022-GST dated 22.03.2022 and Instruction No. 02/2023-GST dated 26.05.2023, to ensure uniformity in selecting returns for scrutiny in 2022 for FY 2017-18 and FY 2018-19 as well as in 2023 for FY 2019-20 onwards. The details of the said SOP have been discussed at length in the later part of this CHAPTER.
- (iv) As per Rule 99 of the CGST Rules, 2017, when a return is selected for scrutiny, the proper officer shall scrutinise the same as per Section 61 based on information available to him. The discrepancies shall be intimated to the taxpayer via Form GST ASMT-10 and seek his explanation **within 30 days** from the date of service of notice **(Rule 99 of CGST Rules, 2017)**
- (v) If the discrepancies pointed out in **FORM GST ASMT-10** is not acceptable to the taxpayer then he has to submit his explanation electronically through common portal vide **FORM GST ASMT-11** [Rule 99(2)].
- (vi) If the reply of the taxpayer is found to be satisfactory and acceptable, then the proper officer may inform the taxpayer electronically in **FORM GST ASMT-12** [Rule 99(3)].
- (vii) If no explanation is provided by the taxpayer or if he fails to pay tax **within 30 days** of intimation, the proper officer may proceed to determine the tax and other dues as per Section 73 or Section 74 of CGST Act, 2017. The officer may refer the matter to the Jurisdictional Principal Commissioner or Commissioner, if he believes that an audit or investigation is required to determine the correct amount of liability. The Principal Commissioner or Commissioner can decide the appropriate action, like audit by the tax officers under Section 65, special audit by a Chartered Accountant or a Cost Accountant nominated by Commissioner under Section 66 or inspection, search and seizure in terms of Section 67 to be referred to the Audit Commissionerate or Anti Evasion Wing. **(Section 73 & 74 of CGST Act, 2017) (Section 65, 66 & 67 of CGST Act, 2017)**
- (viii) No order can be passed under scrutiny assessment as it is not a legal or judicial proceeding.
- (ix) Presently the Directorate General of Analytics and Risk Management (DGARM) selects the GSTIN whose returns are to be scrutinised and communicates the same to the field formations through the DDM portal. The DGARM will make the list of GSTINs available through the DG systems on the scrutiny dashboard of the officers on the ACES-GST application.
- (x) The list of parameters for selection of GST returns for scrutiny are as follows-
 - (a) The tax liability in Tables 3.1(a) and (b) of **GSTR-3B** must match with tax liability in Tables 4, 5, 6, 7A(1), 7B(1), 11A and 11B of **GSTR-1** [Net of amendments in Tables 9, 10, and 11(II)].

- (b) Advances adjusted are accurately reflected by reporting the same in Table 11B and Tables 4, 5, 6 and 7 of [GSTR-1](#).
- (c) Reporting and paying in cash the exact tax liability under the reverse charge mechanism using Tables 3.1(d) for tax liability and 4(A)(2) and 4(A)(3) for ITC claimed on it in GSTR-3B. The value in [GSTR-3B](#) should be more than the eligible ITC in Tables 3, 4, 5 and 6 of [GSTR-2A](#).
- (d) ITC claimed in Table 4(A)(4) of GSTR-3B should match with amounts marked as eligible ITC in Table 7 of GSTR-2A (Net of amendments in Table 8).
- (e) Sales subjected to TCS or TDS under GST in GSTR-3B should match the TDS and TCS credit reflected under Column 6 of Table 9 of the GSTR-2A.
- (f) In Table 3.1(a) and (b) of the GSTR-3B the tax liability should match with the corresponding e-way bills.
- (g) ITC is ineligible for claims for the period after the effective date of cancellation of the supplier's GST registrations, especially in case of retrospective cancellation of GST registrations.
- (h) The GSTR-3B filing status of respective vendors must not be 'No' while claiming ITC of such invoice or debit note in the GST returns, despite it appearing in the GSTR-2A.
- (i) No ITC should be claimed if the relevant period's GSTR-3B is filed after the last date allowed under Section 16(4) of the CGST Act, 2017, i.e. 30th November of the year following the financial year in which such invoice/debit note is raised or date of filing annual returns, whichever is earlier. ([Section 16\(4\) of CGST Act, 2017](#))
- (j) ITC on import of goods in Table 4(A)(1) of GSTR-3B should match with amounts in Tables 10 and 11 of GSTR-2A and data on ICEGATE.
- (k) Adherence to Rule 42 and 43 of CGST Rules, 2017 for accurate reversals of ITC in Table 4(B) of GSTR-3B. ([Rule 42 & 43 of CGST Rule, 2017](#))
- (l) Computation and payment of late fee/interest as per Sections 47 and 50 of the CGST Act, 2017, wherever return filing/tax payment is delayed. ([Section 47 & 50 of CGST Act, 2017](#))
- (xi) The CGST department has introduced the automated return scrutiny module for returns from FY 2019-20 onwards. It ensures minimal manual intervention in the adjudication process, making it more transparent, efficient and bridges any gaps leading to tax evasion.
- (xii) A month-wise schedule shall be prepared by the proper officer for scrutiny regarding all GSTINs selected. The priority may be based on the revenue implication involved. GSTINs with a higher revenue implication shall be prioritised.
- (xiii) The proper officer scrutinises the return for its correctness based on the information available on the system in various forms and statements filed by the registered taxpayer and other sources, such as, DGARM, ADVAIT, E-way Bill portal, etc.
- (xiv) The proper officer is expected to depend on the information available to the Department itself. He should have a minimal interface with the taxpayer and normally should not ask for documents from the taxpayer before the issuance of [FORM GST ASMT-10](#).
- (xv) The proper officer shall issue a notice to the taxpayer indicating all the discrepancies noticed and seek his explanation thereon in [FORM GST ASMT-10](#). He shall quantify the tax, interest, and other such sums payable regarding the discrepancies noticed. If the registered taxpayer has already made the additional tax payment through FORM [GST DRC-03](#), then the same should be considered while communicating discrepancies to the taxpayer in FORM GST ASMT-10.
- (xvi) For each selected GSTIN, the proper officer must scrutinize all the returns of the corresponding financial year and issue a single notice via [FORM GST ASMT-10](#).
- (xvii) The scrutiny of returns shall be completed in a specified period to safeguard revenue. Below are some of the timelines:

Sr. No.	Process	Time Line
1	Communicating the list of GSTINs selected for scrutiny by the DGARM to the nodal officer	From time to time
2	Communicating the list of GSTINs selected for scrutiny by the nodal officer to the proper officer	Within 3 working days from the date of receipt of the list of GSTINs from the DGARM (not applicable for online scrutiny from FY 2019-20 onwards)
3	Finalisation of scrutiny schedule with the Assistant/ Deputy Commissioner	Within 7 working days of receipt of the list of GSTINs from the nodal officer (from FY 19-20 scrutiny onwards, it is available online on ACES portal)
4	Sharing the scrutiny schedule with the DGGST	Within 30 days of receipt of the list of GSTINs from DGARM
5	Issue of notice in Form GST ASMT-10	Within a month as specified in the scrutiny schedule
6	Issue of response in GST ASMT-11	Within 30 days of service of notice under GST ASMT-10
7	Issue of order in Form GST ASMT-12	Within 30 days of receipt of response in Form GST ASMT-11
8	Initiating action for determining tax under section 73 and section 74	If the reply is received: Within 30 days from receipt of reply in GST ASMT-11. If the reply is not received: Within 15 days of completion of 30 days of service of notice in GST ASMT-10 or further period as may be notified by the proper officer.
9	Reference to Commissioner for taking appropriate action under section 65, section 66 or section 67	If the reply is received: Within 30 days from receipt of reply in GST ASMT-11. If the reply is not received: Within 45 days of service of notice in GST ASMT-10.

- (xviii) A Scrutiny Register shall be maintained by the proper officer for all the GSTINs allotted for scrutiny in the format prescribed in [Instruction No. 2/2022-GST, dated 22.03.2022](#), issued by GST Policy Wing of CBIC. For scrutiny from the FY 2019-20 onwards, MIS report of scrutiny register along with the 'Monthly Scrutiny Progress Report' is available on the dashboard of the officer over the ACES portal.
- (xix) The progress of the scrutiny shall be monitored by the jurisdictional Principal Commissioner every month. The proper officer shall prepare a scrutiny progress report at the end of every month in the prescribed format in [Instruction No. 2/2022-GST, dated 22.03.2022](#), issued in GST Policy Wing of CBIC. This report shall be forwarded to the Director General of Goods and Service Tax by the Principal Chief Commissioner of the concerned zone by the 10th of the succeeding month. The DGGST shall submit this report to the Board by the 20th of the corresponding month.
- (xx) Instruction No. 02/2022-GST issued by GST Policy Wing of CBIC on 22.03.2022 shall be followed for the scrutiny of returns for the financial years 2017-18 and 2018-19 whereas the [Instruction No. 02/2023-GST issued on 26.05.2023](#) will be followed along with the previous instruction for FY 2019-20 onwards.

8. BEST JUDGMENT ASSESSMENT IN RESPECT OF NON-FILERS

- 8.1 Assessment in respect of the non-filers of statutory returns is vital for maintaining compliance and identifying taxpayers who haven't met their filing responsibilities. To tackle non-compliance, the GST law has instituted diverse measures while aiming to prompt regular filing among taxpayers.
- 8.2 Continuous vigil is maintained on the GST portal to pinpoint registered taxpayers who fail to submit their returns by the specified deadlines. Through the GST system, reports and alerts are automatically generated for non-filers, aligned with the frequency of return filing, whether it's on a monthly, quarterly, or annual basis.
- 8.3 Intimations are sent to non-filers, outlining their failure to submit returns within the set timeframe. If the taxpayer disregards the intimation or fails to file the necessary returns within the specified duration after receiving the intimation/ notice, assessment proceedings can be initiated.
- 8.4 In case of absence of any of the essential points required for regular assessment, i.e., non-submission of documents and records by taxable person, proper officer not satisfied with the correctness of records submitted by taxable person or taxable person not co-operating with proper officer for enabling him to complete the regular assessment, in such cases, the proper officer will determine the tax liability of the taxable person to the best of his judgement on the basis of records, documents or any other information in possession of such proper officer.

- 8.5 In such cases either no documents or records are furnished/claims are not substantiated or the records and/or evidence produced before the proper officer are rejected as being unreliable or incomplete/incorrect, either wholly or in part.
- 8.6 Section 62 of the CGST Act, 2017 provides for best judgement assessment in respect of such non-filers of returns prescribed under Section 39 or Section 45 *ibid*. **(Section 62, 39 & 45 of the CGST Act, 2017)**
- 8.7 Section 46 of the CGST Act, 2017 read with Rule 68 of CGST Rules, 2017 provides for issuance of notice in **FORM GSTR-3A** to the person who fails to file the statutory returns, viz, GSTR-3B return and GSTR-10 (Final Return), prescribed under Section 39 and 45, respectively. Issuance of notice under Section 46 operates as a pre-condition for initiating proceedings under Section 62 of the said Act. **(Rule 68 of the CGST Rules, 2017)**
- 8.8 Section 62 of the CGST Act, 2017 states that if a registered taxable person fails to furnish the return under Section 39 or Section 45 even after the service of a notice under Section 46, which provides for issuance of notice to the non-filers, the proper officer may assess the tax liability of such person to the best of his judgement taking into account all the relevant material available or which he has gathered and issue an assessment order **within a period of five years** from the due date for furnishing of the annual returns for the financial year to which the tax not paid relates. **(Section 62, 39 45, 46 of the CGST Act, 2017)**
- 8.9 The provisions of Section 62 can be invoked only in case of registered taxable persons who have failed to file returns, as required, under Section 39 or final return on cancellation of registration under Section 45 of the Act. Section 62 cannot be invoked for non-filing of **GSTR-1** or **GSTR-9** Annual Return.
- 8.10 If the taxpayer fails to furnish the return **within 15 days** of issue of notice under Section 46 then the proper officer may assess the tax liability in accordance with the provisions of Rule 100 of the CGST Rules, 2017. **(Rule 100 of the CGST Rules, 2017)**
- 8.11 The Best Judgement Assessment has to be made on the basis of the material available on record and the information gathered by the proper officer and the circumstances of each case.
- 8.12 In terms of Rule 100 of the CGST Rules, 2017, the order of assessment made under Section 62(1) has to be issued in **FORM GST ASMT-13** and a summary thereof shall be uploaded electronically in **FORM GST DRC-07**. **(Section 62(1) of the CGST Act, 2017)**
- 8.13 If the taxpayer furnishes a valid return **within 30 days** of the service of the above said assessment order in **FORM GST ASMT-13**, the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under Section 50(1) or for the payment of late fee under Section 47 shall continue. However, if the taxpayer fails to furnish a valid return **within sixty days** of the service of the said assessment order, he may furnish the same **within a further period of sixty days** on payment of an additional late fee of one hundred rupees for each day of delay 'beyond sixty days of the service of the said assessment order and in case he furnishes valid return within such extended period, the said assessment order shall be deemed to have been withdrawn, but the liability to pay interest or to pay late fee will remain. **(Section 47 & 50(1) of the CGST Act, 2017)**
- 8.14 In case returns are not filed **within 30 days** even after the order of best judgement is passed under Section 62, the order becomes final and even if returns are filed subsequently, the order cannot be withdrawn. **(Section 62 of the CGST Act, 2017)**
- 8.15 Since **FORM GST DRC-07** will also be issued, best judgement assessment under section 62 will lead to recovery of tax assessed and demand made in order in **FORM GST ASMT-13**.
- 8.16 CBIC, vide its **Circular No. 129/48/2019, dated 24-12-2019** has issued Standard Operating Procedure in respect of the assessment of non-filers.

9. ASSESSMENT OF UNREGISTERED PERSONS

- 9.1 Section 63 of the CGST Act, 2017 provides that when a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled under sub section (2) of Section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgement for the relevant tax periods. **(Section 63 & 29(2) of the CGST Act, 2017)**
- 9.2 Under Section 63 of the CGST Act, 2017, even when a taxable person is 'unregistered', the proper officer is vested with jurisdiction to not only identify taxable transactions but also pass an order of assessment on best judgement

basis and fasten an enforceable demand. However, once registration is obtained, use of best judgement method permitted in case of unregistered persons cannot be applied against registered persons even for the period prior to their date of registration.

- 9.3 For assessment of unregistered person, the proper officer has to resort to third party sources like information shared with Income Tax, ROC, etc. Information can also be gathered by initiating search and seizure proceedings after taking necessary approvals of the Competent Authority.
- 9.4 The proper officer will issue an assessment order **within a period of five years** from the due date for furnishing of the annual return for the financial year to which the tax not paid relates.
- 9.5 No such assessment order shall be passed without giving the person an opportunity of being heard.
- 9.6 Rule 100(2) of the CGST Rules, 2017 prescribes that the proper officer shall issue a notice to a taxable person in accordance with the provisions of Section 63 in [FORM GST ASMT-14](#) containing the grounds on which the assessment is proposed to be made on best judgment basis and shall also serve a summary thereof electronically in [FORM GST DRC-01](#). **(Rule 100 (2) of the CGST Rules, 2017)**
- 9.7 After allowing a time of fifteen days to furnish reply, if any, the proper officer shall pass an order in [FORM GST ASMT-15](#) and summary thereof shall be uploaded electronically in [FORM GST DRC-07](#).

10. SUMMARY ASSESSMENT

- 10.1 Summary assessment means a fast-track assessment based on the return filed by the taxpayer and is done in certain special cases to protect the interest of revenue. Summary assessment is usually done in cases of defaulting or absconding taxpayers when the tax authorities believe that the taxpayer is trying to evade tax or when there is a threat to revenue.
- 10.2 Before initiation of Summary Assessment, there must be evidence of tax liability and the proper officer should have sufficient ground that delay in assessment may adversely affect the interest of revenue. Therefore, the assessment is required to be completed on priority basis without the presence of the taxpayer.
- 10.3 Section 64 of the CGST Act, 2017 empowers the proper officer to carry out Summary Assessment with prior permission of the Additional Commissioner or Joint Commissioner, if he has evidence that the taxpayer has incurred a liability to pay tax and has sufficient ground to believe that delay in passing order will adversely affect the interest of revenue. That means, Summary Assessment cannot be initiated by the proper officer suo moto. **(Section 64 of the CGST Act, 2017)**
- 10.4 Summary assessments are often carried out in situations where it is not possible to identify the taxable person concerned in a case of supply of goods. If some person comes forward to claim the ownership of the unaccounted goods and to pay tax thereon, then for that he will be the taxable person. When the taxable person is not ascertainable then as per proviso to Section 64(1) of the CGST Act, 2017, in such cases the person incharge of such goods at that relevant time shall be deemed to be the taxable person and the tax liability is fastened on such person.
- 10.5 The procedure to be followed in respect of Summary Assessment is provided in Rule 100 of the CGST Rules, 2017.
- 10.6 There is no provision to issue any notice before passing the assessment order. However, opportunity to produce documents showing details of goods and to prove that such goods are accounted is given during the course of the Summary Assessment proceedings.

- 10.7 Rule 100(3) CGST Rules, 2017 provides for issuance of order of assessment in [FORM GST ASMT-16](#) and the summary of the order shall be uploaded electronically in [FORM GST DRC-07](#). **(Rule 100(3) of the CGST Rules, 2017)**
- 10.8 No time limit has been prescribed for passing the above said order. It is necessary to pass a speaking order containing introduction, discussion and finding, conclusion, amount of all applicable taxes (CGST/SGST/IGST) assessed, interest and penalty payable.
- 10.9 Section 64(2) of the CGST Act, 2017 provides that the taxable person against whom the Summary Assessment order is passed, can apply to the Additional Commissioner or Joint Commissioner electronically in [FORM GST ASMT-17](#) [Rule 100(4)]. for withdrawal of said order, **within 30 days** from the date of receipt of the order. The Additional Commissioner after considering the grounds made by such taxable person in his application, shall either withdraw the Summary Assessment order if the same is found erroneous or reject the application if the grounds are not legally acceptable. The order of withdrawal of Summary Order or rejection of the application of taxable person, has to be issued in [FORM GST ASMT-18](#) [Rule 100(5)].

05 DEMAND AND DETERMINATION THEREOF

1. INTRODUCTION: HOW A SITUATION FOR DEMAND ARISES

- 1.1 While discharging the tax liability on the supplies, a supplier has to ensure proper compliance of the provisions related to classification of the supply of Goods and Services, applicable rate of tax, valuation of the supply, time of supply, place of supply, admissibility of exemption/concession granted by notification, if any, etc., so as to ensure proper payment of tax on such supplies.
- 1.2 Any short payment or non-payment of tax, wrong availment/utilization of input tax credit would lead to demand and determination of the amount of tax short-paid or not paid, amount of wrongly availed/utilized input tax credit. Any amount erroneously refunded shall also result in demand of such erroneously refunded amount.
- 1.3 The provisions of CGST Act, 2017 and CGST Rules, 2017, relevant to demand and determination of tax short paid or not paid, Input Tax Credit wrongly availed or utilized or amount erroneously refunded, are as under –

Sr. No.	Section/Rules	Provisions pertaining to
1	Section 73	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful-misstatement or suppression of facts
2	Section 74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful-misstatement or suppression of facts
3	Section 75	General provisions relating to determination of tax
4	Section 76	Tax collected but not paid to government
5	Section 79	Recovery of tax
6	Section 129	Detention, seizure and release of goods and conveyances in transit
7	Section 161	Rectification of errors apparent on the face of record
8	Rule 142	Notice and order for demand of amounts payable under the Act.
9	Rule 152	Attachment of property in custody of courts or Public Officer

- 1.4 The relevant provisions, Forms, Circulars, Notification, etc., wherever mentioned, can be seen by clicking ctrl+click on the respective hyperlink, which will open the <https://taxinformation.cbic.gov.in> page. On clicking GST option on the Menu bar, 'Information-GST' page will appear, below which the option of Act, Rules, Forms, Notification, etc. is provided. The required page of the relevant provision/Form/Circular/Notification can be seen by clicking the appropriate option.
- 1.5 The taxable event under the Goods and Services Tax (GST) law is 'supply' of goods or services or both. That is, GST is payable when a person supplies goods or services or both to another person. The person supplying goods and/or services, called as 'supplier', has to pay the tax into the Government account by following the procedure laid down in the CGST Rules, 2017. The person liable to pay tax is commonly referred as 'taxpayer'.
- 1.6 Under the GST law, self-assessment of the tax payable on supply of goods or services or both is provided under Section 59 of the CGST Act, 2017. Periodical returns, as specified under Section 39 of the CGST Act, 2017 has to be furnished by the taxable person for each tax period by the taxpayer, declaring the details of supplies made, its value, tax payable, input tax credit availed, tax paid, etc. The returns filed by the taxpayer depict the compliance of tax payment for the relevant period. **(Section 59 of CGST Act, 2017) (Section 39 of CGST Act, 2017)**
- 1.7 Under self-assessment, there is a possibility of short-payment or non-payment of tax or incorrect availment of input tax credit by the taxpayer on account of various factors like incorrect rate of tax applied due to wrong classification of the supply, incorrect valuation, availing inadmissible exemption, availing inadmissible input tax credit, etc. There can be a case of erroneous refund of any amount to the taxpayer, which otherwise was not due to him. Further, there may be cases where, by reason of fraud, or willful-misstatement or suppression of facts, the tax amount has not been paid or short paid or input tax credit has been wrongly availed or utilized, with intent

to evade tax, which has eventually led to improper discharge of the tax liability. Most common reasons leading to improper discharge of tax liability are –

- Mismatch in details reported in GSTR-1 Return and GSTR-3B Return;
- Difference in Input tax credit claims made in GSTR-3B vis-a-vis GSTR-2B/2A;
- Delay in filing of GSTR-1 and GSTR-3B;
- Inconsistent declaration in GSTR-1 and e-way bill portal;
- Inconsistencies in reporting of Exports in GSTR-1 with information available on ICEGATE. For example, Shipping Bill or the Bill of export lodged on ICEGATE but not reported in GSTR-1;
- Non-payment of GST liability (tax) or the short-payment of the tax with or without the intent to defraud;
- GST Refund is wrongly made with or without the intent to defraud;
- The input tax credit is wrongly availed or utilized;
- Where a business is liable to obtain GST registration but has failed and not discharged the tax and other liabilities under the CGST Act, 2017;

1.8 The above-mentioned short payment or non-payment of tax or wrongly availed/ utilized input tax credit or erroneous refund can be detected by carrying out verification of the correctness of self-assessed tax, by conducting scrutiny of returns or during the course of Audit conducted on the records of the taxpayer or during enquiry or investigation initiated against the taxpayer.

1.9 Central Goods and Services Tax (GST) Act, 2017, authorizes the Proper Officer to demand and determine the following amounts:

- (i) A tax which is not paid (Section 73 and Section 74)
- (ii) A tax which is short paid (Section 73 and Section 74)
- (iii) A tax which is erroneously refunded (Section 73 and Section 74)
- (iv) Wrongly availed Input Tax Credit (Section 73 and Section 74)
- (v) Wrongly utilized Input Tax Credit (Section 73 and Section 74)
- (vi) A tax which is collected but not paid (Section 76)
- (vii) A tax which is collected under the wrong head (Section 77).

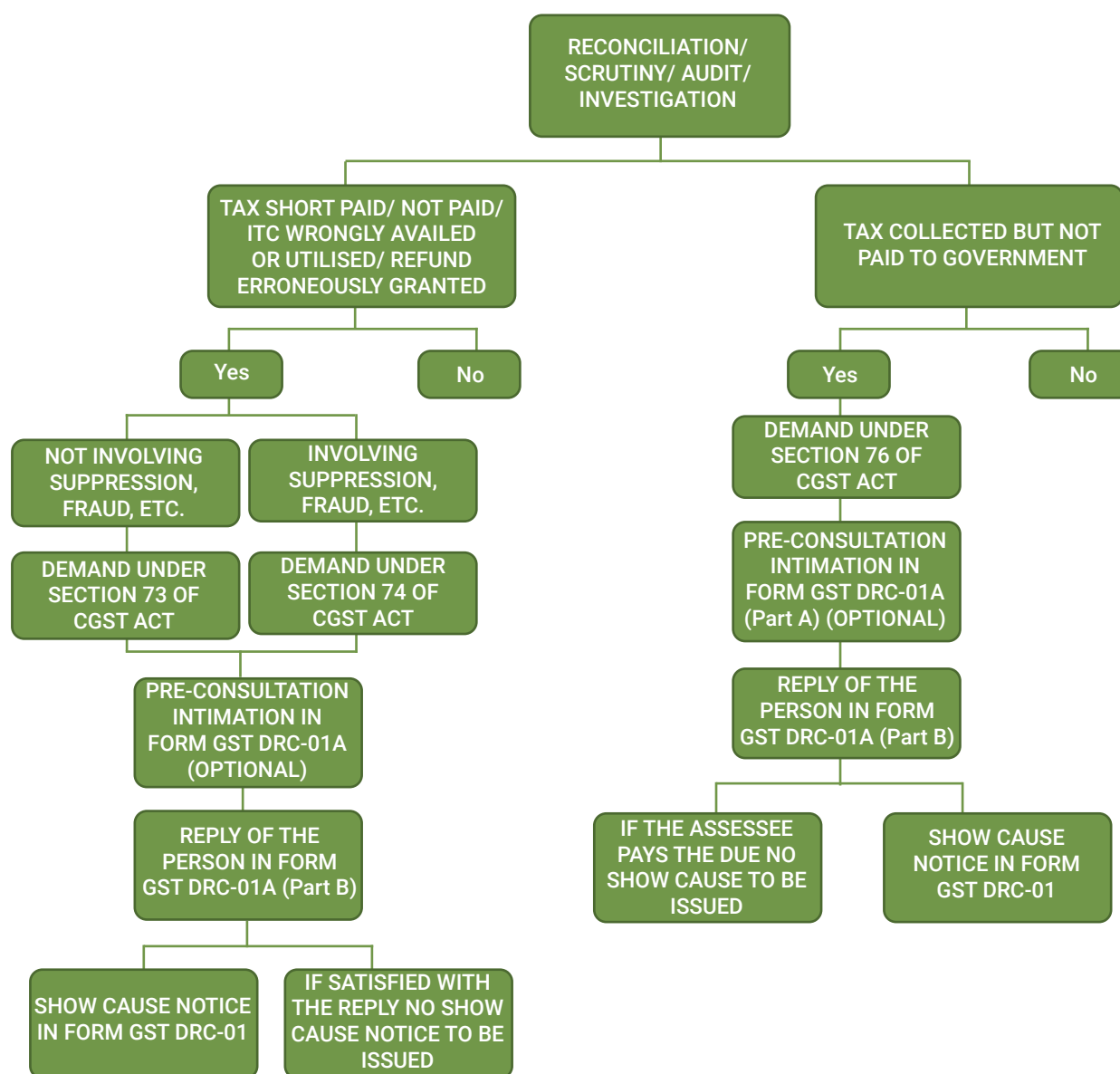
1.10 Action to be taken under the provisions of GST law for recovery of the amount of tax not paid or short paid or Input Tax Credit wrongly availed/ utilized or amount erroneously refunded involves two major steps – **to demand** such amount by issuing a Show Cause Notice and then **to determine** the amount of tax, interest and penalty payable by adjudicating the Show Cause Notice, i.e. by passing an Order after following the prescribed procedure. If any short-payment or non-payment of tax or incorrect availment or utilization of input tax credit or erroneous refund of tax to the taxpayer is noticed during the above-mentioned verification, then such short-paid or not-paid tax or wrongly availed input tax credit or erroneous refund of tax shall be demanded from the taxpayer along with applicable interest by following the due process prescribed under the CGST Act, 2017 and the CGST Rules, 2017.

1.11 Section 73 of the CGST Act, 2017 is the relevant legal provision for demand and determination of the tax short-paid or not-paid or wrongly availed input tax credit or erroneously refunded amount, in cases not involving fraud or willful misstatement or suppression of facts. In cases involving fraud or willful misstatement or suppression of facts, such amount has to be demanded and determined under the provisions of Section 74 of the CGST Act, 2017. **(Section 73 of CGST Act, 2017) (Section 74 of CGST Act, 2017)**

- 1.12 There can be situations where the taxpayer has collected the tax amount from the recipient of goods and/or services, i.e. their customers, but the same is not deposited into the Government account. In such cases, the amount of tax collected but not paid or deposited in the Government account is required to be demanded and determined under Section 76 of the CGST Act, 2017. (**Section 76 of CGST Act, 2017**)

2. DEMAND OF TAX

- 2.1 CGST Act, 2017, authorizes the 'Proper Officer' (please refer Para 5 below) to demand and determine the amount of tax not paid or short paid, wrongly availed/utilized Input Tax Credit, tax erroneously refunded and tax collected but not paid. The proper officer has to act as per the provisions of Sections 73, 74 and 76 of the CGST Act, 2017, relevant to the case.
- 2.2 The Proper Officer, has to send a show cause notice prescribed under Rule 142 of the CGST Rules, 2017, to the person liable to pay the tax. The Demand Notice contains information regarding the amount of tax owed, the reason for the demand, and the period within which the tax must be paid. The Proper officer has to follow the online procedures as illustrated in para 6 below. Process-flow is as under: (**Rule 142 of CGST Rules, 2017**)



3. PRE-NOTICE COMMUNICATION OF DEMAND

- 3.1 Before the issuance of a notice online in [Form GST DRC-01](#), the Proper Officer has to communicate online through the common portal the details of tax liable to be demanded under Section 73(1) or Section 74(1) or 76(2) of CGST Act, 2017, as the case may be, in Part A of [FORM GST DRC-01A](#) prescribed in Rule 142(1A) of CGST Rules, 2017 so as to make the taxpayer aware of the duty demanded. **The provision of pre-notice communication is**

optional w.e.f. 15.10.2020. (Rule 142(1A) of CGST Rules, 2017)

4. REPLY TO PRE-NOTICE COMMUNICATION OF DEMAND

- 4.1 The person to whom the above said intimation has been sent, has the option to reply in Part B of FORM GST DRC-01A online through the common portal.

5. SHOW-CAUSE NOTICE

- 5.1 On receipt of reply from the person in Part B of FORM GST DRC-01A or if no reply is received within the given time, the Proper Officer shall serve the Summary of the notice in FORM GST DRC-01 along with a Show Cause Notice to the person liable to pay tax. The Show Cause Notice should contain the details of the case, the legal provisions applicable, the amount of tax demanded, interest payable under Section 50 of CGST Act, 2017 and penalty imposable under the relevant provisions of the Act.
- 5.2 CBIC vide Instruction No. 04/2023-GST, dated 23.11.2023, issued under F. No. 20016/41/2023-GST, has directed that the Summary of the notice in FORM GST DRC-01 shall be served electronically on the common portal.
- 5.3 A Show Cause Notice (SCN) should ideally comprise of the following parts, though it may vary from case to case:
- (a) Introduction of the case;
 - (b) Legal frame work;
 - (c) Factual statement and appreciation of evidences;
 - (d) Discussion, facts and legal frame work relating thereto;
 - (e) The period to which the Notice pertains to and the discussion on Limitation period, if applicable;
 - (f) Calculation of tax amount payable and other amounts due, such as interest, penalty etc.;
 - (g) Statement of charges-exact nature of violation of law, rules or safeguards etc.
- 5.4 The notice under Section 73 of the CGST Act, 2017, shall be served to the concerned taxpayer at least three months prior to the due date for issuance of the adjudication order specified under Section 73(10) of the CGST Act, 2017. The due date for issuance of the adjudication order is **within three years** from the due date for furnishing the Annual Return for the financial year to which the demand pertains or **within three years** from the date of erroneous refund. (Section 73(10) of the CGST Act, 2017)
- 5.5 The notice under Section 74 of the CGST Act, 2017 shall be served to the concerned taxpayer six months before the due date for issuance of an adjudication order under Section 74(10) of the CGST Act, 2017. The due date for issuance of the adjudication order under Section 74(10) is **within five years** from the due date for furnishing of Annual Return for the relevant financial year to which the demand pertains. (Section 74(10) of the CGST Act, 2017)
- 5.6 In the demand portion, the tax amount pertaining to Central Tax (CGST), State Tax (SGST), Integrated Tax (IGST) and Compensation Cess, as applicable, are required to be clearly indicated. The breakup of each of the applicable taxes should be clearly shown either in the Annexure to the SCN or in a table inside the SCN.
- 5.7 The amount of demand should be clearly indicated in words as well as in figures.
- 5.8 The Relied Upon Documents should be clearly indicated and listed in an Annexure in the SCN.
- 5.9 In case the taxpayer has paid the entire duty amount and the SCN is being issued for interest and/or penalty then in this case, first the duty has to be demanded and then the taxpayer has to be asked to show cause as to why the amount (to be specified) already paid should not be appropriated against the tax demanded. Similarly, if the amount has been paid along with interest and the SCN is being issued only for penalty then duty and interest should first be demanded and then the amount paid should be appropriated against the tax demand and interest.

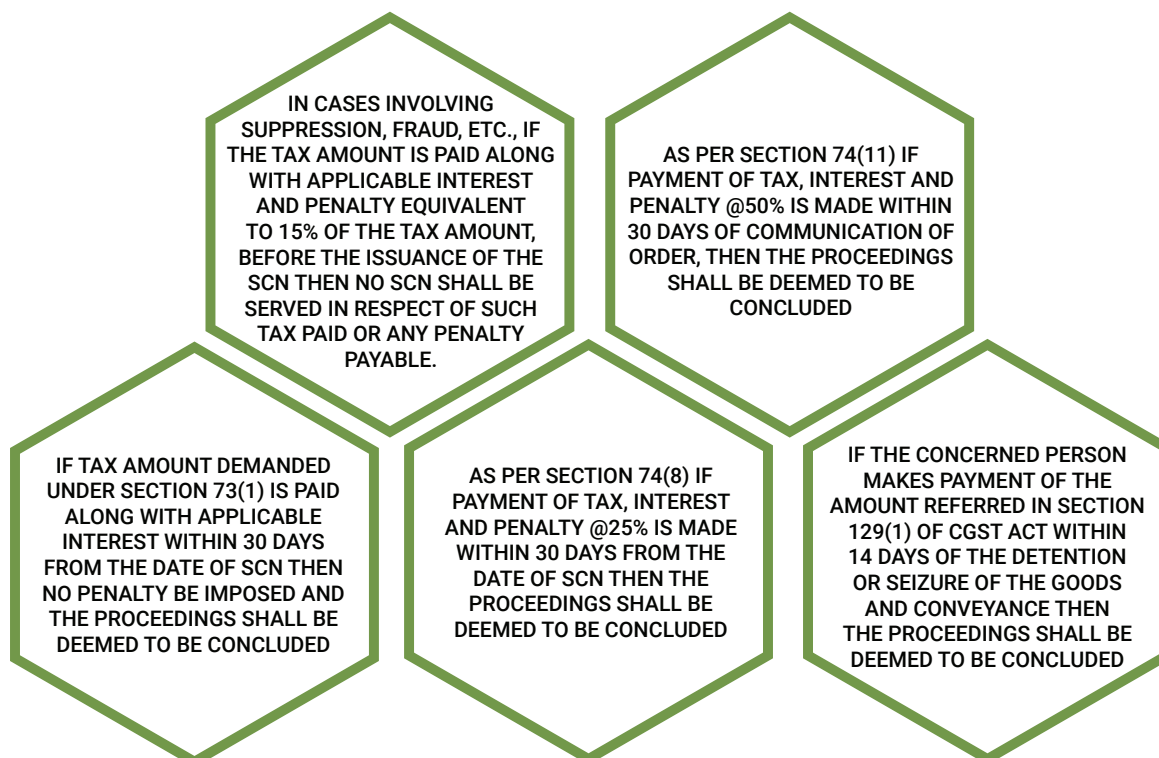
6. SUMMARY STATEMENT (DRC-02)

As per Section 73(3) and Section 74(3) of the CGST Act, 2017, where a Show Cause Notice has been issued for any period by the Proper Officer demanding tax under Section 73(1) or Section 74(1), he may serve a statement in **FORM GST DRC-02**, electronically on common portal containing all the details relating to the taxes short paid or not paid or input tax credit wrongly availed or utilized, as the case may be, for the period other than the period included in the Show Cause Notice already issued on a particular ground. Service of such statement shall be deemed to be the service of show cause notice on such persons, when the grounds involved in the show cause notice issued earlier and the present statement covering further period are same. Such notices are commonly called as periodical demand notices. (**Section 73(3) and 74(3) of CGST Act, 2017**)

7. PAYMENT OF TAX BEFORE ISSUANCE OF SCN OR ORDER

7.1 A taxpayer has the option of payment of tax dues before issuance of SCN and/or order, as discussed below.

PAYMENT OF TAX BEFORE ISSUANCE OF SCN OR ORDER



- 7.2 If any person pays tax dues along with interest on the delayed payment of that tax, before the issuance of show cause notice, either on his own or on the direction of the proper officer and informs the proper officer in writing, then as per Section 73(6) of the CGST Act, 2017, no show cause notice shall be issued for such tax dues or the penalty payable. (**Section 73(6) of CGST Act, 2017**)
- 7.3 If the person to whom show cause notice demanding tax under Section 73 of the CGST Act, 2017 has been issued, pays the tax along with interest on the delayed payment of that tax, **within a period of thirty days** from the date of issue of the said show cause notice, then as per Section 73(8) of the CGST Act, 2017, penalty shall not be imposed and all the proceedings against that person relating to the said show cause notice shall be considered as concluded. (**Section 73(8) of CGST Act, 2017**)
- 7.4 The person chargeable with tax may pay the tax dues on the basis on his own or on the direction of the Proper Officer, before the issuance of show cause notice, along with the applicable interest for the delayed payment of tax and also pay penalty equivalent to 15% of the tax amount and inform the Proper Officer about such payment. As per Section 74(6) of the CGST Act, 2017, the Proper Officer shall not serve any notice in respect of the tax so paid or any penalty payable. (**Section 74(6) of CGST Act, 2017**)
- 7.5 If the person to whom show cause notice demanding tax under Section 74 of CGST Act, 2017 has been issued, pays the tax dues along with interest on the delayed payment of that tax and penalty equivalent to 25% of the tax dues, **within a period of thirty days** from the date of issue of the said show cause notice, then as per Section

74(8) of the CGST Act, 2017, all the proceedings against that person relating to such show cause notice shall be considered as concluded. **(Section 74(8) of CGST Act, 2017)**

8. INTIMATION OF PAYMENT OF TAX

- 8.1 As mentioned in para 7 above, if the person charged with non-payment of tax pays the tax and interest in accordance with Section 73(5) or 73(8) of the CGST Act, 2017 or the tax, interest and penalty in accordance with Section 74(5) or 74(8) of the CGST Act, 2017, either on his own or as communicated by the Proper Officer, then he shall inform about such payment in **FORM GST DRC-03**. **(Section 73 and 74 of CGST Act, 2017)**

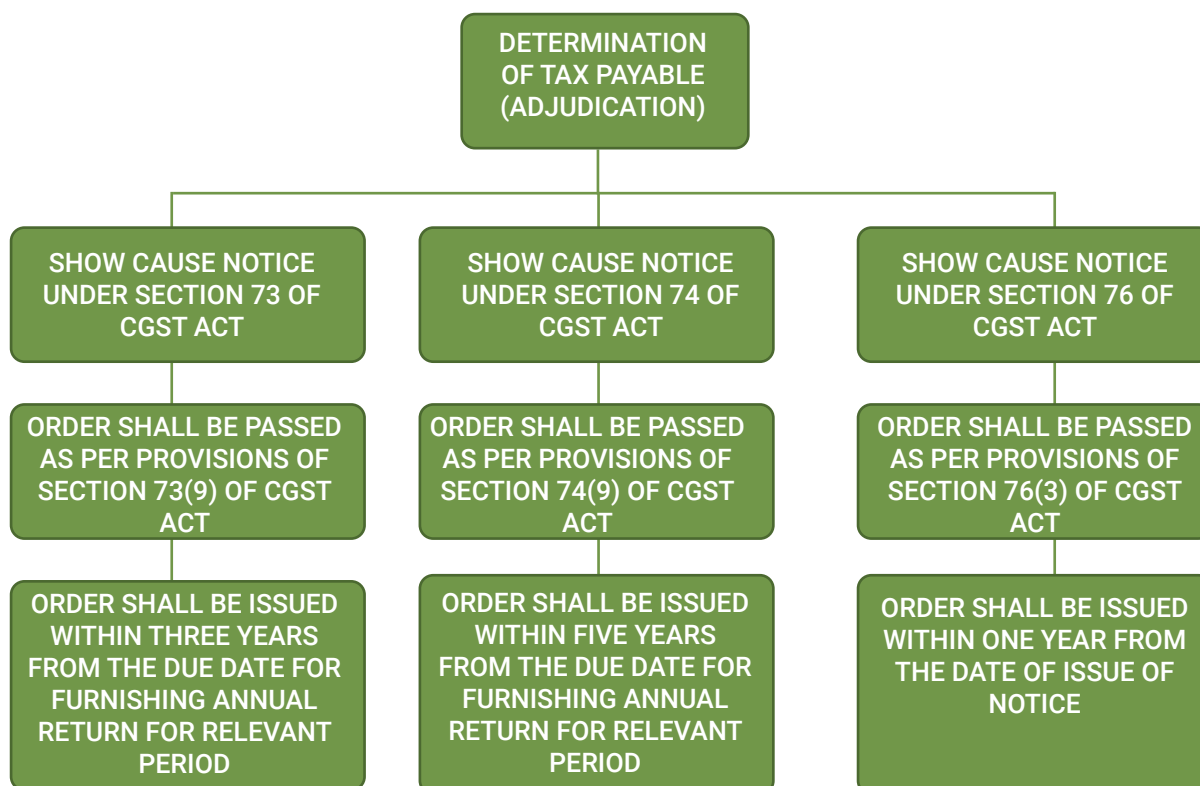
9. ACKNOWLEDGEMENT OF VOLUNTARY PAYMENT BY TAXPAYER

Whenever any person makes payment of dues and informs in FORM GST DRC-03, the Proper Officer shall issue an acknowledgement accepting the payment in FORM GST DRC-04 prescribed in Rule 142(2) of CGST Rules, 2017. If only partial payment of the amount payable, communicated in FORM GST DRC-01A, is made then such person chargeable for non-payment of tax shall make his submission in Part B of FORM GST DRC-01A, mentioned above. (Rule 142(2) of CGST Rules, 2017)

10. INTIMATION OF CONCLUSION OF PROCEEDINGS ON PAYMENT BY Taxpayer

If the person, to whom demand notice has been issued, makes payment as per Section 74(8) of the CGST Act, 2017 within 30 days of the service of the show cause notice or where the concerned person makes payment of penalty in terms of Section 129(1) of the CGST Act, 2017 within 14 days of detention or seizure of the goods and conveyance, then such person shall intimate to the Proper Officer about such payment in FORM GST DRC-03 and the Proper Officer shall issue order in **FORM GST DRC-05** concluding the proceedings in respect of such notice. (Refer Rule 142(3) of the CGST Rules, 2017) **(Section 74 (8) and 129 of CGST Act, 2017) (Rule 142(3) of CGST Rules, 2017)**

11. OVERVIEW: ADJUDICATION OF SHOW CAUSE NOTICE (DETERMINATION OF TAX PAYABLE)



12. REPLY BY TAXPAYER TO THE NOTICE

The representation or the reply to the Show Cause Notice issued in FORM GST DRC-01, shall be furnished by the Taxpayer in **FORM GST DRC-06**. (Refer Rule 142(4) of CGST Rules, 2017) **(Rule 142(4) of CGST Rules, 2017)**

13. ADJUDICATION OF SHOW CAUSE NOTICE

- 13.1 The Proper Officer shall grant personal hearing, if the noticee (person to whom the show cause notice is issued) so desires, otherwise also, Proper Officer may give opportunity of personal hearing. The Proper Officer shall determine the tax payable after considering all submissions made by the noticee and pass suitable Adjudication Order, as prescribed under Section 73(9) or Section 74(9) of the CGST Act, 2017. **(Section 73(9) and 74(9) of CGST Act, 2017)**
- 13.2 The show cause notice pertaining to demand of tax or wrongly availed or utilized input tax credit issued under Section 73 of the CGST Act, 2017, shall be adjudicated **within three years** from the due date of filing of the Annual Returns for the relevant financial year. If the case is related to the erroneous refund received by the Taxpayer, the case shall be adjudicated **within three years** from the date when the erroneous refund was credited in the account of the Taxpayer. (Refer Section 73(10) of the CGST Act, 2017) **(Section 73(10) of CGST Act, 2017)**
- 13.3 The show cause notice pertaining to demand of tax and/or wrongly availed or utilized input tax credit issued under Section 74 of the CGST Act, 2017, involving suppression of facts or willful misstatement or fraud, etc. shall be adjudicated **within a period of five years** from the due date of filing of the Annual Returns for the relevant financial year. If the case is related to erroneous refund received by the Taxpayer, involving suppression of facts or willful misstatement or fraud, etc. the case shall be adjudicated **within the period of five years** from the date when the erroneous refund was credited in the account of the Taxpayer. (Refer Section 74(10) of the CGST Act, 2017). **(Section 74(10) of CGST Act, 2017)**
- 13.4 The show cause notice issued under Section 76 of the CGST Act, 2017, shall be adjudicated **within one year** from the date of issue of the show cause notice. (Refer Section 76(6) of the CGST Act, 2017) **(Section 76(6) of CGST Act, 2017)**
- 13.5 The Summary of the Adjudication Order shall be uploaded electronically in FORM GST DRC-07, prescribed under Rule 142(5) of the CGST Rules, 2017, specifying the amount of tax, interest and penalty payable by the person. Such an order shall be treated as the notice for recovery. **(Rule 142(5) of CGST Rules, 2017)**

14. RECTIFICATION OF ADJUDICATION ORDER

- 14.1 The provisions of Section 161 of the CGST Act, 2017 provide for rectification of the error, which is apparent on the face of record in any decision or order or notice or certificate or any other document, by the authority who has issued or passed such order or decision or notice, either on his own or on being brought to his notice. **(Section 161 of CGST Act, 2017)**
- 14.2 The rectification has to be done **within six months** from the date of issue of the decision or order or notice or certificate. The limitation of six months will not apply if the rectification is in the nature of correction of clerical or arithmetical error.
- 14.3 If the rectification adversely effects any person, then the principles of natural justice shall be followed by the authority.
- 14.4 As specified in Rule 142(7) of the CGST Rules, 2017, if a rectification order is passed under the provisions of Section 161 of the CGST Act, 2017 or where an order uploaded on the system is withdrawn, a summary of the rectification order or the withdrawal order shall be uploaded electronically by the Proper Officer in FORM GST DRC-08. **(Rule 142(7) of CGST Rules, 2017)**

15. PROPER OFFICER UNDER SECTION 73 & 74 OF THE CGST ACT, 2017 AND THE IGST ACT, 2017

- 15.1 Vide Circular No. 3/3/2017-GST dated 05.07.2017, the Deputy or Assistant Commissioner of Central Tax is assigned as the Proper Officer under sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 74 of the CGST Act, 2017 and the Superintendent of Central Tax is assigned as the Proper Officer under sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 73 of the CGST Act, 2017. This Circular was partially modified vide Circular No. 31/05/2018-GST dated 09.02.2018, wherein Superintendent of Central Tax is also empowered to issue show cause notices and orders under Section 74 of the CGST Act, 2017. **(Circular No. 3/3/2017-GST dated 05.07.2017) (Circular No. 31/05/2018-GST dated 09.02.2018)**
- 15.2 Thus, all officers up to the rank of Additional/Joint Commissioner of Central Tax have been assigned as the Proper Officer for issuance of show cause notices and order under sub-sections (1), (2), (3), (5), (6), (7), (9) and

(10) of Section 73 and 74 of the CGST Act, 2017 and under IGST Act, 2017.

- 15.3 Monetary limits, as indicated in the Table below, for different levels of officers of Central Tax have been prescribed under the above said Circular No. 31/05/2018-GST dated 09.02.2018, to act as Proper Officer in relation to issue of show cause notice and orders under Section 73 and 74 of the CGST Act, 2017 and under Section 20 of the IGST Act, 2017:

S r . No.	Officer of Central Tax	Monetary limit of the amount of Central Tax (including Cess) not paid or short paid or erroneously refunded or input tax credit of Central Tax wrongly availed or utilized for issuance of show cause notices and passing of orders under Section 73 and 74 of CGST Act, 2017	Monetary limit of the amount of Integrated Tax (including Cess) not paid or short paid or erroneously refunded or input tax credit of Integrated Tax wrongly availed or utilized for issuance of show cause notices and passing of orders under Section 73 and 74 of CGST Act, 2017 made applicable to matters in relation to Integrated Tax vide Section 20 of the IGST Act, 2017	Monetary limit of the amount of Central Tax and Integrated Tax (including Cess) not paid or short paid or erroneously refunded or input tax credit of Central Tax and Integrated Tax wrongly availed or utilized for issuance of show cause notices and passing of orders under Section 73 and 74 of CGST Act, 2017 made applicable to matters in relation to Integrated Tax vide Section 20 of the IGST Act, 2017
1.	Superintendent of Central Tax	Not exceeding Rs. Ten Lakhs	Not exceeding Rs. Twenty Lakhs	Not exceeding Rs. Twenty Lakhs
2.	Deputy or Assistant Commissioner of Central Tax	Above Rs. Ten lakhs and not exceeding Rs. One Crore	Above Rs. Twenty lakhs and not exceeding Rs. Two Crore	Above Rs. Twenty lakhs and not exceeding Rs. Two Crore
3.	Additional or Joint Commissioner of Central Tax	Above Rs. One Crore without any limit	Above Rs. Two Crore without any limit	Above Rs. Two Crore without any limit

- 15.4 The show cause notices issued on similar issues to noticee(s) and made answerable to different levels of Adjudicating authorities within a Commissionerate, shall be adjudicated by the Adjudicating authority competent to decide the case involving the highest amount of Central Tax and/or Integrated Tax (including Cess).
- 15.5 As per [Circular No. 169/01/2022-GST, dated 12.03.2022](#), the Central Tax Officers of Audit Commissionerates and Directorate General of Goods and Services Tax Intelligence (DGGI) shall exercise powers only to issue show cause notices. Such show cause notices will be adjudicated by the competent Central Tax Officer of the Executive Commissionerate in whose jurisdiction the noticee is registered when such cases pertain to jurisdiction of one Executive Commissionerate of Central Tax only. ([Circular No. 169/01/2022-GST dated 12.03.2022](#))
- 15.6 In respect of Show cause notices issued by DGGI wherein the principal place of business of the noticees fall under jurisdiction of multiple Central Tax Commissionerates or where show cause notices are issued on the same issue to different noticees, including the persons having the same PAN but different GSTINs falling under jurisdiction of multiple Central Tax Commissionerates, the Additional/Joint Commissioners of specified Commissionerates have been empowered with All India jurisdiction vide **Notification No. 02/2022-Central Tax, dated 11.03.2022** to adjudicate such show cause notices, irrespective of the amount involved. The show cause notice(s) shall be made answerable by the officers of DGGI to the concerned Additional/Joint Commissioners of Central Tax, as mentioned in the Table provided in the said Circular dated 12.03.2022 and shall be adjudicated by the Additional/Joint Commissioner of Central Tax Officer holding charge of adjudication of the Central Tax Commissionerate mentioned in the said Table of Circular dated 12.03.2022, in whose jurisdiction the principal place of business of the noticee from whom the highest demand of Central Tax and or Integrated tax (including Cess) has been made, falls. ([Notification No. 02/2022-CT dated 11.03.2022](#))
- 15.7 CBIC vide [Notification No. 56/2023-Central Tax dated 26.12.2023](#) has extended the time limit specified under Section 73(10) of the CGST Act, 2017 for issuance of order under Section 73(9) of the CGST Act, 2017, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized for any reason, other than the reason of fraud or any willful-misstatement or suppression of facts to evade tax, in respect of a tax period for FY 2018-19 and 2019-20 as specified below ([Notification No. 56/2023-CT dated 28.12.2023](#)):

- (i) for the financial year 2018-19, up to the 30th April, 2024
- (ii) for the financial year 2019-20, up to the 31st August, 2024.

16. MODE OF SERVICE OF NOTICE/ORDER

16.1 Section 169 of the CGST Act, 2017 prescribes the following mode of service of any decision, order, summons, notice or other communication under the CGST Act, 2017 and the rules made thereunder (**Section 169 of CGST Act, 2017**) -

- (i) By tendering it directly or by a messenger, courier to the addressee, to the taxpayer/ manager/ authorized representative/ advocate/ tax practitioner holding authority to appear in the proceeding/ person regularly employed in connection with the business/ to any adult member of family residing with the taxable person;
- (ii) By registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorized representative, if any, at his last known place of business or residence;
- (iii) By sending a communication to his e-mail address provided at the time of registration or as amended;
- (iv) By making it available on common portal;
- (v) By publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued last resided or carried on business or personally worked;
- (vi) By affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who passed such decision or order or issued such summons or notice.

17. GENERAL PROVISIONS REGARDING DETERMINATION OF TAX

- 17.1 Section 75 of the Central Goods and Services Tax Act, 2017 deals with the general provisions regarding the determination of tax. (**Section 75 of CGST Act, 2017**)
- 17.2 When Appellate Court stays the issuance of the show cause notice or order by the officer, for computing the limitation period under Section 73(2) and Section 73(10) or Section 74(2) and Section 74(10) of the CGST Act, 2017, the period till the issuance of notice or order under stay shall be excluded.
- 17.3 When the charges under Section 74(1) of CGST Act, 2017 relating to willful misstatement or fraud or suppression of facts to escape the tax is not established against the person to whom show cause notice has been issued by the Appellate Authority or Tribunal of the Court, the Proper Officer shall determine the tax payable by such person, deeming the notice as a show cause notice under Section 73(1) of CGST Act, 2017.
- 17.4 When Appellate Authority, Court or Tribunal passes any direction and an order is required to be passed in relation to that direction, then such order shall be passed **within two years** from the date of communication of such direction.
- 17.5 When any adverse decision is being contemplated against the person liable for tax or penalty and such person requests in writing that he should be heard, the authority may provide him with an opportunity of being heard. Further, if he shows sufficient cause, his hearing may be adjourned or time may be granted to him.
- 17.6 The amount of tax, penalty and interest determined in the Adjudication order shall not exceed the amount demanded in the show cause notice. Moreover, the grounds in the decision or order and the grounds in the show cause notice must be the same.
- 17.7 The summary of the order issued under Section 75 of the CGST Act, 2017 shall be uploaded electronically in FORM GST DRC-07.
- 17.8 Interest on the short paid/not paid tax shall be payable by the person whether or not specified in the order determining the tax liability.

- 17.9 If the Adjudication order is not issued **within three years**, as provided under Section 73(10) or five years as provided under Section 74(10), then the proceeding shall be deemed to be concluded.
- 17.10 Where any amount of tax assessed in a return furnished under Section 39 of the CGST Act, 2017 by the taxpayer remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered in the manner prescribed under Section 79 of CGST Act, 2017. **(Section 79 of CGST Act, 2017)**
- 17.11 It is pertinent to mention here that penalty under Section 73(9) and 74(9) of the CGST Act, 2017, as applicable, is liable to be imposed in cases where determination of tax not paid or short paid has been ordered. Therefore, if penalty has been imposed on a person under Section 73 or Section 74 of the CGST Act, 2017 then no penalty for the same act shall be imposed on that person under any other provision of CGST Act, 2017.
- 17.12 Clarification regarding applicability of the provisions of Section 75(2) of the CGST Act, 2017 and its effect on limitation has been provided in CBIC Circular No. 185/17/2022-GST dated 27.12.2022. **(Circular No. 185/17/2022-GST dated 27.12.2022)**

18. INSTRUCTIONS/CIRCULARS RELEVANT TO THIS CHAPTER

- (i) Instruction No. 04/2023-GST dated 23.11.2023 issued under F. No. 20016/41/2023-GST.
- (ii) Circular No. 3/3/2017-GST dated 05.07.2017.
- (iii) Circular No. 31/05/2018-GST dated 09.02.2018.
- (iv) Circular No. 169/01/2022-GST dated 12.03.2022.
- (v) Circular No. 185/17/2022-GST dated 27.12.2022.

06 REFUND UNDER GST

1. INTRODUCTION

- 1.1 Government of India levies and collects duties and taxes from the taxpayers. However, in specified situations, if any amount, which is not due to the Government is paid by any person then the Government refunds the such amount to such person, on following the due process prescribed under the GST law.
- 1.2. The relevant provisions of CGST Act, 2017 IGST Act, 2017 and CGST Rules, 2017, pertaining to this Chapter are as under –

Sr. No.	Section/Rule	Provision pertaining to
1	Section 27 of CGST Act, 2017	Special provisions relating to casual taxable person and non-resident taxable person
2	Section 54 of CGST Act, 2017	Refund of tax
3	Section 55 of CGST Act, 2017	Refund in certain cases
4	Section 56 of CGST Act, 2017	Interest on delayed refunds
5	Section 107 of CGST Act, 2017	Appeals to Appellate Authority
6	Section 112 of CGST Act, 2017	Appeals to Appellate Tribunal
7	Section 115 of CGST Act, 2017	Interest on refund of amount paid for admission of appeal
8	Section 16 of IGST Act, 2017	Zero rated supply
9	Rule 89 of CGST Rules, 2017	Application for refund of tax, interest, penalty, fees or any other amount
10	Rule 90 of CGST Rules, 2017	Acknowledgement
11	Rule 91 of CGST Rules, 2017	Grant provisional refund
12	Rule 92 of CGST Rules, 2017	Order sanctioning refund
13	Rule 93 of CGST Rules, 2017	Credit of the amount of rejected refund claim
14	Rule 94 of CGST Rules, 2017	Order sanctioning interest on delayed refunds
15	Rule 95 of CGST Rules, 2017	Refund of tax to certain persons
16	Rule 96 of CGST Rules, 2017	Refund of integrated tax paid on goods (or services) exported out of India
17	Rule 96A of CGST Rules, 2017	Export of goods or services under Bond or Letter of Undertaking
18	Rule 96B of CGST Rules, 2017	Recovery of refund of unutilized input tax credit or integrated tax paid on export of goods where export proceeds not realized.
19	Rule 96C of CGST Rules, 2017	Bank Account for credit of refund

- 1.3 GST refund is a process in which, any person (registered or unregistered) can claim refund of any balance in electronic cash ledger or any tax, interest, penalty, fees or any other amount paid which was not required to be paid by him. "Refund" under the GST law includes: -
 - (a) Any balance amount in the electronic cash ledger or any tax which was paid in excess;
 - (b) Interest paid on such tax;
 - (c) Any other amount paid, which was not required to be paid;
 - (d) Tax paid on export of goods or services or both, tax paid on the deemed exports as notified in [Notification No. 48/2017-C.T. dated 18.10.2017](#), as amended;

- (e) Any unutilized input tax credit on account of-
 - (i) zero rated supplies made without payment of tax; or,
 - (ii) inverted duty structure.
- (f) Supply which is not provided, either wholly or partially and for which invoice has not been issued or refund voucher has been issued;
- (g) Any other amount paid on intra-State supply, which is subsequently held to be inter-State supply and vice versa;
- (h) Refund to Casual Taxable Person/ Non-Resident Taxable Person (subject to furnishing all returns for the period of continuity of registration);
- (i) Refund of pre-deposit;
- (j) Tax paid by the notified agency of UNs or Embassy/Consulate, etc. on inward supply.

1.4 GST provides for an efficient invoice based tracking system with the help of the periodical GSTR-1 Returns, wherein the registered person furnishes the details of the outward supplies, which help in verifying the transactions on an individual basis and thus, allowing systematic checking of the same.

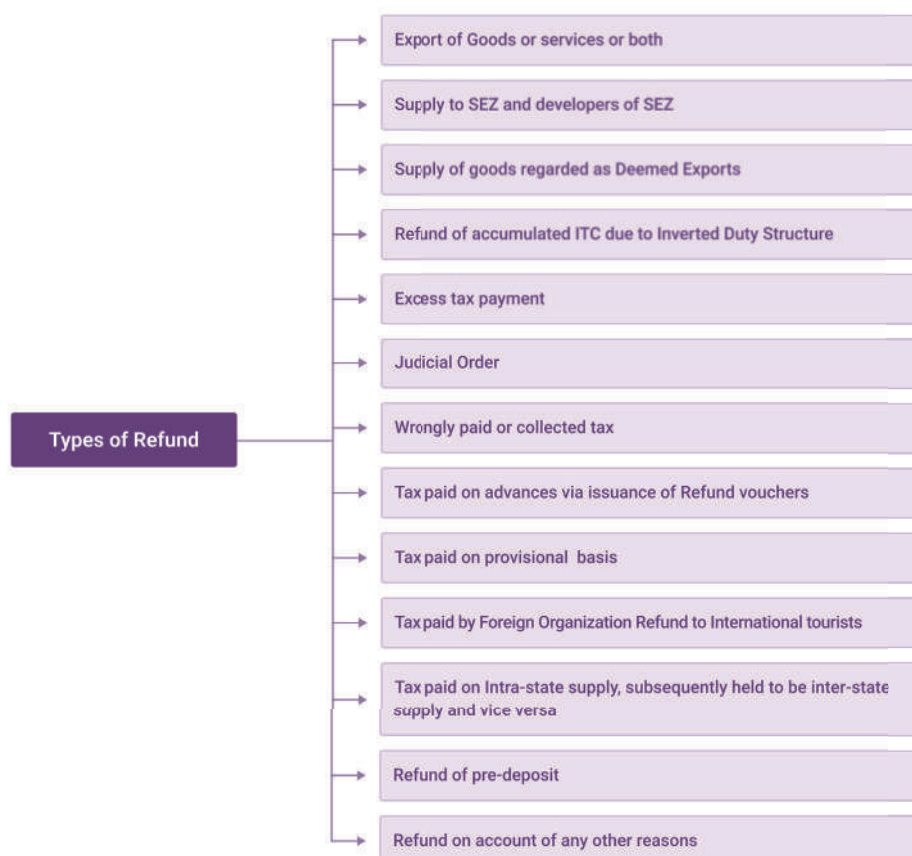
1.5 Timely refund of the amount claimed is essential in tax administration, as it facilitates trade through release of blocked funds for working capital, expansion and modernization of existing business.

1.6 The provisions pertaining to refund contained in the GST law aim to streamline and standardise the refund procedures. The claim and sanctioning procedure are completely online and time bound.

1.7 All types of refunds, including the refund of input tax credit and refund of IGST paid on export of services is handled by GST department, except refund of IGST paid on goods exported, which is handled by Customs.

1.8 Refund claim needs to be filed **within two years** from the 'relevant date'.

2. SITUATIONS LEADING TO REFUND CLAIMS:



2.1 A Refund Claim under GST may arise on account of the following;

2.2 TYPES OF REFUNDS

(I) **Export of Goods with payment of tax/ Export of Goods or services without payment of tax –**

- (i) One of the categories under which claim for refund may arise would be on account of exports. All exports, whether of goods or services, have been categorized as 'Zero Rated Supplies' in the IGST Act, 2017. On account of zero rating of supplies, the supplier is entitled to claim Input Tax Credit in respect of goods or services or both used for supplies exported under Bond or Letter of Undertaking, though exempt from payment of tax.
- (ii) Every person making claim of refund on account of zero rated supplies has two options, either he can export under Bond/LUT and claim refund of accumulated Input Tax Credit; or he may export the goods and/or services on payment of Integrated tax and claim refund of the tax paid as per the provisions of Rule 96 of CGST Rules, 2017. The concept here is that the goods and services are to be exported but not the taxes incurred by the registered taxpayers in manufacture and supply of goods or for providing services, so that India as a country remains competitive in global world trade.

For example, a registered manufacturer purchases his inputs and incurs tax liability on his purchases. When this registered manufacturer exports his final products/goods to some person outside India, then under the GST law the tax borne on such inputs, accumulated as input tax credit balance in his Electronic Credit Ledger, is either allowed to be used for payment of tax in respect of the domestic taxable supplies or refunded in cash as per the entitlement vis-à-vis the exports made, which is computed as per the formula provided in Rule 89(4) of the CGST Rules, 2017. Same is the case with export of services. **(Section 54 of CGST Act, 2017)**

(II) **Supply of goods and services to SEZ and developers of SEZ –** Special Economic Zones (SEZ) are geographically located in India but are considered as a foreign territory for the purpose of taxation. All the goods and services produced/generated from an SEZ are meant for exports only. Therefore, any registered person in the taxable territory of India, when supplies his goods or services to a non-taxable territory geographically located in India, such as SEZ unit or to developers of SEZ, then that supplier is entitled to get the refund of his accumulated ITC. Supplies made to SEZ unit or developer of SEZ are also 'zero rated' supplies and are also termed as 'deemed exports'.

(III) **Supply regarded as Deemed Exports:** [Notf. No 48/2017-CE dated 18.10.2017](#) has notified certain supplies as 'Deemed Export'. The application for Refund of deemed exports may be filed;

- (a) by the recipient of deemed export supplies; or
- (b) by the supplier of deemed export supplies in case the recipient does not avail ITC on such supply.

(IV) **Purchases made by Foreign organizations –** All foreign establishments such as those of United Nations, Embassies and Consulates of other nations, having establishments geographically located in India are also considered to be foreign territories for the purpose of taxation. Section 55 of the CGST Act, 2017 provides for refund of tax paid on notified supplies received by UN bodies and embassies and other international organisations notified by the Government. A taxable person making supplies to such bodies would charge the tax due and remit the same to government account. However, the UN bodies and other notified entities can claim refund of the taxes paid by them on their purchases. The claim has to be made before the expiry of two years from the last day of the quarter in which such supply was received. **(Section 55 of the CGST Act)**

(V) **Refund of accumulated ITC on Inverted Duty Structure –** There are certain scenarios where the output product has lesser GST rate than the input GST rate. This is called as the 'inverted duty structure'. In such a scenario, there is a net accumulation of Input Tax Credit (ITC) in the Electronic Credit Ledger of the registered taxpayer. This can be claimed as refund under the GST law.

(VI) **Refund of Excess tax payment –** Sometimes the taxpayer can make mistake in calculation of his liability and deposit excess tax, more than his actual liability. Under GST law, such excess amount of tax is refunded to the taxpayers.

(VII) **Refund due to Judicial Order –** Court or Appellate Authority or judicial forum can direct the government to refund certain amount due to various reasons, which are generally recorded in the speaking order passed by that judicial

or quasi-judicial authority. GST law provides for refund of such amount.

- (VIII) **Refund of wrongly paid or collected tax**—A registered taxpayer can wrongly pay one form of tax in place of other. For example, a person mistakenly pays IGST in place of CGST and SGST and vice versa. In order to rectify such mistake, GST law provides that the taxpayer first pay the tax amount in proper head and then claim refund of the wrongly paid tax. Interest will not be charged in such case. Further, a person collecting wrong amount of tax should deposit the same to the government.
- (IX) **Refund of tax paid on advances via issuance of Refund vouchers** – It generally happens that during a contract, suppliers demand a minimum confirmation advance from the buyer to supply the desired goods and services. The advance paid by the recipient of goods and services to the supplier is subjected to GST. However, when the contract is not executed and cancelled, the supplier generates refund voucher and credits the account of the supplier the amount of advance received, excluding the GST paid on such advance. Here the receiver can claim back the tax amount paid to that supplier from GST Department as refund by following the due process, as there is no supply.
- (X) **Refund of tax paid on provisional basis**—Sometimes, there is no full clarity with respect to the value of goods and services or the rate of tax applicable on such goods and services. In such non-clear scenarios, the taxpayer requests for the 'provisional' assessment of the rate of duty and pays the tax amount then applicable. However, once the exact value of supply and the rate of tax applicable on such supply is clear the exact amount of tax becomes calculable and the taxpayer becomes eligible for refund of tax on finalization of the assessment, if the tax under provisional assessment deposited is greater than the actual tax.
- (XI) **Refund to International tourists** – While travelling to India, many international tourists make purchases of goods and services during their stay and hence bear the taxes incorporated in the market value of such goods and services. The GST law has provision to refund the tax Component on all such purchases made by international tourists when they finally leave India, subject to the fulfilment of certain terms and conditions. However the said section has not yet been notified on recommendations of GST Council.
- (XII) **Tax paid on Intra-state supply, subsequently held to be inter-state supply and vice- versa** – Intra-state supply will attract CGST and SGST while inter-state supply will attract IGST. Thus, if a taxpayer considers a supply as intra-state, he will pay CGST and SGST. However, due to some reasons later on the same supply is treated as inter-state supply, then such taxpayer shall pay IGST first and then will be eligible to get the refund of CGST and SGST paid earlier. A vice-versa scenario is also possible.
- (XIII) **Refund of pre-deposit**—For filing appeal against any order before the Appellate Authority or Tribunal, the appellant has to make pre-deposit of the amount stipulated in the relevant provisions of CGST Act. In case the Appellate Authority or the Tribunal decides the case in favour of the appellant and such order is accepted by the Department, i.e. no appeal is filed against such order, then the amount of pre-deposit can be claimed by the appellant as refund. Section 115 of the CGST Act also provides for payment of interest on such pre-deposit. **(Section 115 of CGST Act, 2017)**
- (XIV) **Refund on account of any other reasons**— Refund of any amount, which is not liable to be paid by the taxpayer but has been paid and not covered under any of the above reason, are covered under this category of refund. Some of the reasons are –
- (a) Tax collected by the taxable person more than the tax due on such supplies must be credited to the Government account. The law makes explicit provision for the person who has borne the incidence of tax to file refund claim in accordance with the provisions of Section 54 of CGST Act, 2017. **(Section 54 of CGST Act, 2017)**
- (b) A casual/Non-resident Taxable Person has to pay tax in advance at the time of registration. Refund may become due to such persons at the end of the registration period because the tax paid in advance may be more than the actual tax liability on the supplies made by them during the period of validity of registration period. The law envisages refund to such categories of taxable persons also. But the amount of excess advance tax shall not be refunded unless such person has filed all the returns due during the time their registration was effective.
- (XV) Canteen Store Departments (CSDs) have been notified under Section 55 of the CGST Act, 2017 vide [Notification No. 6/2017- Central Tax \(Rate\) dated 28.06.2017](#) for refund of 50% of applicable Central Tax paid on all inward supplies of goods received by it for the purposes of subsequent supply of such goods to the Unit Run Canteens of the CSD or to the authorized customers of the CSD.

3. STATUTORY PROVISIONS AND MANNER OF FILING CLAIM FOR REFUND UNDER GST LAW.

- 3.1 (a) The refund application for balance in Electronic Cash Ledger is required to be made in [FORM GST RFD-01](#). The balance in the Electronic Cash Ledger is required to be refunded after the taxpayer discharges the entire liability towards tax, interest, penalty, fee or any other amount payable under the Act or the rules made thereunder, in accordance with the provisions of Section 54 of CGST Act. **(Section 54, 54(4) of CGST Act, 2017)**
- 3.1 (b) The application for refund should be accompanied by-
- Documentary evidence prescribed to establish that a refund is due to the applicant; and
 - Evidence that incidence of duty has not been passed on by him to any other person.
 - However, where the amount claimed as refund is less than two lakh rupees, self-declaration based on documents available with him is sufficient - Section 54(4) of CGST Act.
- 3.2 **Refund of IGST paid on services exported** – Refund of IGST paid on services exported shall be filed in [FORM GST RFD-01](#) and shall be dealt in accordance with provisions of Rule 89 of CGST Rules. (Rule 96(9) of CGST Rules, 2017) **(Rule 89 & 96(9) of CGST Rules, 2017)**
- 3.3 **Refund of IGST paid on goods exported–**
- (a) Refund of IGST paid on export of goods is processed and disbursed by Customs.
- (b) As per Rule 96(1) of the CGST Rules, 2017, the Shipping Bill filed by an exporter is deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application is deemed to have been filed only when **(Rule 96 of CGST Rules, 2017)**:
- (i) 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
- (ii) the applicant has furnished a valid return in **FORM GSTR-3B**, as the case may be.
- (c) The details of the relevant export invoices contained in **FORM GSTR-1** (or Table 6A thereof) are transmitted electronically by the common portal to the system designated by the Customs and the said system shall transmit to the common portal the confirmation that the goods covered by the said invoices have been exported out of India.
- (d) On receipt of information regarding furnishing of return in **FORM GSTR-3B and FORM GSTR-1** from the common portal, the system designated by the Customs (or the proper officer) process the claim for refund and an amount equal to the Integrated tax paid in respect of each Shipping Bill or Bill of Export is credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.
- 3.4 **Refund application in case of supply of goods to SEZ or SEZ Developer** - In respect of supply of goods to a Special Economic Zone unit or a Special Economic Zone Developer, the application for refund in [FORM GST RFD-01](#) shall be filed by the supplier of goods along with the documentary evidences mentioned in Rule 89(2) of CGST Rules, after the goods have been admitted in full in the Special Economic Zone for authorized operations, as endorsed by the specified officer of the Zone. (Rule 89(1) of CGST Rules, 2017) **(Rule 89(1), (2) of CGST Rules, 2017)**
- 3.5 **Refund application in case of supply of services to SEZ-** In respect of supply of services to a Special Economic Zone unit or a Special Economic Zone Developer, the application for refund in [FORM GST RFD-01](#) shall be filed by the supplier of services along with such evidence specified in Rule 89(2) of the CGST Rules, regarding supply and receipt of services for authorized operations, as endorsed by the specified officer of the Zone. (Rule 89(1) of CGST Rules, 2017)
- 3.6 **Refund claim in case of 'Deemed Export' either by recipient or supplier–**
- (i) [Notification No. 48/2017-CT dated 18.10.2017](#) specifies certain supplies of goods as deemed export.

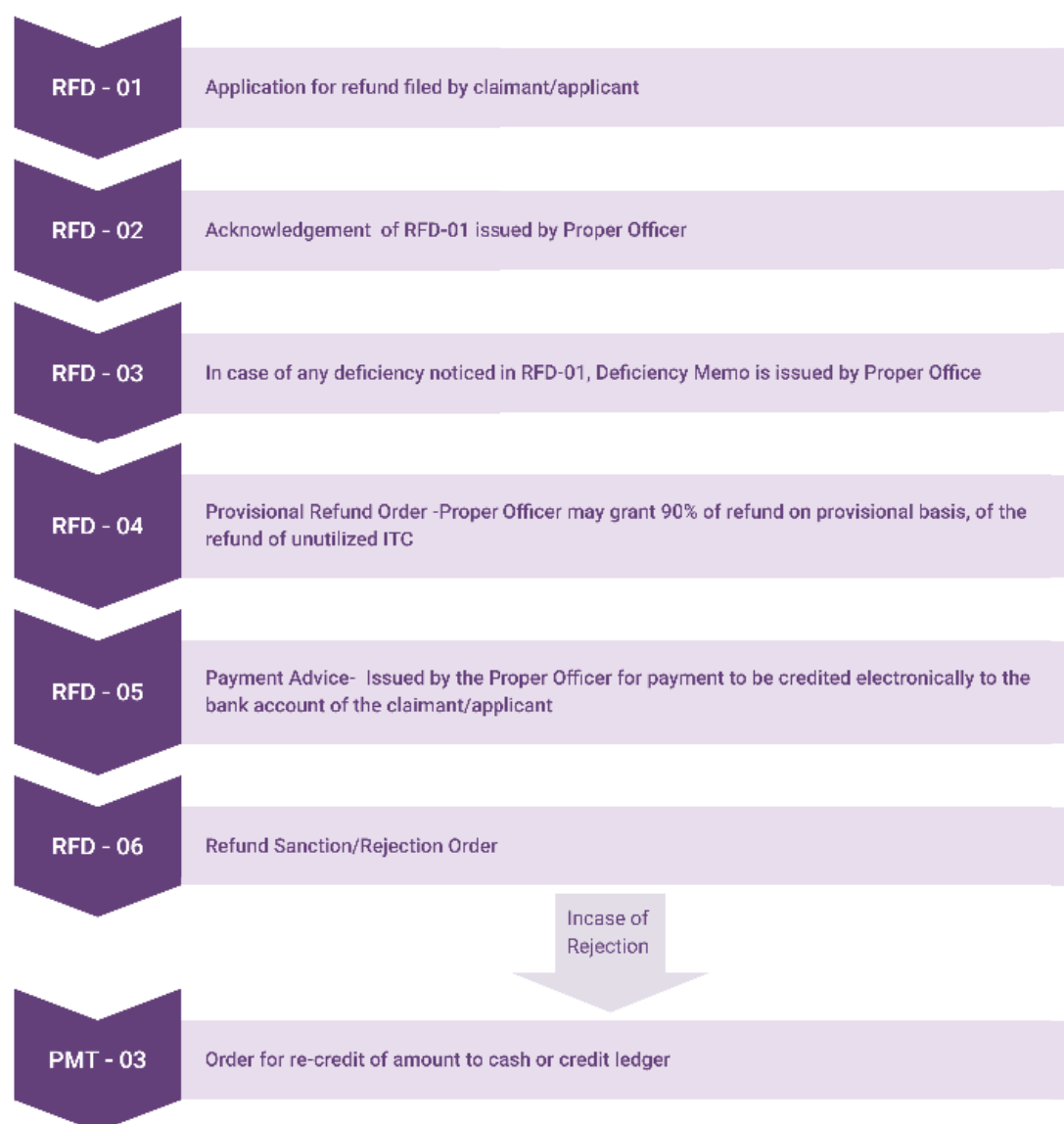
- (ii) In respect of supplies regarded as deemed exports, the application may be filed in FORM GST RFD-01 by-
 - (a) The recipient of deemed export supplies; or
 - (b) The supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund.
- (iii) In case such refund is sought by the supplier of deemed export supplies, the documentary evidences specified in Notification No. 49/2017-CT dated 18.10.2017 are required to be furnished, which includes acknowledgment by the jurisdictional Tax Officer of the Advance Authorisation holder or Export Promotion Capital Goods (EPCG) Authorisation holder, as the case may be, about the receipt of the deemed export supplies or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit (EOU) acknowledging the receipt of deemed export supplies, an undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and that no input tax credit on such supplies has been availed by him.
- (iv) In case the refund is filed by the recipient of deemed export supplies, an undertaking by the supplier of deemed export supplies to the extent that he shall not claim the refund in respect of such supplies is also required to be furnished.
- (v) The procedure regarding procurement of supplies of goods from DTA by Export Oriented Unit (EOU) / Electronic Hardware Technology Park (EHTP) Unit / Software Technology Park (STP) Unit/Bio Technology Parks (BTP) Unit under deemed export as laid down in Circular No. 14/14/2017-GST dated 06.11.2017 needs to be complied with.
- (vi) As per the provisions of Rule 89(2)(g) of the CGST Rules, 2017, the statement 5B of FORM GST RFD-01 is required to be furnished for claiming refund on supplies declared as deemed exports. (Rule 89(2)(g) of CGST Rules, 2017)
- (vii) Rule 89(4A) of CGST Rules, provides for refund of ITC availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both, where the supplier has availed benefit of Notification No. 48/2017-CT dated 18.10.2017. (Rule 89 (4A) of CGST Rules, 2017)
- (viii) Rule 89(4B) of CGST Rules, provides for grant of refund of input tax credit availed in respect of inputs received for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, to the exporter, on which supplier has availed benefit under [Notification No. 40/2017-Central Tax \(Rate\) dated 23.10.2017](#) or [Notification No. 41/2017-Integrated Tax \(Rate\) dated 23.10.2017](#), or when the exporter has himself availed the benefit of duty/tax free procurement under the [Notification No. 78/2017-Customs dated 13.10.2017](#) or [Notification No. 79/2017-Customs dated 13.10.2017](#). (Rule 89(2)(g), (4B) of CGST Rules, 2017)

3.7 Refund of advance tax by Casual or Non-resident taxable person- Refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited under Section 27 of the CGST Act (casual taxable person or non-resident taxable person) at the time of registration, shall be claimed by way of filing application in [FORM GST RFD-01](#) only after the last return required to be furnished by him has been so furnished (Rule 89(1) of CGST Rules, 2017) (**Section 27 of CGST Act, 2017**) (**Rule 89(1) of CGST Rules, 2017**)

3.8 Refund claims on account of 'inverted duty structure'–

- (i) Refund of unutilized ITC in case of 'inverted tax structure', as provided in Section 54(3) of the CGST Act, 2017 is available where ITC remains unutilized even after setting off of available ITC for the payment of output tax liability. (**Section 54(3) of CGST Act, 2017**)
- (ii) Refund claim in respect of unutilized input tax credit, accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies) has to be made electronically in [FORM GST RFD-01](#) for a tax period or by clubbing tax periods.
- (iii) The refund claim for a tax period may be filed only after filing the details in FORM GSTR-1 for the said tax period.
- (iv) It should be ensured that a valid return in FORM GSTR-3B has been filed for the last tax period before the one in which the refund application is being filed.

4. PROCEDURE AND CONDITIONS FOR FILING REFUND CLAIM



- 4.1 **FORM GST RFD-01** shall be filled on the common portal by an applicant for the purpose of refund and uploaded with supporting documents, as provided in Annexure-A of CBIC [Circular No. 125/44/2019 - GST dated 18-11-2019 read with Circular No. 197/09/2023-GST, dated 17.07.2023](#).
- 4.2 In case a Deficiency Memo has been issued, the applicant has to file a fresh refund application as the refund application with deficiencies would not be processed.
- 4.3 **Debit to Electronic Cash Ledger if refund claimed from Electronic Cash Ledger–**
- (i) If a person has claimed refund of any amount from the balance in Electronic Cash Ledger then the said amount shall be first debited in the Electronic Cash Ledger. **(Rule 87(10) of CGST Rules, 2017)**
 - (ii) The debit in Electronic Cash Ledger is required as on sanction, the refund will be credited to the bank account of the applicant.
 - (iii) Refund from balance in Electronic Cash Ledger can be made without limitation of time. **(Section 54(1) of CGST Act)**
 - (iv) If the refund so claimed is rejected, either fully or partly, the amount equivalent to the amount rejected shall be credited, to the Electronic Cash Ledger by the Proper Officer by an order made in [FORM GST PMT-03](#). (Rule 87(11) of CGST Rules, 2017)

4.4 Debit to Electronic Credit Ledger if refund of Input Tax Credit (ITC) claimed under Section 54 of CGST Act -

- (i) If a registered person has claimed refund of any unutilized ITC amount from the Electronic Credit Ledger in accordance with the provisions of Section 54 of CGST Act (refund in case of zero rated supply or inverted tax structure), the amount to the extent of the claim shall be debited in the said ledger at the time of filing the refund claim. **(Rule 86(3) of CGST Rules, 2017)**
- (ii) In case of refund claim of ITC pertaining to export of goods or services or supplies to SEZ, the amount is required to be debited at the time of filing refund claim, as the amount will be refunded to the person by crediting his bank account.

4.5 Procedure for re-credit of amount erroneously refunded in Electronic Credit Ledger – Procedure for re-credit of amount erroneously refunded has been specified in [Circular No. 174/06/2022-GST dated 6-7-2022](#), which is as follows-

- (i) The taxpayer shall deposit the amount of erroneous refund along with applicable interest and penalty, wherever applicable, through [FORM GST DRC-03](#) by debit of amount from Electronic Cash Ledger. While making the payment through [FORM GST DRC-03](#), the taxpayer should clearly mention the reason for making payment in the text box as 'deposit of erroneous refund of unutilised ITC', or 'deposit of erroneous refund of IGST' obtained in contravention of Rule 96(10) of the CGST Rules. **(Rule 96(10) of CGST Rules, 2017)**
- (ii) The taxpayer has to make a written request, in format prescribed, to jurisdictional Proper Officer to re-credit the amount equivalent to the amount of refund paid back in cash, to Electronic Credit Ledger.
- (iii) If the Proper Officer is satisfied that the full amount of erroneous refund along with applicable interest and penalty, has been paid by the taxpayer in [FORM GST DRC-03](#) by way of debit in Electronic Cash Ledger, he shall re-credit the amount in Electronic Credit Ledger, equivalent to the amount of erroneous refund so deposited by the registered person. An order in [FORM GST PMT-03A](#) has to be passed, preferably **within a period of 30 days** from the date of receipt of request for re-credit of erroneous refund amount so deposited or from the date of payment of full amount of erroneous refund along with applicable interest, and penalty, whichever is later.

4.6 A refund claim for a particular tax period can be filed only after furnishing all the returns in FORM GSTR-1 and FORM GSTR-3B, which were due to be furnished on or before the date on which the refund application is being filed. However, in case of a claim for refund filed by a Composition Taxpayer, a Non-Resident taxable person, or an Input Service Distributor (ISD), furnishing of returns in FORM GSTR-1 and FORM GSTR-3B is not required. Instead, the applicant should have furnished returns in FORM GSTR-4 (along with FORM GST CMP-08), FORM GSTR-5 or FORM GSTR-6, as the case may be, which were due to be furnished on or before the date on which the refund application is being filed.

4.7 [Circular No. 188/20/2022-GST dated 27-12-2022](#), prescribes the manner of filing refund claim by unregistered persons in the following situations-

- (i) Unregistered buyers, who had entered into an agreement/contract with a builder for supply of services of construction of flats/building, etc. and had paid the amount towards consideration for such service, either fully or partially, along with applicable tax, had to get the said contract/agreement cancelled subsequently due to non-completion or delay in construction activity in time or any other reasons.
- (ii) Long-term insurance policies where premium for the entire period of term of policy is paid upfront along with applicable GST and the policy is subsequently required to be terminated prematurely due to some reasons.

The application for refund is required to be filed in [FORM GST RFD-01](#) on the common portal under the category 'Refund for unregistered person'. The applicant is required to upload statement 8 (in pdf format) and all the requisite documents as per the provisions of sub-rule (2) of rule 89 of the CGST Rules. The applicant should also upload the certificate issued by the supplier in terms of clause (kb) of sub-rule (2) of rule 89 of the CGST Rules, 2017, and any other document(s) to support his claim that he has paid and borne the incidence of tax and that the said amount is refundable to him.

4.8 Functionality has been made available on the common portal, which allows unregistered persons to take a temporary registration and apply for refund under the category 'Refund for Unregistered person'. Statement 8 has been inserted in [FORM GST RFD-01](#) to provide for the documents required to be furnished along with the application of refund by the unregistered persons and the statement has to be uploaded along with the refund

application.

- 4.9 In cases where the amount paid back by the supplier to the unregistered person on cancellation/termination of agreement/contract for supply of services is less than the amount paid by such unregistered person to the supplier, only the proportionate amount of tax involved in such amount paid back shall be refunded to the unregistered person.
- 4.10 The applicant can withdraw the application for refund filed in [FORM GST RFD-01](#), at any time before issuance of provisional refund sanction order in [FORM GST RFD-04](#) or final refund sanction order in [FORM GST RFD-06](#) or payment order in [FORM GST RFD-05](#) or refund withhold order in [FORM GST RFD-07](#) or notice in [FORM GST RFD-08](#), by filing an application in [FORM GST RFD-01W](#) (CGST Rule 90(5) of CGST Rules, 2017). On submission of application for withdrawal of refund in FORM GST RFD-01W, any amount debited from Electronic Credit Ledger or Electronic Cash Ledger, as the case may be, while filing application for refund, shall be credited back to the ledger from which such debit was made.

5. [RELEVANT DATE FOR FILING THE REFUND CLAIM](#)

- 5.1 The relevant date provision embodied in Section 54 of the CGST Act, 2017, provision contained in Section 77 of the CGST Act, 2017 and the requirement of submission of relevant documents as listed in Rule 89(2) of CGST Rules, 2017 is an indicator of the various situations that may necessitate a refund claim. The GST law requires that every claim for refund is to be filed **within 2 years** from the relevant date. ([Rule 89\(2\) of CGST Rules, 2017](#)) ([Section 54, 77 of CGST Act, 2017](#))
- 5.2 The 'relevant date' in respect of the certain cases would be as under -
- (i) In the case of goods exported out of India where a refund of tax paid is available in respect of the goods themselves or the inputs or input services used in such goods -
 - (a) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or
 - (b) if the goods are exported by land, the date on which such goods pass the frontier; or
 - (c) if the goods are exported by post, the date of dispatch of goods by Post Office concerned to a place outside India.
 - (ii) In 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 filed.
 - (iii) In case of zero-rated supply of goods or services or both to a Special Economic Zone Developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the relevant date is the due date for furnishing of return under Section 39 in respect of such supplies. (Section 39 of CGST Act, 2017)
 - (iv) In 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 relevant date would be the date of -
 - (a) receipt of payment in convertible foreign exchange or in Indian rupees wherever permitted by RBI, where the supply of service had been completed prior to the receipt of such payment; or
 - (b) issue of invoice, where payment for the service had been received in advance prior to the date of issue of the invoice.
 - (v) In case where the tax becomes refundable as a consequence of judgement, decree, order or direction of Appellate Authority, Appellate Tribunal or any Court, the date of communication of such judgement, decree, order or direction would be the relevant date.
 - (vi) In the case of refund of unutilised input tax credit under clause (ii) of the first proviso to Section 54(5) of the CGST Act, the due date for furnishing of return under Section 39 of the CGST Act for the period in which such claim for refund arises, would be the relevant date. (Section 54(5) & 39 of CGST Act, 2017)
 - (vii) In the case where tax is paid provisionally under CGST Act or the rules made thereunder, the date of

adjustment of tax after the final assessment thereof would be the relevant date.

(viii) In the case of a person, other than the supplier, the date of receipt of goods or services by such person would be the relevant date.

(ix) In any other case, the date of payment of tax.

5.3 The time period from the date of filing of the refund claim in [FORM GST RFD-01](#) till the date of communication of the deficiencies in [FORM GST RFD-03](#) by the Proper Officer, shall be excluded from the period of two years, as specified under Section 54(1) of CGST Act, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies. **(Section 54(1) of CGST Act, 2017)**

5.4 CBIC, vide [Circular No. 166/22/2021-GST dated 17-11-2021](#), has clarified that time limit prescribed under Section 54(1) of CGST Act is not applicable to refund claim for excess balance in Electronic Cash Ledger. This also applies to TDS/TCS deposited in Electronic Cash Ledger.

5.5 In respect of refund claims under Section 77 of the CGST Act of tax paid in respect of a transaction considered to be an Intra-State supply, which is subsequently held to be an Inter-State supply, an application is required to be filed electronically in [FORM GST RFD-01](#) through the common portal, before the expiry of a period of **two years from the date of payment** of the tax on the supply, either directly or through a Facilitation Centre notified by the Commissioner. (Rule 89(1A) to CGST Rules) **(Section 77 of CGST Act, 2017) (Rule 89(1A) of CGST Rules, 2017)**

6. [DOCUMENTS TO BE FILED WITH REFUND CLAIM](#)

As per Rule 89(2) of CGST Rules, 2017, the application for refund under Rule 89(1) of the CGST Rules, shall be accompanied by any of the following documentary evidences, as applicable to the individual claim, to establish that a refund is due to the applicant - **(Rule 89(1)(2) of CGST Rules, 2017)**

- (i) The reference number of the order and a copy of the order passed by the Proper Officer or an Appellate Authority or Appellate Tribunal or Court, resulting in such refund or reference number of the payment of the amount specified in Section 107(6) and Section 112(8) claimed as refund. (Section 107(6) & 112(8) of CGST Act, 2017)
- (ii) In a case where the refund is on account of export of goods, other than electricity, a statement containing the number and date of shipping bills or bills of export and the number and date of relevant export invoices.
- (iii) In case where refund is on account of export of electricity, a statement containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement, along with the copy of statement of scheduled energy for exported electricity by Generation Plants issued by the Regional Power Committee Secretariat as a part of the Regional Energy Account (REA) under Regulation 2(l)(nnn) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 and the copy of agreement detailing the tariff per unit.
- (iv) In a case where the refund is on account of export of services, a statement containing the number and date of invoices and the relevant Bank Realization Certificates or Foreign Inward Remittance Certificates, as the case may be.
- (v) In case of supply of goods made to a Special Economic Zone unit or a Special Economic Zone Developer, along with a declaration to the effect that tax has not been collected from the Special Economic Zone (SEZ) unit or the Special Economic Zone (SEZ) developer, a statement containing the number and date of invoices as prescribed in Rule 46, along with the evidence that the goods have been admitted in full in the SEZ, by way of endorsement specified in the first proviso (a) to Rule 89(1) of CGST Rules. **(Rule 46, 89(1) of CGST Rules, 2017)**
- (vi) Where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone Developer, along with a declaration to the effect that tax has not been collected from the Special Economic Zone (SEZ) unit or the Special Economic Zone (SEZ) developer, a statement containing the number and date of invoices, the evidence regarding receipt of services for authorized operations, by way of endorsement specified in the first proviso (b) to Rule 89(1), the details of payment along with proof thereof made by the recipient to the supplier for authorized operations, as defined under the SEZ Act, 2005.
- (vii) Where the refund is on account of Deemed Exports, a statement containing the number and date of

invoices along with such other evidence, as notified in this behalf.

- (viii) In a case where the claim pertains to refund of any unutilized input tax credit under Section 54(3) of the CGST Act, where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (inverted duty structure), other than nil-rated or fully exempt supplies, a statement containing the number and date of invoices received and issued during a tax period. (Section 54(3) of CGST Act, 2017)
- (ix) In a case where the refund arises on account of finalisation of provisional assessment, the reference number of the final assessment order and a copy of the said order.
- (x) A statement showing details of transactions considered as intra-state supply subsequently held as inter-state supply.
- (xi) A statement showing the details of the amount of claim on account of excess payment of tax.
- (xii) In a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated, a statement containing the details of invoices viz. number, date, value, tax paid and details of payment, in respect of which refund is being claimed along with copy of such invoices, proof of making payment to the supplier, a certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant, the copy of agreement or registered agreement or contract entered with the supplier for supply of service, the letter issued by the supplier for cancellation or termination of agreement or contract for supply of service, details of payment received from the supplier against cancellation or termination of such agreement along with proof thereof.
- (xiii) A declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed does not exceed two lakh rupees. However, a declaration is not required to be furnished in respect of cases covered under Section 54(8)(a), 54(8)(b), 54(8)(c) or 54(8)(d) of CGST Act, 2017, i.e. refund of tax paid on export of goods and/or services or inputs and input services used in making such exports, refund of unutilized ITC accumulated on account of zero rated supplies and on account of inverted tax structure, refund of tax paid on non-supply or incomplete supply or refund voucher cases and refund of tax paid on intra-state supply, which is later held as inter-state supply or vice-versa. **(Section 54(8)(a), (b) (c) & (d) of CGST Act, 2017)**
- (xiv) A Certificate in Annex 2 of FORM GST RFD-01 issued by a Chartered Accountant or a Cost Accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed exceeds two lakh rupees. Such a declaration is not required to be furnished in respect of cases covered under said Sections 54(8)(a), 54(8)(b), 54(8)(c) or 54(8)(d) of CGST Act, 2017 and in cases where refund is claimed by an unregistered person who has borne the incidence of tax.

7. EXAMINATION OF REFUND APPLICATIONS AND THE ACTION TO BE TAKEN BY OFFICERS

- 7.1 The Deputy/Assistant Commissioner of Central Tax is designated as 'Proper Officer' for the purpose of granting refund and all related actions specified under Section 54 of CGST Act, 2017 and Rules 89 to 96 of CGST Rules, 2017, like issuance of acknowledgement, issuance of Deficiency Memo, issuance of Provisional Refund Sanction order, Payment order, Final order and Refund Withhold order. **(Section 54 of CGST Act, 2017) (Rule 89 to 96 of CGST Rules, 2017)**
- 7.2 Refund Application in [FORM GST RFD-01](#) will be filed by the applicant on the common portal for the purpose of refund, along with supporting documents, as provided in Annexure-A of [CBIC Circular No. 125/44/2019-GST dt. 18-11-2019](#).
- 7.3 The Application Reference Number (ARN) will be generated only after the applicant has completed the process of filing the refund application in [FORM GST RFD-01](#), and has completed uploading of all the relevant documents and wherever required, the amount has been debited from the Electronic Credit/Cash Ledger.
- 7.4 Acknowledgement or a Deficiency Memo should be issued **within the stipulated period of 15 days**, starting from the date of generation of ARN. The acknowledgement for the complete application in [FORM GST RFD-02](#) would be issued electronically by the jurisdictional tax officer based on the documents so received from the common portal.

- 7.5 As per Sub-rule (3) of Rule 90 of the CGST Rules, 2017 the Deficiency Memo in [FORM GST RFD-03](#) has to be issued **within 15 days** from the date of ARN, by the Proper Officer, communicating the deficiencies noticed during preliminary scrutiny of the Refund claim. **(Rule 90(3) of CGST Rules, 2017)**
- 7.6 Once an acknowledgement has been issued in relation to a refund application, no Deficiency Memo, on any grounds, can be subsequently issued for the said application.
- 7.7 After a Deficiency Memo has been issued, the refund application would not be further processed and a fresh application will have to be filed by the applicant. The applicant is required to rectify the deficiencies highlighted in Deficiency Memo and file fresh refund application electronically in [FORM GST RFD-01](#) again for the same period and this application would have a new and distinct ARN. [\(CBIC Circular No. 125/4/2019-GST dated 18.11.2019\)](#).
- 7.8 The time period, from the date of filing of the refund claim in [FORM GST RFD-01](#) till the date of communication of the deficiencies in [FORM GST RFD-03](#) by the Proper Officer, shall be excluded for computing the period of two years, as specified under Section 54(1) of CGST Act, in respect of any fresh refund claim filed by the applicant consequent to issuance of the Deficiency Memo. (Proviso to Rule 90(3) of CGST Rules, 2017) **(Section 54(1) of CGST Act, 2017)**
- 7.9 Any amount of input tax credit/cash debited from Electronic Credit/Cash Ledger would be re-credited automatically once the Deficiency Memo has been issued.
- 7.10 In terms of Section 54(6) of CGST Act, 2017, the Proper Officer may grant 90% of refund of unutilized input tax credit on provisional basis, claimed on account of zero-rated supply of goods and services, subject to the conditions specified in Rule 91 of the CGST Rules, 2017. The Proper Officer shall make an order in [FORM GST RFD-04](#) **within seven days** from the date of issuance of acknowledgement in [FORM GST RFD-02](#). **(Section 54(6) of CGST Act, 2017) (Rule 91 of CGST Rules, 2017)**
- 7.11 The payment order in [FORM GST RFD-05](#) shall be issued by the Proper Officer and the same shall be credited electronically to the bank account of the applicant mentioned in the registration particulars. The payment order is required to be revalidated in case if the refund is not disbursed within the same financial year in which the payment advice was issued.
- 7.12 On examination if the refund application is found in order and the Proper Officer is satisfied that a refund under Section 54(5) of CGST Act, 2017, is due and payable to the applicant then he will pass an order in [FORM GST RFD-06](#), sanctioning the entitled amount of refund, mentioning therein the amount of refund granted on provisional basis, if any, amount adjusted against any outstanding demand and the balance amount refundable. The amount determined as refundable shall be credited to the 'Consumer Welfare Fund', except in cases mentioned in Section 54(8) of the CGST Act, 2017 and where it is proved that the burden of tax is not passed on to another person. Before sanction of refund the data sent by DGARM is to be checked. **(Section 54(5), 54(8) of CGST Act, 2017)**
- 7.13 (a) If a registered person claims refund of any amount of tax wrongly paid or paid in excess for which debit has been made from the Electronic Credit Ledger, the said amount, if found admissible, shall be re-credited to the Electronic Credit Ledger by the Proper Officer by an order made in [FORM GST PMT-03](#). (Rule 86(4A) of CGST Rules, 2017) [\(CBIC Circular No.135/05/2020-GST dated 31-3-2020\)](#). The functionality of [FORM GST PMT-03A](#) allows Proper Officer to re-credit the amount in the Electronic Credit Ledger of the taxpayer. **(Rule 86(4A), 86(4B) of CGST Rules, 2017)**
- (b) As per Rule 86(4B) of CGST Rules, 2017, if the registered person deposits the amount in respect of the following categories of refund sanctioned erroneously, along with interest and penalty, wherever applicable, through [FORM GST DRC-03](#), by debiting the Electronic Cash Ledger, on his own or on being pointed out, an amount equivalent to the amount of erroneous refund deposited by the registered person shall be re-credited to the Electronic Credit Ledger by the Proper Officer by an order made in [FORM GST PMT-03A](#) -
- Refund of IGST obtained in contravention of Rule 96(10) of CGST Rules, 2017.
 - Refund of unutilized ITC on account of export of goods/services without payment of tax. **(Rule 96(10) of CGST Rules, 2017)**
 - Refund of unutilized ITC on account of zero-rated supply of goods/services to SEZ developer/Unit without payment of tax.
 - Refund of unutilized ITC due to inverted tax structure.

- 7.14 **Time limit for deciding refund claim** - The order under which the refund application is decided, either rejecting or accepting refund claim, shall be issued by the Proper Officer **within sixty days** from the date of receipt of application complete in all respects. - Section 54(5) of CGST Act, 2017.
- 7.15 If any tax refundable under Section 54(5) of the CGST Act, 2017, to any applicant is not refunded **within sixty days** from the date of receipt of application, interest at the specified rate is payable for the period of delay beyond sixty days, from the date of receipt of such application till the date of refund of such tax. (Section 56 of CGST Act, 2017) (**Section 54(5) & 56 of CGST Act, 2017**)
- 7.16 **No refund if amount less than Rs. 1,000/-** - No refund shall be paid to an applicant if the amount of refund is less than Rupees One Thousand. The limit of Rupees One Thousand shall be applied for each tax head separately and not cumulatively. (CBIC [Circular No. 125/44/2019 - GST dated 18-11-2019](#)). (Section 54(14) of CGST Act, 2017)
- 7.17 **Powers to withhold refund in certain cases** - Section 54(11) of the CGST Act, 2017 provides that where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under CGST Act, 2017 is pending and the Proper Officer or the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of illicit activity or fraud committed, he may pass an order in Part A of [FORM GST RFD-07](#), providing the reasons for withholding of the refund amount. Once the reasons for withholding refund no more exist, such withheld refunds may be released by passing an order in Part-B of [FORM GST RFD-07](#).
- 7.18 On examination of the refund application, if the Proper Officer is satisfied that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant then he will issue a notice in [FORM GST RFD-08](#) to the applicant.
- 7.19 The applicant will file reply electronically in [FORM GST RFD-09](#), if he so desires, **within 15 days** of the receipt of said notice. The Proper Officer after considering the reply filed, will issue an order electronically in [FORM GST RFD-06](#), sanctioning the amount of refund in whole or part or rejecting the refund claim, as the case may be. No claim can be rejected without giving applicant an opportunity.
- 7.20 Guidelines provided under [Instruction No. 03/2022-GST dated 14.06.2022](#) and [Instruction No. 04/2022-GST dated 28.11.2022](#) should be followed while examining the refund claims.

8. UNJUST ENRICHMENT

- 8.1 GST is an indirect tax whose incidence is to be borne by the consumer and hence, a presumption is always drawn that the taxpayer will shift the incidence of tax to the final consumer. It is for this reason that every claim of refund (barring specified exceptions) needs to pass the test of unjust enrichment.
- 8.2 Every refund claim, if sanctioned, is first transferred to the Consumer Welfare Fund.
- 8.3 The test of unjust enrichment is inapplicable in case of refund of accumulated ITC, refund on account of exports, refund of payment of wrong tax (Integrated tax instead of Central tax plus State tax and vice versa), refund of tax paid on a supply which is not provided or where refund voucher is issued or if the applicant shows that he has not passed on the incidence of tax to any other person. In all other cases the test of unjust enrichment needs to be satisfied for the claim to be paid to the applicant.
- 8.4 If the refund claim is less than Rupees 2 Lakhs, then a self-declaration of the applicant to the effect that the incidence of tax has not been passed to any other person will suffice to process the refund claim. For refund claims exceeding Rupees 2 Lakh, a certificate from a Chartered Accountant/ Cost Accountant has to be given.

9. POWERS TO CENTRAL GOVERNMENT TO REFUND STATE TAX AND VICE VERSA.

During the initial days after introduction of GST taxation system a taxable person under jurisdiction of Central Government had to go to State/Union Territory GST authorities to get refund of SGST/UTGST if Central Government Officers sanction refund. Subsequent to insertion of Section 54(8A) of CGST Act, 2017, a system of integrated refund has been introduced. Thus, officer of CGST/SGST/UTGST will sanction and disburse both CGST and SGST/UTGST and vice-versa, in such manner and within such time, as prescribed. (**Section 54(8A) of CGST Act, 2017**)

10. DISBURSAL OF REFUNDS OF ALL TAXES BY JURISDICTIONAL OFFICER ONLY.

- 10.1 CBIC [Circular No. 125/44/2019-GST dated 18-11-2019](#) has clarified that in respect of a refund application assigned to a Central Tax Officer, both the sanction order ([FORM GST RFD-04/06](#)) and the corresponding payment

order [\(FORM GST RFD-05\)](#) for the sanctioned refund amount, under all tax heads, shall be issued by the Central Tax Officer only and vice-versa.

- 10.2 If a refund application is electronically transmitted to the wrong jurisdictional officer, he/she shall reassign it to the correct jurisdictional officer electronically as soon as possible, but not later than three working days, from the date of generation of the ARN. Deficiency Memo shall not be issued in such cases merely on the ground that the applications were received electronically in the wrong jurisdiction. Facility to reassign such refund applications is already available with the Commissioner or the officer(s) authorized by him.
- 10.3 The refund application in [FORM GST RFD-01](#) filed by migrated taxpayers should be forwarded for processing by the common portal to the jurisdictional Proper Officer of the tax authority from which the taxpayer has originally migrated. Such officers will continue to process these applications up to the stage of issuance of final order in [FORM GST RFD-06](#) and the related payment order in [FORM GST RFD-05](#) even if the applicant is assigned to the counterpart tax Authority while the refund claim is under processing. However, if such an applicant gets assigned to one of the tax authorities after generation of the ARN and a Deficiency Memo gets issued for the refund application submitted by him, then the re-submitted refund application, after correction of deficiencies, shall be treated as a fresh refund application and shall be forwarded to the jurisdictional Proper Officer of the tax authority to which the taxpayer has now been assigned, irrespective of which authority handled the initial refund claim and issued the Deficiency Memo.

11. ADJUDICATION OF SCN BY PROPER OFFICER SANCTIONING REFUND

- 11.1 The proper officer for sanctioning refund will also be the proper officer for adjudicating the cases relating to refund application.
- 11.2 The notice shall be adjudicated following the principles of natural justice and an order shall be issued in [FORM GST RFD-06](#) under Section 54 of the CGST Act, 2017.
- 11.3 [FORM GST RFD-08](#) and [FORM GST RFD-06](#), are to be considered as show cause notice and adjudication order, respectively, under both Section 54 (for rejection of refund) and Section 73/74 of the CGST Act, 2017, as the case may be (for recovery of erroneous refund).

12. FUNCTIONS OF RANGE AND DIVISION OFFICERS IN REFUND PROCESSING

The Division/Range Officer is required to undertake the following functions:

- (i) Scrutiny of Application for refund with prescribed documents as per Chapter X of CGST Act, 2017 and Chapter IX of CGST Rules, 2017.
- (ii) The acknowledgement for the complete application in [FORM GST RFD-02](#) to be issued electronically based on the documents so received from the common portal as per Rule 90 of CGST Rules, 2017.
- (iii) In case there is any deficiency in the application, a Deficiency Memo has to be issued in FORM GST RFD-03, **within 15 days** from the date of filing a refund application as per Rule 90 of CGST Rules, 2017.
- (iv) 90% of refund of the refund of unutilized input tax credit claimed on account of zero-rated supply of goods and services has to be given on provisional basis, subject to the conditions specified in Rule 91 of the CGST Rules, 2017, in [FORM GST RFD-04](#) **within seven days** from the date of issuance of acknowledgement in [FORM GST RFD-02](#).
- (v) The payment order in [FORM GST RFD-05](#) shall be issued by the Proper Officer and the same shall be credited electronically to the bank account of the applicant mentioned in the registration particulars.
- (vi) On examination of the refund application, if the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant then notice in [FORM GST RFD-08](#) is to be issued to the applicant, as specified in Rule 92 of CGST Rules, 2017.
- (vii) After considering the reply filed, an order may be issued electronically in [FORM GST RFD-06](#), sanctioning the amount of refund in whole or part or rejecting the refund claim, as the case may be, as per Rule 92 of CGST Rules, 2017.
- (viii) If a registered person claims refund of any amount of tax wrongly paid or paid in excess for which debit

has been made from the Electronic Credit Ledger, the said amount, if found admissible, shall be re-credited to the Electronic Credit Ledger by the Proper Officer by an order made in [FORM GST PMT-03](#). (Rule 86(4A) of CGST Rules, 2017)

- (ix) [FORM RFD-07](#) has to be issued by the officer in cases where refund claimed by the applicant is fully adjusted against any outstanding demands (PART A) or refund is withheld due to certain reasons (PART B).
- (x) If any interest is due and payable to applicant under Section 56 of CGST Act, 2017, the officer shall make an order along with a payment advice in FORM GST RFD-05, as specified in Rule 94 of CGST Rules, 2017.
- (xi) The proper officer has to ensure that the registered person availing the option to supply goods or services for export without payment of Integrated tax has furnished a bond or a Letter of Undertaking in [FORM GST RFD-11](#), binding himself to pay the tax due along with the interest specified as per Section 50(1) of CGST Act, 2017.
- (xii) The Range Officer has to check the ITC eligibility and data of zero rated supplies, if such verification is required.
- (xiii) The records of the receipt of refund applications received and disposed of along with all relevant details are to be maintained by Division/Range Officer.

13. [SOPS ISSUED IN RESPECT OF REFUND](#)

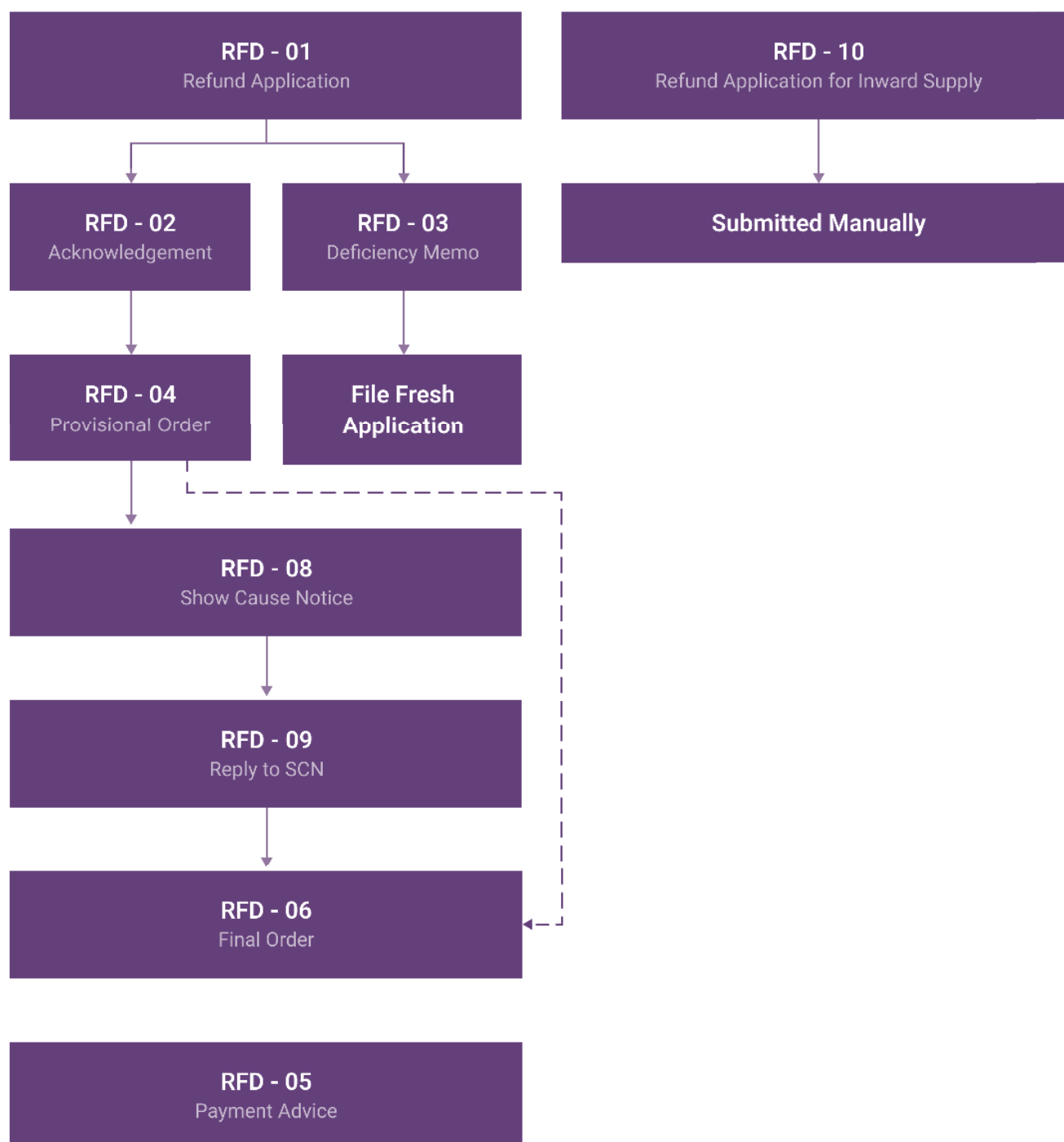
- (I) [Instruction No. 3/2022-GST, dated 14.06.2022](#) pertains to procedure relating to sanction, post-audit and review of refund claims.
- (II) [Instruction No. 4/2022-GST dated 28.11.2022](#) pertains to the manner of processing and sanction of IGST refunds, withheld in terms of clause (c) of sub-rule (4) of Rule 96, transmitted to the jurisdictional GST authorities under sub-rule (5A) of Rule 96 of the CGST Rules, 2017.
- (III) [Circular No.131/1/2020-GST dated 23.01.2020](#) issued to CGST formations provides for the procedure to be followed for verification of risky exporters and their suppliers.
- (IV) [SOP vide CBEC-20/16/07/2020-GST dated 20.05.2020](#) is regarding changes in SOP dated 23.01.2020 for verification of IGST refunds and other related aspects.

14. [CIRCULARS ISSUED BY CBIC ON ISSUES RELATED TO REFUNDS](#)

- (I) [Circular No. 14/14/2017-GST dated 06.11.2017](#) – Procurement of goods from DTA by EOU/EHTP/STP/BTP
- (II) [Circular No. 125/44/2019-GST dated 18.11.2019](#) – Electronic Refund process and single disbursement.
- (III) [Circular No.134/04/2020-GST dated 23.03.2020](#) – Refund in respect of companies under Insolvency & Bankruptcy Code, 2016.
- (IV) [Circular No. 135/05/2020-GST dated 31.03.2020](#) – Clarification on refund related issues.
- (V) [Circular No.139/09/2020-GST dated 10.06.2020](#) - Clarification on refund related issues.
- (VI) [Circular No.147/03/2021-GST dated 12.03.2021](#) – Refund claim by recipient of deemed export supply, zero-rated supplies.
- (VII) [Circular No.166/22/2021-GST dated 17.11.2021](#) – No time limit for refund of balance in Cash Ledger.
- (VIII) [Circular No. 160/16/2021-GST dated 20.09.2021](#) – Clarification on restriction imposed under proviso to Section 54(3) of CGST Act, 2017
- (IX) [Circular No. 173/05/2022-GST dated 06.07.2022](#) - Clarification on refund claim under Inverted Duty Structure.

- (X) [Circular No.174/06/2022-GST dated 06.07.2022](#) – Re-credit of sanctioned excess or erroneous refund in Electronic Credit Ledger
- (XI) [Circular No.176/08/2022-GST dated 06.07.2022](#) – Refund of taxes paid on inward supply of indigenous goods when supplied to outgoing international tourist.
- (XII) [Circular No. 188/20/2022-GST dated 27.12.2022](#) – Refund for unregistered person.
- (XIII) [Circular No.197/09/2023-GST dated 17.07.2023](#) – Refund of accumulated input tax credit.

FLOW CHART FOR REFUND APPLICATION



07 AUDIT

1. INTRODUCTION- OBJECTIVES OF AUDIT UNDER CGST ACT, 2017

This chapter outlines the principles and policies of audits conducted under the CGST Act, 2017 and the rules made thereunder, viz., CGST Rules, 2017. The objective of audit of taxpayers under GST is to measure the level of their compliance in the light of the provisions of the CGST laws. Audit examines the declaration of taxpayers to not only test the accuracy of the declaration and the accounting systems that produce the declared liability, but also evaluate the credibility of the declared or assessed tax liability.

- 1.1 Audit is a systematic examination of financial records, statements, transactions and operations of a business to ensure accuracy, compliance with laws and financial management. An effective audit program generally results in the discovery of under-declared liabilities either by omission, error or deliberate deception and is dependent on the effectiveness of audit planning and implementation. An efficient and effective audit system promises voluntary compliance and facilitates the tax administration's aim of getting "the right tax at the right time."
- 1.2 The provisions of CGST Act, 2017 and CGST Rules, 2017 relevant to this Chapter are as under –

Sr. No.	Section/Rules	Provisions pertaining to
1	Section 65	Audit by Tax authorities
2	Section 66	Special Audit
3	Rule 101	Audit
4	Rule 102	Special Audit
5	Section 71	Access to Business premises

2. DEFINITION OF AUDIT:

Audit under CGST Act, 2017 implies – Section 2(13) of the CGST Act, 2017 (**Section 2(13) of the CGST Act, 2017**)

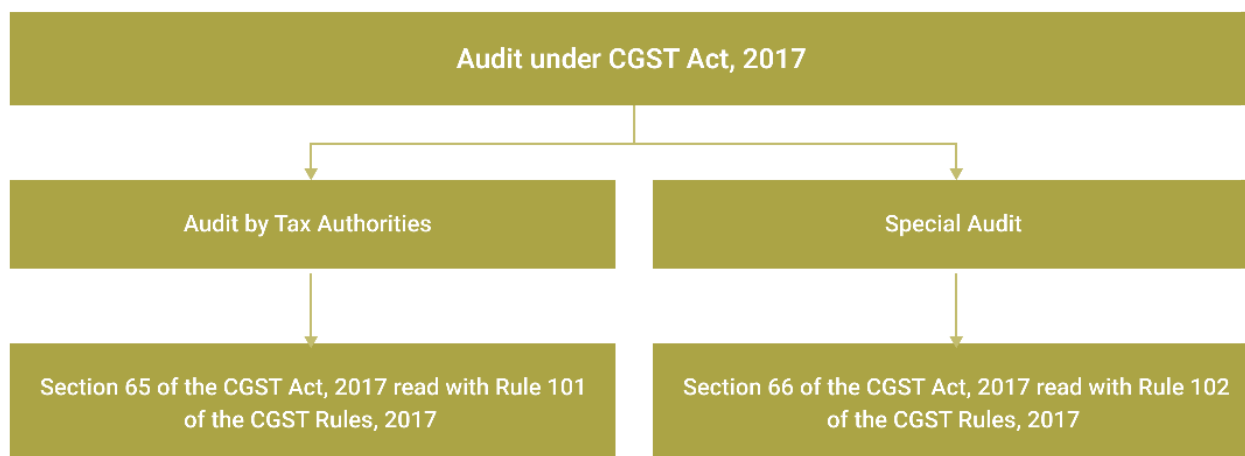
- (a) Detailed examination of
 - (i) records,
 - (ii) returns and
 - (iii) other documents– maintained/ furnished by a registered person, under GST law/any other law or rules-
- (b) For verification of correctness of –
 - (i) turnover declared
 - (ii) taxes paid
 - (iii) refund claimed
 - (iv) input tax credit availed and
 - (v) assessment of compliance with provisions of GST law and rules.

- 2.1 **Principles of Audit:** The basic principles of audit are –

- (i) conducting audit in a systematic and comprehensive manner

- (ii) scrutinizing the records maintained in the normal course of business with emphasis on the identified risk areas
- (iii) applying audit techniques based on materiality, i.e., degree of scrutiny and application of an audit tool depending upon the identified nature of risk factors
- (iv) proper recording of all checks and findings made during the entire audit
- (v) identifying unexplored compliance verification parameters
- (vi) educating the taxpayer for voluntary compliance.

2.2 **Types of audits under CGST Act, 2017:** The CGST Act, 2017 prescribes the following two types of audits:



Note: This chapter mainly deals with audit by tax authorities, as prescribed under section 65 of the CGST Act, 2017 and Rule 101 of the CGST Rules, 2017.

3. LEGAL PROVISIONS ASSOCIATED WITH AUDIT BY TAX AUTHORITIES AND THE PROCEDURE TO CONDUCT AUDIT THEREOF-

- 3.1(i) The Commissioner or any officer authorised by him is empowered to conduct audit. The audit may be conducted at the place of business of the registered person or in the office of the auditor. However, as a measure of taxpayer facilitation, in the case of small taxpayers, the audit may be conducted in the office of the auditor. A visit to the premises of the small taxpayer should only be considered in case of non-cooperation. The audit shall be conducted for a financial year or any part thereof or multiples thereof – Section 65(1) & (2) of CGST Act, 2017 and Rule 101(1) of CGST Rules, 2017.
- (ii) A prior notice shall be issued to the auditee at least **fifteen working days in advance**, notifying him of the audit and to obtain documents required for conduct of audit as per Section 65(3) of the CGST Act, 2017. The notice is issued as per **Form GST ADT-01**, as prescribed under Rule 101(2) of the CGST Act, 2017. **(Section 65(3) of the CGST Act, 2017 Rule 101(2) of the CGST Rules, 2017)**
- (iii) The audit should be completed normally **within a period of three months** from the date of commencement of the audit, except in cases where approval of the Commissioner has been obtained for completing audit in a period beyond three months, which can be extended by a **further period of six months**, for the reasons to be recorded in writing. The expression 'commencement of audit' is as defined under Explanation to Section 65(4) of the CGST Act, 2017. **(Section 65 (4) of the CGST Act, 2017)**
- (iv) During the audit, the Proper Officer, along with his team of officers shall conduct audit and verify auditee's books of accounts and other documents and returns maintained and/or furnished during the course of business to ascertain the accuracy of turnover, exemptions, deductions claimed, applicable tax rates for goods and/or services supplied, availment and utilization of input tax credit, refunds claimed and other relevant matters. The auditee may afford necessary facilities to the auditor/s to verify the required books of account or other documents, including any other required information and assistance for timely completion of the audit. Section 35 of the CGST Act, 2017 prescribes these books of accounts and other records, which are required to be kept and maintained by the registered person at his principal place of business, as mentioned in the certificate of registration. The auditors record the audit observations in the audit notes – **(Section 65 (5) of the CGST Act, 2017 and Section 35 of the CGST Act, 2017 Rule 101(3) of the CGST Rules, 2017)**

- (v) If any discrepancies are noticed during the audit, the proper officer shall notify the registered person, who then shall have the opportunity to respond. After considering the reply provided by the registered person, the proper officer shall finalise the audit findings – **(Rule 101(4) of the CGST Rules, 2017)**
- (vi) The audit is deemed to be concluded once the audit findings are approved by the Commissioner in the Monitoring Committee Meeting. The audit findings in the form of Final Audit Report (FAR) should be communicated to the auditee within 30 days. The FAR is issued in **FORM GST ADT-02**. The FAR should include the reasons for the audit findings and inform the auditee of his rights and obligations . **(Section 65 (6) of the CGST Act, 2017 Rule 101(5) of the CGST Rules, 2017)**
- (vii) The detections made during the audit may either be recovered from the auditee or notice for recovery may be issued to him by the proper Officer – **(Section 73&74 of the CGST Act, 2017)**

3.2 Access to the business premises for audit:

Besides desk-based audit prescribed for audit of small taxpayers, the audit may be conducted by visiting the business premises of the auditee, for which access is authorised to the auditors – **(Section 71 of the CGST Act, 2017)**

- (1) An officer holding the rank of Joint Commissioner or above is authorised to delegate officers to inspect the business premises of a registered person. This inspection includes examining books of account, documents, computers, computer programmes, software and any other things necessary for conducting an audit – **(Section 71(1) of the CGST Act, 2017)**
- (2) The auditee is obligated to make available the documents and information required for conduct of audit to the auditor, which may include – **(Section 71(2) of the CGST Act, 2017)**
 - (i) Records prepared or maintained by the registered person and declared to the proper officer as prescribed.
 - (ii) Trial balance or its equivalent.
 - (iii) Annual financial account statements, duly audited, when necessary.
 - (iv) Cost audit report under section 148 of the Companies Act, 2013, if applicable.
 - (v) Income – tax audit report under section 44AB of the Income Tax Act, 1961, if applicable; and
 - (vi) Any other relevant records.

These documents must be made available by the registered person for scrutiny **within fifteen working days** from the date of demand made by the officer or the audit party. Access to business premises also includes online access to the taxpayer's books and accounts and records, in addition to physical access.

- 3.3 **Accounts and other records:** The accounts and other records which a registered person is required to keep and maintain at his registered principal place of business are prescribed under Section 35 of the CGST Act, 2017 and the same may be required for conduct of audit. However, following documents may not be asked for from taxpayers due to their online availability in the GST Systems: **(Section 35 of the CGST Act, 2017)**

LIST OF DOCUMENTS AVAILABLE ONLINE:

S. No.	Documents/ Returns	Description of document	Source
1	Form GST REG-06	GST Registration Certificate provides the details such as Legal Name, Trade Name, Constitution of business, Principal place of business, date of issue of GST Registration	All-in-One(pdf)(GSTN)
2	GSTR 9	Annual Return	All-in-One: Visible and downloadable (GSTN)

3	GSTR 1	Monthly/quarterly return that summarizes all sales (outward supplies) of a taxpayer	All-in-One: in Excel. Invoice level details can also be accessed by downloading the uploaded return JSON Zip file. (GSTN)
4	GSTR 3B	Self-declared summary GST return filed every month (quarterly for the QRMP scheme). Taxpayers need to report the summary figures of sales, ITC claimed, and net tax payable in GSTR-3B.	All-in-One(pdf)(GSTN)
5	GSTR 4	Return for financial year of registered person who has opted for composition levy or availing benefit of Notification no. 02/2019-Central Tax (Rate)	All-in-One(pdf)(GSTN)
6	GSTR 5	Monthly return for Non-resident taxable	All-in-One(pdf)(GSTN)
7	GSTR 6	Monthly return for Input Service Distributor	All-in-One(pdf)(GSTN)
8	GSTR 7	Monthly return to be furnished by the person liable to deduct TDS	All-in-One(pdf)(GSTN)
9	GSTR 8	Monthly return to be filed by e-commerce operators required to collect TDS	All-in-One(pdf)(GSTN)
10	GSTR 2A	Purchase –related dynamic tax return that is automatically generated for each business by the GST portal. GSTR 2A is auto-populated from the returns of sellers viz. GSTR 1(filed by regular registered seller), GSTR-5 (filed by Non-resident), GSTR 6 (filed by Input Service Distributor), GSTR 7 (filed by person liable to deduct TDS), GSTR 8 (filed by e- Commerce operator)	All-in-One (Excel) Month-wise after individual request (GSTN)
11	Tax Liability vs ITC Comparison (GSTR-1 vs GSTR-3B and GSTR-2A vs GSTR-3B)	Comparison of Tax Liability vs ITC	All-in-One (GSTN)
12	Summary of GSTR 3B	Summary of GSTR 3B return	All-in-One return dashboard (view only)
13	Summary of GSTR 1	Summary of GSTR 1 return	All-in-One return dashboard (view only)
14	FORM GST PMT-05 (Electronic Cash Ledger)	Every deposit made by a person by internet banking or by using credit or debit cards or NEFT or RTGS or by over-the-counter deposit on account of tax, interest, penalty, fee or any other amount is credited to the respective electronic cash ledger. 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	All-in-One (GSTN)
15	FORM GST PMT-02 (Electronic Credit Ledger)	Input Tax Credit as self-assessed in the return by a registered person is credited to his electronic credit ledger	All-in-One (GSTN)
16	Analytical reports	Various analytical reports	ADVAIT
17	Form GST DRC-03	Voluntary tax payment form in which a taxpayer can pay the tax by raising its liability voluntarily or in response to the show-cause notice (SCN) raised by the department	All-in-One (GSTN)

18	Refund application along with annexure	Application for refund	All-in-One (GSTN)
19	TRAN-01	Transition form to claim the Input Tax Credit of the old (pre-GST) regime in the GST regime	All-in-One (GSTN)
20	TRAN-02	Transition form to claim the Input Tax Credit of the old (pre-GST) regime in the GST regime by a person who was unregistered in old regime	All-in-One (Excel) (GSTN)
21	E-way bills	A document to be carried by the person in charge of conveyance, on commencement of movement of goods exceeding the value of Rs.50,000/- in relation to supply or for reasons other than supply or due to inward supply from an unregistered person.	E-way bill portal
22	Annexure-GSTAM-1	Registered person's master file	All the information except HSN-wise detail in Part 3 of Annexure GSTAM-1 is already available with the Department and the same can be filled by auditors.
23	Form GST CMP-08	Quarterly return to be filed by taxpayer opting for composition scheme. This return replaces the erstwhile quarterly GSTR-4 filled by composition dealers.	All-in-One (GSTN)
24	Form GST ITC-04	Half-yearly (for turnover more than Rs.5 cr.) and yearly (for turnover upto Rs. 5 cr.) return showing the details for goods/capital goods sent to job workers and received back.	All-in-One (GSTN)

3.4 Special Audit – Section 66 of CGST Act, 2017

- (1) If at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, 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 by a communication in writing 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 – **(Section 66 of the CGST Act, 2017)**
- (2) The chartered accountant or cost accountant so nominates shall, within the period of ninety days, submit a report of such audit duly signed and certified by him to the said Assistant Commissioner mentioning therein such other particulars as may be specified:
Provided that the Assistant Commissioner may, on an application made to him in this behalf by the registered person or the chartered accountant or cost accountant or for any material and sufficient reason, extend the said period by a further period of ninety days.

4. Special Audit – Section 66 of CGST Act, 2017 and Rule 102 of the CGST Rules, 2017.

- 4.1 If, during any phase of examination, inquiry, investigation, or other proceedings, an officer not below the rank of Assistant Commissioner, considering the nature of the case, complexity, and revenue implications, is of the opinion that the declared value is inaccurate or the credit availed exceeds normal limits, he may, with Commissioner's approval, direct the concerned registered person in writing to have his records, including accounting books, to be reviewed and audited by a Chartered Accountant or a Cost Accountant nominated by the Commissioner. The directions to conduct such audit shall be issued in **FORM GST ADT-03** as prescribed under Rule 102(1) of the CGST Rules, 2017 – **(Section 66 of the CGST Act, 2017 Rule 102(1) of the CGST Rules, 2017)**
- 4.2 The Chartered Accountant or the Cost Accountant nominated to conduct audit shall, **within a period of ninety days**, submit the audit report duly signed and certified by him to the said Assistant Commissioner, along with such other particulars as may be specified. However, the period may be extended by a **further period of ninety days** by the Assistant Commissioner, on an application made to him in this behalf by the registered person or the Chartered Accountant or the Cost Accountant for any material and sufficient reason – **(Section 66(2) of the CGST Act, 2017)**

- 4.3 On conclusion of the audit under Section 66, the registered person shall be informed of the findings of the special audit in [FORM GST ADT-04 – \(Rule 102\(2\) of the CGST Rules, 2017\)](#)
- 4.4 The proper officer shall initiate action for recovery of tax, input tax credit and/or erroneous refund detected during the audit – [\(Section 73 &/or 74 of the CGST Act, 2017\)](#)

5. **MANAGEMENT OF GST AUDIT**

In order to monitor, co-ordinate and guide the effective implementation of the audit system, the Board has set up the Directorate General of Audit as the nodal agency. At the local level, management of audit is entrusted to GST Audit Commissionerates who conduct audits, and are supervised by respective Zonal Principal Chief Commissioners/Chief Commissioners.

5.1 **Directorate General of Audit:**

- (i) The Directorate General of Audit, Indirect Taxes and Customs, New Delhi, headed by Principal Director General/ Director General, has been mandated with the task of formulating the comprehensive audit processes and techniques through a CGST Audit Manual [[Goods and Services Tax Audit Manual, 2019 \(GSTAM, 2019\)](#) is currently in force]. The Directorate, in coordination with its seven Zonal Units located at Ahmedabad, Bangalore, Chennai, Delhi, Hyderabad, Kolkata and Mumbai (each headed by a Principal Additional Director General/ Additional Director General) further ensures efficient and effective implementation of the audit system by devising, evolving and improving audit techniques and procedures under CGST Audit manual. The audit performance of the CGST audit field formations is monitored and evaluated on both quantitative and qualitative aspects through the standards prescribed in the [Manual for Quality Assurance Review and Audit performance Index, 2021 \(QAR & API Manual\)](#), issued and administered by DG (Audit).
- (ii) The selection of registered CGST taxpayers for audit is jointly carried out by the DG Audit and the Directorate General of Analytics and Risk Management (DGARM), based on selected risk parameters.

5.2 **Principal Chief Commissioner / Chief Commissioner, Central GST:**

Principal Chief Commissioners/ Chief Commissioners are responsible for administrative supervision of the Audit Commissionerates under their charge. They also approve 20% of the taxpayers to be audited as selected by the CGST Audit Commissionerates out of the list of taxpayers provided by DG Audit/ DGARM based on local risk parameters,

5.3 **CGST Audit Commissionerate:**

The CGST Audit Commissionerate is headed by a Principal Commissioner of CGST Audit / Commissioner of CGST Audit. The Commissionerate comprises of Audit Circles, Planning and coordination section, Risk management and Quality Assurance section and other sections. The Audit Circles comprise of Audit Groups who conduct audits. The Principal Commissioner of CGST Audit / Commissioner of CGST Audit is required to ensure proper selection of taxpayers to be audited during the year under local parameters, hold Monitoring Committee Meeting (MCM) once a month to take decision about the acceptability of all audit objections, review audit performance and assess the training needs of the auditors and organize training programmes in coordination with NACIN.

5.4 **Advisor Cost, Deputy Director Cost and Assistant Director Cost:**

The officers of Indian Cost Accounts Service (ICoAS) are posted in various field formations of the CBIC. These officers are in the post of Advisor (Cost), Director/ Joint Director (Cost) and Deputy/ Assistant Director (Cost). Since they are proficient in cost and accounting matters, their services can be helpful for audit and can be utilised by auditors in understanding books of accounts and other related matters, including for training purposes.

5.5 **Staffing norms prescribed in GST Audit Manual, 2019 for CGST Audit Commissionerate:**

- (i) The Audit Groups deployed for audit of large taxpayers may comprise 2-3 Superintendents and 3-5 Inspectors. For medium taxpayers, the audit group may include 1 – 2 Superintendents and 2 – 3 Inspectors. For small taxpayers, the Audit group may include 1 Superintendents and 1 – 2 Inspectors.
- (ii) Groups for large taxpayers, medium taxpayers and small taxpayers should be in such numbers that the following distribution of manpower deployment in audit groups is achieved.
 - (a) 40% of manpower for large taxpayers

- (b) 30% of manpower for medium taxpayers
- (c) 20% of manpower for small taxpayers
- (d) 10% of manpower for planning, coordination and follow up.

The taxpayers are categorised into large, medium and small categories based on their annual turnover, the threshold of which may vary in different Commissionerates.

6. **AUDIT PROCESS:**

- (I) The Internal Audit function involves scrutiny of records of the taxpayer, selected on the basis of risk parameters, in a uniform, efficient and comprehensive manner, adhering to the stipulated principles and policies and in accordance with the best international audit standards. Detailed guidelines for conduct of audit in line with the legal provisions contained in the CGST Act, 2017 and CGST Rules, 2017 have been prescribed by the Directorate General of Audit in the GSTAM, 2019.
- (II) Brief steps of the Audit Process as contained in GSTAM 2019 are as under –
 - (i) Creation of Audit teams.
 - (ii) Selection of taxpayers.
 - (iii) Allotment of taxpayers to the audit groups.
 - (iv) Intimation to the taxpayer regarding the conduct of audit (GST ADT -01).
 - (v) Reviewing the taxpayer data – Taxpayer at a Glance (TAG), Registration, Returns, payments, Dispute Resolution, Audit Report Utility, E-way bills & Third-Party data if available and conducting Desk Review in office.
 - (vi) Preparing the audit plan based on the finding of Desk Review.
 - (vii) Carrying out audit verification as per the Audit Plan including mandatory checks to be carried out.
 - (viii) Conveying the preliminary findings of the audit to the taxpayer and recording his response.
 - (ix) Preparing the draft audit report (DAR) for the Monitoring Committee Meeting (MCM) held by the Commissioner.
 - (x) Examining the audit paras in MCM.
 - (xi) Preparing the final audit report (FAR), **within thirty days** of the Meeting.
 - (xii) Communicating the final audit report to the taxpayer (ADT-02).

6.1 **Methodology for selection of taxpayers**

A scientific and well deliberated Risk Assessment programme, developed in coordination with the DGARM, is used to identify risky taxpayers.

6.1.1 **Risk parameters for selection of taxpayers.**

The list of risky taxpayers, which are selected based on risk parameters is shared with the Audit Commissionerates for audit. These risk parameters are subject to change depending upon audit feedback leading to their recalibration and identification of new risk parameters.

- 6.1.2 The CGST Audit Commissionerates are categorized based on number of large, medium and small categories of taxpayers (the criteria of which is annual turnover of the taxpayers) within their jurisdiction. A document containing Risk Flags and the action points for decision support to facilitate the auditors in identifying the areas to focus during audit is separately provided with the risk flag indicators.

The list of taxpayers provided by DGARM to each Audit Commissionerate contains-

- (i) 70% of the taxpayers (risky taxpayers) selected on the basis of their risk score.
- (ii) 10% of the total taxpayers selected randomly by the DGARM's system applying different algorithms,
- (iii) The remaining 20% of the taxpayers to be audited are selected by the Audit Commissionerates based on local risk factors, after obtaining approval from the jurisdictional Chief Commissioner. A comprehensive list is provided by DGARM for 20% selection to be made by the Audit Commissionerates.

GSTAM, 2019 provides indices on indicative duration for conduct of audit that is inclusive of desk review, preparation and approval of Audit plan, actual Audit and preparation of Audit report wherever necessary, for each category would be as under:

- (a) For large taxpayers - 7 working days
- (b) For medium taxpayers - 5 working days
- (c) For small taxpayers - 3 working days

6.2 Audit intimation to the taxpayer:

As per section 65 of the CGST Act, 2017 taxpayers listed to be audited should be intimated of audit **at least 15 working days** before the commencement of audit verification in their premises. The CGST Rules provide that letter in **FORM GST ADT-01** shall be issued at **least fifteen working days** prior to the conduct of audit and shall detail a request for providing records / documents which are necessary for conducting audit. In case the Registered Person does not respond to the letter, a reminder should be issued within a reasonable time. Where the registered person does not volunteer to submit the same on the basis of letters issued by the auditor, necessary action as outlined in various other provisions of the Act such as inspection can be deployed to achieve the desired outcome. Para 1.3 of the **GSTAM, 2019** prescribes action to be initiated by the concerned Executive Commissionerate, which includes action through enforcement. In such cases, the Executive Commissioners should take immediate proactive action for safeguard of revenue, keeping the Audit Commissioner and DG Audit apprised of the action taken. Details of such registered persons should also be included in the Risk Parameters by DG Audit and DGARM on a reference to be made by the Audit Commissioner, so that in future the said person may be identified for audit on priority. Also, the GST compliance rating of said person may also be modulated to reflect non-compliance with the mandate of audit. **(Section 65 of the CGST Act, 2017)**

6.3 Audit preparation - desk review

Detailed methodology for desk review has been described in Chapter 5.5 of the GSTAM, 2019. The salient elements of Desk Review are:

- (i) The desk review lays emphasis on gathering data about the taxpayers, his operations, business practices, accounting system, studying flow of materials, cash and documentation.
- (ii) The information available with the Department is reconciled with the collected information. Results of Financial Ratios, Revenue Risk Analysis and Trend Analysis is documented.
- (iii) Examination of financial statements, cost & tax audit reports and records is carried out and all receipts of taxpayer as mentioned in financial records are examined for Tax liability and to verify eligibility for any exemption.

6.4 Audit Plan

Based on the result of the preliminary Desk Review carried out by the auditor as per steps / procedure laid down in the Audit Manual, a draft Audit Plan is prepared for approval. The QAR & API Manual prescribes approval of audit plan of taxpayers for every Audit Circle in the following manner:

- (i) Approval by Pr Commissioner/ Commissioner - Top five taxpayers based on turnover
- (ii) Additional / Joint Commissioner - All other large and medium taxpayers.
- (iii) Assistant/ Deputy Commissioner, Circle - All small taxpayers.

An audit plan outlines a logical series of review and examination steps that would meet the goals and standards of an audit in an efficient and effective manner. It should account for complexity of audits. It allows auditor to take a reasonable view regarding the vulnerable areas, the weak points in the internal control systems, abnormal trends and unusual occurrences that warrant detailed verification. Certain unanswered or inadequately answered queries about the affairs of the registered person may also be added to this list.

An illustrative Audit Plan has been prescribed in [Annexure GSTAM –VII](#).

6.5 **Mandatory checks and conduct of Audit verification-**

- (i) Audit verification involves verification of data and documents submitted at the time of desk review and also verification of issues mentioned in the audit plan.
- (ii) The verification techniques must be appropriate for audit objectives identified in the audit plan. At times, it may be difficult to test the technical correctness of all objections owing to varied interpretations of the provisions of law. However, it should be corrected to the extent that any professional auditor, working with and having access to the same research material would likely come to the same conclusion. It also means that the auditor must demonstrate, in writing, the research and reasoning used to base his application of legislation, policies and jurisprudence.
- (iii) The auditor should conduct the verification in a systematic manner, following the sequence of steps envisaged in the working papers. Special care should be taken to examine all those issues pointed out in the audit plan. The auditor should try to determine whether any apparent weakness in the internal control system of the manufacturer/service provider has led to any loss of revenue. The auditor should also identify recurrent procedural infractions. Discrepancies, if any, should be noted along with details of enquiries made regarding the cause of the discrepancies and their revenue implication.
- (iv) Documents submitted to various Government departments/ Regulatory Authorities such as Customs, Income Tax, Banks, etc. by the registered person should be used in cross verification of the information filed by the registered person for the assessment of GST. Information available with open sources such as electronic and print media, internet etc. should also be used for verification of information filed by the registered person.
- (v) The audit verification gives maximum opportunity to the auditor to go through the registered person's records. As a result of which, an auditor may come across a new set of information or documents, not earlier known, during any of the earlier stages. Further, while examining an issue, the auditor may come across a fresh issue also requiring detailed examination. In such a situation, the auditor should, after obtaining the approval of higher authority, go beyond the scrutiny envisaged under the Audit Plan and record the reasons for doing so. At the end of each entry in working papers, the auditor must indicate the findings. If any of the planned verifications is not conducted, the reasons for the same must also be recorded. While the process of verification for each audit would be unique in terms of Audit Plan, it should involve some general steps as discussed below.
- (vi) A detailed scrutiny of documents like Annual Financial Accounts containing Director's Report, Statutory Auditor's Report, Balance Sheet and Profit & Loss Account should be carried out. The auditor must also examine Trial Balance, Ledgers, Journal Vouchers, 26AS Statement, Invoices and E-Way bills. The auditor may also examine Cash Flow Statement, Groupings, Cost Audit Report and Tax Audit Report and should also check whether the registered person is maintaining the statutory records as required under other statutes like the Companies Act, 2013.
- (vii) Audit objections raised must be fully supported by documentary and legal evidence.
- (viii) During audit, the auditors may examine the details of procurements from unregistered persons as to whether they are liable to reverse charge mechanism- [\(Section 9\(4\) of the CGST Act, 2017\)](#)
- (ix) For verifying the gap in ITC availment, the auditor should carry out a test check of the invoices of such suppliers whose details are not figuring in GSTR 2A and identify some of such suppliers with high tax value and get the particulars of tax payment verified at the supplier's end.

6.6 **Communication of Audit observations**

As the Audit system adopts a transparent methodology, it is necessary that all the audit objections noticed by the Audit Group are conveyed to the registered person before preparing the Draft Audit Report. Accordingly, the audit objections should be intimated in writing to the registered person, clearly stating that the same is not

in the nature of any show cause notice and is only a part of participative and fact-finding audit scheme under which even the preliminary and tentative audit observations are being shared with the registered person for ascertaining his point of view. Where satisfactory explanation or evidence is submitted to the auditor, the finding should be revised as necessary. However, if a response from the registered person is not forthcoming, draft audit paras should be prepared based on available records after citing the lack of cooperation on part of the registered person, in the Audit Report.

6.7 **Draft Audit Report (DAR)**

- (i) After completion of audit verification, the auditor prepares the Draft Audit Report which records the results of verification conducted as per the audit plan. Any additional issue (not mentioned in the original plan) verified / point noticed is also mentioned. The initial views of the taxpayers are recorded in the verification document. Details of spot recoveries and willingness of the registered person to pay short levy are also recorded.
- (ii) The narrative of the objections in the audit report should be concise, to the point and self-contained and should convey the gist of the objection raised. Telegraphic narration should be avoided. Where the objections are based on any circulars or clarifications issued by the Board, they should be quoted. Cases, in which certain specified conditions are not fulfilled, giving rise to objections are backed by interpretations as decided by the court judgments, decisions of Appellate authorities or supported by technical literature, those should be cited.
- (iii) The DAR should be prepared within the shortest time span possible, i.e., **within 10 -15 days** of the commencement of the audit in the registered person's place and placed before the Monitoring Committee for decision.

6.8 **Monitoring Committee Meeting (MCM)**

Monitoring Committee Meeting (MCM) should be convened by the Audit Commissioner at least once a month, to which the Executive Commissioner or his representative shall be invited to attend. During the MCM, each of the audit objections/ observations should be examined for its sustainability. The minutes of each such meeting should be drawn, pointing out the decision on each audit objection regarding its sustainability and directions for future action. The objections rejected by the meeting will be treated as closed. The decision taken by the Audit Commissioner, with regard to settlement of audit objections after recovery of all dues or dropping of the unsustainable audit objections, shall be final.

6.9 **Final Audit Report (FAR)-**

Based on the decision of the MCM, the DAR should be finalized within thirty days from the date of the meeting and FAR should be prepared. A copy of the FAR (GST ADT -02), even if it is a NIL report, should be sent to the registered person, by e-mail through the system (GSTN) and necessary records confirming such action should be kept in Registered person's Master File. It may be noted that the communication of the FAR to the auditee concludes the proceedings of audit. The format of FAR is [FORM GST ADT-02](#).

An illustrative list of documents to be verified during audit in respect of supply of goods/ services is prescribed in [Annexure GSTAM-IX](#).

6.10 **Follow up action-**

An audit objection should be closed after requisite action, i.e., either recovery of amounts due or issuance of show cause notice. After the issuance of Final Audit Report, wherever further action such as issue of Show Cause Notice is required under Section 73 and/ or 74 of the CGST Act, 2017, the Audit Group shall prepare the Draft Show Cause Notice. The Show Cause Notice should be issued by the concerned officer of the Audit Commissionerate as per the competency decided by the Board in its instructions issued from time to time and the same shall be answerable to the adjudicating authority as per the Board's instructions issued in this regard. It is the responsibility of the Audit Commissionerate as per the competency to pursue / persuade the taxpayer for payment of tax dues, especially on the paras admitted by the Registered Person. However, for any pending action, i.e., recovery, especially on paras admitted in writing by the Registered Person, the matter can be taken up with the jurisdictional Executive Commissionerate, for follow up. In case, new facts, necessitating reconsideration of findings in an audit report, come to the knowledge of officers who are required to take action on an objection, they should send their report along with supporting material to the Planning and Coordination Section for reconsideration. But this action must be taken most expeditiously, say within one month of receipt of the Audit Report. In exceptional cases involving cogent grounds, the views taken in the Monitoring Meetings shall be taken up for review/re-consideration by the MCM only. The Audit Commissioner should send a list containing details of Show Cause Notices issued during the month to each of the Executive Commissionerates,

on a monthly basis. **(Section 73 (5) & 73(6) and 74 (5) & 74(6) of the CGST Act, 2017)**

Note: For detailed information on audit processes, [the Goods and Services Tax audit manual, 2019 \(GSTAM\)](#), issued by the Directorate General of Audit may be referred to.

7. Thematic Audit- An overview

The purpose of Theme-based audit is to conduct a “focused audit” instead of a “comprehensive audit”, so that available resources are directed to check/verify compliance of sensitive issues or sectors. The results obtained from theme-based audit assists the policy makers to assess compliance level of a particular type of service/industry or trade sectors or areas so that compliant sectors may be extended greater facilitation and special focus may be directed to ensuring compliance on sectors with relatively low compliance scores. It is a value-adding approach that helps the Auditors to determine, consolidate and report high-level insights in the business transactions and practices prevalent in a particular type of industry/service sector. Theme-based audit may have both compliance and performance audit objectives.

7.1 The following scenarios may lead to a thematic audit-

- Taxpayers in the same supply chain registered in same/different states.
- Simultaneous audit of taxpayers which have same modus operandi of tax evasion and are registered across states.
- Taxpayers dealing in supply of some goods/services which have also been determined as evasion prone.
- Thematic audit may also extend to specificity like trends in availment and utilization of ITC in any given sector.

7.2 Administrative arrangement for selection of themes for thematic audit

- (i) For conducting thematic audit, GST Council has formed an All-India Coordination Committee at all India level which shall select themes for conducting theme-based audit at all India level in a coordinated manner.
- (ii) The All-India Coordination Committee shall constitute a Committee of Officers in each state/UT for selecting taxpayers in a state for conducting thematic audit, coordinate among various Audit Authorities for evolving a common minimum audit plans for a given theme, monitor actual audit by the field formations and disseminate audit outcome to appropriate stakeholders.

7.3 Administrative arrangement for conduct of Thematic Audits

For coordination of actual audit, the All-India Coordination Committee has constituted a Committee of Officers (CoO) for each State/UT composed of the following two members-

- State GST Commissioner
- CGST Audit Commissioner preferably located at the same station.

The Committee of Officers shall select the taxpayers based on the themes which have been finalized by the All-India Coordination Committee. The details of the taxpayers so selected, will be shared with Audit formations of the Central and State Tax Authorities for conducting audit proceedings.

7.4 Role of Audit field formations (of Central and State Tax) for conducting thematic audit

Theme-based audit of a selected taxpayer shall be conducted by the concerned GST audit authority, i.e., the jurisdictional Central or State Audit Officer. Considering the importance of thematic audit, it is imperative to allocate appropriate resources/staff in each of the Audit formation. Audit groups dealing with Thematic Audits should be given proper training to deal with audit of records of the taxpayers of the selected themes.

7.5 Standard Operating Procedure (SOP) for conducting Thematic Audit

- (a) The All-India Coordination Committee shall select the themes for Audit and communicate the Themes to the Committee of Officers responsible for Audit.

- (b) For a given theme, the Committee of Officers shall select the taxpayers to be audited in that State.
- (c) Audit groups earmarked for conducting the theme-based audit shall request the selected taxpayer(s) for providing necessary documents viz. Balance sheet(s), 3 CD report (Statement of particulars required to be furnished under Section 44AB of the Income Tax Act, 1961, profit and loss statement, income tax returns etc. The concerned audit group shall also take out various GST returns filed by the said taxpayer and examine/scrutinize them. They will accordingly prepare the Desk Review (DR) and the Audit Plan (AP). As with entity-based audit discussed in the earlier section above, as much data as possible may be gathered from the documents/returns already available in the system.
- (d) All such Audit groups (both under Centre and State Tax Authorities) shall forward the proposed audit plan so prepared by them, to the Committee of Officers which shall examine these audit plans to ensure uniformity in approach and provide further inputs, if any. After this exercise, a common minimum Audit Plan shall be prepared and communicated to all Audit Groups for conduct of audit.
- (e) The Committee of Officers for conduct of thematic audit shall also indicate a date on which audit of all such taxpayers irrespective of their jurisdiction (whether under Centre or State) shall commence.
- (f) After conducting an audit, all the Audit Groups shall prepare their observations and convey to the taxpayer (s) for their written response to these observations. In their written response, the taxpayer is expected to communicate their agreement or disagreement, as the case may be, to the observations pointed out by the Audit Group. After considering the written response from the taxpayer, the Audit Group shall prepare the draft audit para(s).
- (g) The Audit Group shall forward their draft audit para(s) to the Committee of Officers for approval. Before approving the draft audit para(s), the Committee of Officers may hold a meeting (physical/virtual) with concerned audit groups. This Committee may also point out certain additional areas which need to be looked into by the audit groups before finalizing the audit paras.
- (h) Once draft audit para(s) are approved by the Committee of Officers, the audit group(s) shall present their draft audit report before their respective Audit Authorities for approval. The Audit Authorities may adopt a practice of holding monthly meetings of the monitoring committee for approval of audit paras presented by their audit groups.
- (i) Once audit para(s) are finalized after approval of the Monitoring Committee, the concerned audit officers/groups shall issue Final Audit Report (FAR), a copy of which shall also be endorsed to the coordination committee for dissemination to Central Tax Audit Commissionerates / State Audit Officers across India for information.
- (j) The audit paras which have been agreed upon by the taxpayer shall be closed after payment of the due tax amount along with appropriate interest and penalty, if any.
- (k) As regards unpaid/short paid GST is concerned where the taxpayer is not in agreement with the audit para and is not willing to pay outstanding GST along with interest and penalty, the audit groups shall prepare demand cum show cause notice to be adjudicated by the appropriate Tax Officer. Before the issue of demand cum show cause notice, the taxpayers may be given pre-consultation so as to give them one more opportunity to explain their point of view before a final decision is arrived at. This will reduce unnecessary litigation which is good for both the taxpayer as well as the government.
- (l) After adjudication proceedings, recovery action against the taxpayer shall be taken by the appropriate jurisdictional tax authority (i.e. Central Tax Commissionerates or State Tax Jurisdictional Authority) in accordance with Section 79 of the CGST/SGST Act read along with relevant rules and provisions issued therein. **(Section 79 of the CGST Act, 2017)**
- (m) The jurisdictional tax authorities shall upload the audit findings (in a predetermined format), in an Audit Utility which shall be accessible to all the Audit formations across the country. These findings may be helpful in detecting similar types of anomalies in similar cases across the country.

8. AUDIT OF REPORTING ENTITIES UNDER PMLA, 2002 FROM ANTI MONEY-LAUNDERING, COUNTERING THE FINANCING OF TERRORISM AND COMBATING PROLIFERATION

FINANCING PERSPECTIVE:

- 8.1 **DG Audit as Regulator under the Prevention of Money-laundering Act, 2002 :** The Central Board of Indirect Taxes and Customs (CBIC) has been notified as the Regulator in respect of the 'Dealers in Precious Metals and Precious Stones' and the 'Real Estate Agents' under Rule 2(1)(fa) (iii) and Rule 2(1)(fa)(iv) of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005(PMLR) and accordingly, the Principal Director General/Director General, Directorate General of Audit has been appointed as Regulator' under the Prevention of Money Laundering Act, 2002(PMLA), to work on behalf of the CBIC for these two sectors.
- 8.2 The Regulator has prescribed separate Anti-Money Laundering (AML), Countering the Financing of Terrorism (CFT) and Combating Proliferation Financing (CPF) Guidelines for 'Dealers in Precious Metals and Precious Stones' and Real Estate Agents' under the Prevention of Money Laundering Act, 2002, the Unlawful Activities (Prevention) Act, 1967 (UAPA) and the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (WMDA). The dealers and real estate agents are defined under the PMLA as the persons carrying on designated business or profession and are the reporting entities under the PMLA, 2002 and the PML (Maintenance of Records) Rules, 2005, as notified under Section 2(1)(wa) of the PMLA, 2002. The guidelines have been updated from time to time, circulated to all the stakeholders and are uploaded in the departmental website of the CBIC at www.cbic.gov.in.
- 8.3 As prescribed in the guidelines, the reporting entities are obligated upon to comply with certain regulatory requirements, as prescribed under Chapter-IV of the PMLA and PMLR. These requirements are related to conducting Client Due Diligence (CDD), Enhanced Due Diligence (EDD), undertaking KYC while entering into a transaction of a specified amount with a customer, maintaining records of all transactions, reporting transactions specified under Rule 3 of the PMLR, setting up internal controls and conducting regular AML, CFT and CPF specific training for their staff to mitigate risk of money laundering, terror financing and proliferation financing.
- 8.4 Though, the PMLA and the PMLR notify 'Dealers in Precious Metals and Precious Stones' and the 'Real Estate Agents' as the Reporting Entities based on their cash transactions and the annual turnover, respectively, as specified in the respective guidelines, and most of the regulatory requirements are subjected to the reporting entities only, the provisions of Section 51A of the UAPA and Section 12 A of the WMDA apply to all the 'Dealers in Precious Metals and Precious Stones' and the 'Real Estate Agents', irrespective of any threshold of cash transaction or annual turnover. These provisions are related to the entities and individuals who are subjected to the United Nations Security Council (UNSC) and the Government of India sanctions measures related to terror financing and the proliferation financing. The Details of such entities and individuals are regularly provided to all the reporting entities and other stakeholders, including the Centre and the State GST authorities, immediately on receipt. In this regard, the relevant procedures have been prescribed under the Orders issued under Section 12 A of the WMDA and Section 51A of the UAPA.
- 8.5 **Guidelines for risk-based supervision of the reporting entities under the PMLA, 2002:**
- (i) The Pr. ADG/ADG, DG Audit has been notified as the Director to exercise powers under section 13 of the PMLA, 2002. The Director is competent to make or cause enquiry with regard to the obligations of the reporting entities under Chapter-IV of the PMLA, read with the PMLR and to impose penalties thereof.
 - (ii) In view of the aforesaid powers vested under Section 13 of the PMLA, the Regulator has prescribed separate Guidelines for Supervision of 'Dealers in Precious Metals and Precious Stones' and 'Real Estate Agents' on a Risk-Sensitive Basis, issued on 03.11.2023. These guidelines prescribed various risk matrices, which classify the reporting entities under high, medium and low risk. Accordingly, frequency of audit based on their risk categorization is prescribed in the guidelines, which is yearly for high risk and two-yearly for medium risk entities. The low risk shall be audited as and when they move up to medium and high-risk categories.
 - (iii) Presently, it has been decided to conduct the audit of the reporting entities in the two sectors, i.e., 'Dealers in Precious Metals and Precious Stones' and 'Real Estate Agents' through the GST audit authorities of the Centre and the States. The audit process involves a comprehensive review of the reporting entity's policies, procedures, and systems related to anti-money laundering (AML) and combating the financing of terrorism (CFT).
 - (iv) Checklist for Audit: The aforesaid guidelines for risk-based supervision are supplemented by an 18-Point Checklist prescribed by the Regulator. These checkpoints can be changed or expanded based on feedback received from audits of the reporting entities.

Sr. No.	Checkpoints	Remarks
1	Whether the Reporting Entities have received the Guidelines for Reporting Entities under the Prevention of Money Laundering Act, 2002?	(Yes/No)
2	Whether any AML/CFT/TF/PF policy and/ or procedure was in place prior to the issuance of the Guidelines by DG Audit as Regulator?	(Yes/No)
3	If yes, details thereof.	If yes, details thereof.
4	Details of Principal Officer and the Designated Director? Whether appointed?	
5	Whether records as prescribed by PMLR guidelines are maintained? Such records should capture/contain the following info (as per Rule 3 and 4 of the Prevention of Money-Laundering (Maintenance of Records Rules), 2005: (i) Details of the reporting entity (ii) Details of the Principal Officer and the Designated Director (iii) Details of clients/ customers including contact number. (iv) KYC records of the clients (PAN/Aadhar, Voter Id, Passport etc. (v) Records of all transactions including cash transactions. (vi) Cash/ suspicious transaction (CTR/STR) details and reports submitted to FIU-IND, if any.	(Yes/No)
6	Where are these records maintained?	
7	Who maintains them?	
8	Whether they are maintained physically or electronically?	
9	What are the policy and procedures to ensure that confidentiality of information referred to above is maintained?	
10	What steps are being taken to ensure that no-tipping happens in case a Cash Transaction Report and Suspicious Transaction Report (CTR/STR) is generated? (The reporting entity may not actually have generated one)	
11	What is the policy/ Procedure for intra-group and intra-organization exchange of information related to AML/CFT/TF/PF?	
12	Is any third-party database/ public source information received for Know Your Client (KYC)/ Client Due Diligence/ EDD?	
13	Have all the directors/Officers/ employees been trained at AML/CFT/TF/PF requirement? If so, details thereof?	
14	Have you received any TF/PF related information? If so, how has it been handled?	
15	What are the difficulties, if any, you envisage in implementation of these guidelines?	
16	How is it checked that a non-resident party/ Parties to a transaction if/are PEP or not?	
17	Has the identity of persons designated to the UN Sanction List been taken into consideration while dealing with clients?	
18	Whether Reporting Entity has on-boarded with FIU and are aware of the on-boarding procedure?	

08 INSPECTION, SEARCH, SEIZURE AND ARREST

1. INTRODUCTION

- 1.1 In any tax administration the provisions for Inspection, Search, Seizure and Arrest are provided as a deterrent for tax evasion. These provisions are also required to safeguard Government's legitimate dues. It provides a method which can effectively be used to unearth willful and organized evasion of tax dues. This Chapter provides the insight of the legal provisions and procedures in respect of Inspection, Search, Seizure and Arrest. The provisions of CGST Act and CGST Rules relevant to this Chapter are as under -

Sr. No.	Section/Rules	Provisions pertaining to
1	Section 67	Power of inspection, search and seizure
2	Section 68	Inspection of goods in movement
3	Section 69	Power to arrest
4	Section 70	Power to summon persons to give evidence and produce documents
5	Section 71	Access to business premises
6	Section 72	Officers to assist proper officers
7	Section 74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts
8	Section 129	Power to waive penalty or fee or both
9	Section 132	Punishment for certain offences
10	Section 137	Offences by companies
11	Section 154	Power to take samples
12	Rule 139	Inspection, search and seizure
13	Rule 140	Bond and security for release of seized goods
14	Rule 141	Procedure in respect of seized goods

- 1.2 The options of Inspection, Search, Seizure and Arrest are exercised, only in exceptional circumstances and as a last resort, to protect the Government's Revenue. Therefore, to ensure that these provisions are used properly, effectively and the rights of taxpayers are also protected, it is stipulated that Inspection, Search or Seizure can only be carried out when an officer of the rank of Joint Commissioner or above, has reasons to believe the existence of such exceptional circumstances. In such cases, the Joint Commissioner may authorize, in writing, any other officer to cause inspection, search and seizure. However, in case of arrests the same can be carried out only where the person is accused of offences specified for this purpose and the tax amount involved is more than the specified limit.

2. INSPECTION

- 2.1 'Inspection' is a softer provision than search, which enables officers to access any place of business of a taxable person and also any place of business of a person engaged in transporting goods or who is an owner or an operator of a warehouse or godown. The inspection can be carried out by an officer of CGST only upon a written authorization given by an officer of the rank of Joint Commissioner or above. A Joint Commissioner or an officer higher in rank can give such authorization only if he has reasons to believe that the person concerned has done one of the following actions:
- (a) Suppression of any transaction relating to supply of goods or services or stock in hand;
 - (b) Claimed excess input tax credit;
 - (c) Contravention of any provisions of the Act or the Rules to evade tax;
 - (d) Transporting or keeping goods which escaped payment of tax or manipulating accounts or Stocks which

may cause evasion of tax.

- 2.2 Inspection can also be done of the conveyance, carrying a consignment of value exceeding specified limit. The person in charge of the conveyance has to produce documents/devices for verification and allow inspection. Inspection during transit can be done even without authorization of the Joint Commissioner.

2.3 **Legal Framework for Inspection in GST:**

- (i) As per Section 67(1) of the CGST Act, 2017, the Proper Officer should not be below the rank of Joint Commissioner of Central Tax. The Central Board of Indirect Taxes & Customs (CBIC), vide [Circular No. 3/3/2017-GST dated 5th July 2017](#), has assigned the functions of the Proper Officer for authorizing Inspection to the Additional Commissioner or the Joint Commissioner of Central Tax. The said proper officer can also authorize inspection of any place of business of any transporter or an owner or operator of a warehouse or a godown suspected of keeping goods, which have escaped payment of tax. **(Section 67(1) of CGST Act, 2017)**
- (ii) Rule 139(1) of the CGST Rules, 2017, provides that the said proper officer shall issue an authorization in [FORM GST INS-01](#) authorizing any other officer subordinate to him to conduct the inspection. **(Rule 139(1) of CGST Act, 2017)**

2.4 **Officer of Central Tax competent to carry out Inspection:**

According to Section 67(1) of the CGST Act, 2017, the Proper Officer can authorize any other officer of Central Tax to carry out the Inspection. However, according to Rule 139(1) of the CGST Rules, 2017, the officer so authorized by the Proper Officer has to be subordinate to the Proper officer. This means that even though the officer so authorized can be any other officer, he should not be equal in rank or senior in rank to the Proper Officer.

2.5 **Manner to conduct Inspection:**

The Proper officer can authorize a subordinate officer to carry out Inspection by issuing an Inspection Authorization in FORM GST INS-01. The Inspection Authorization is generated online by the Proper Officer on the CBIC DIN Portal and contains the following important details:

- (i) Document Identification Number (DIN) of the Inspection Authorization;
- (ii) Name and designation of the officer authorized for Inspection;
- (iii) Address of the premises to be inspected;
- (iv) Period of validity of the Inspection Authorization;
- (v) Violations of law in respect of which reasons to believe have been formed by the Proper officer.

2.6 **Persons in respect of whom Inspection can be authorized by the Proper officer:**

Inspection can be authorized by the Proper officer when he has reasons to believe that the specified violations of law have been committed by the following persons:

- (i) A taxable person;
- (ii) Any person, whether or not a taxable person, engaged in the business of transporting goods; or
- (iii) An owner or operator, whether or not a taxable person, of a warehouse or a godown or any other place.

2.7 **Specified violations in respect of which reasons to believe have to be formed by the Proper Officer:**

In terms of clause (a) and clause (b) of Section 67(1) of the CGST Act, 2017, the violations, in respect of which reasons to believe, have to be formed by the Proper officer are as under:

(I) **Violations by a taxable person-**

- (i) Suppressing any transaction relating to supply of goods or services or both;
- (ii) Suppressing the stock of goods in hand;

- (iii) Claiming input tax credit in excess of his entitlement;
- (iv) Contravention of any of the provisions of the CGST Act, 2017 or the Rules made thereunder to evade tax.
- (II) **Violations by any person, whether or not a taxable person, engaged in the business of transporting goods-**
 - (i) Keeping goods which have escaped payment of tax;
 - (ii) Keeping his accounts or goods in such a manner as is likely to cause evasion of tax.
- (III) **Violations by an owner or operator, whether or not a taxable person, of a warehouse or a godown or any other place-**
 - (i) Keeping goods which have escaped payment of tax;
 - (ii) Keeping his accounts or goods in such a manner as is likely to cause evasion of tax.

2.8 **Places which can be inspected:**

Under Inspection, only places of business, as under, can be inspected:

- (i) Any places of business of the taxable person;
- (ii) Any places of business of the person engaged in the business of transporting goods, whether or not a taxable person;
- (iii) Any places of business of the owner or the operator, whether or not a taxable person, of warehouse or godown or any other place.

2.9 **Inspection in movement:**

- (I) Any consignment, exceeding value of Rs. 50,000/-, may be stopped at any place for verification of the documents/ devices prescribed for movement of such consignments.
- (II) If on verification of the consignment, during transit, it is found that the goods were removed without prescribed document or the same are being supplied in contravention of any provisions of the Act, then they can be detained or seized and may be subjected to penalties as prescribed.

3. **SEARCH**

3.1. **Legal Framework for Search in GST:**

- (I) Section 67(2) of the CGST Act, 2017 empowers the proper officer, not below the rank of Joint Commissioner, to authorise in writing any other Central Tax Officer to search any place where any goods liable to confiscation or any documents or books or things relevant to the proceedings under this Act are suspected to be secreted and seize such goods, documents, books or things. **(Section 67(2), (4) & (10) of CGST Act, 2017)**
- (II) Section 67(4) of the CGST Act, 2017, empowers the officer so authorized to seal or break open the door of any premises or to break open any storage space to access any goods, accounts, registers or documents, suspected to be concealed.
- (III) Section 67 (10) of the CGST Act, 2017, makes the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure, applicable to search and seizure under this section.
- (IV) Rule 139(1) of the CGST Rules, 2017, provides that the said proper officer shall issue an authorization in **FORM GST INS-01** authorizing any other officer subordinate to him to conduct the search. **(Rule 139(1) of CGST Act, 2017)**

3.2 **Officer of Central Tax competent to authorize Search:**

As per Section 67(2) of the CGST Act, 2017, the Proper Officer should not be below the rank of Joint Commissioner of Central Tax. The Central Board of Indirect Taxes & Customs, vide [Circular No. 3/3/2017-GST dated 5th July](#)

2017, has assigned the functions of Proper Officer for authorizing Search to the Additional Commissioner or the Joint Commissioner of Central Tax.

3.3 **Officer of Central Tax competent to carry out Search:**

According to Section 67 (2) of the CGST Act, 2017, the Proper Officer can authorize any other officer of Central Tax to carry out the Search. However, according to Rule 139(1) of the CGST Rules, 2017, the officer so authorized by the Proper Officer has to be subordinate to the Proper Officer. This means that even though the officer so authorized can be any other officer, he should not be equal in rank or senior in rank to the Proper Officer.

3.4 **Manner in which the Proper officer can authorize any other officer to conduct Search:**

- (I) The Proper officer can authorize a subordinate officer to carry out Search by issuing a Search Authorization in [FORM GST INS-01](#).
- (II) The Search Authorization is generated online by the Proper Officer on the CBIC DIN Portal and *interalia* contains the following important details:
 - (a) Document Identification Number (DIN) of the Search Authorization;
 - (b) Name and designation of the officer authorized for Search;
 - (c) Address of the premises to be searched;
 - (d) Period of validity of the Search Authorization.

3.5 **Forming reasons to believe for authorizing search of the Premises:**

According to Section 67 (2) of the CGST Act, 2017, the Proper Officer for arriving at reasons to believe for the search, is required to take the following into consideration-

- (i) Goods liable to confiscation are secreted in the place to be searched;
- (ii) Documents or books or things, which in the opinion of the Proper officer shall be useful for or relevant to any proceedings under the CGST Act, 2017, are secreted in the place to be searched.

3.6 **Places which can be searched:**

There is no restriction on the places which can be searched. Even places other than places of business can also be searched.

3.7 **Stage at which search can be carried out:**

There are two stages at which Search can be carried out-

Stage 1: Search can be carried out based on the inputs gathered during an Inspection, which reveal that incriminating goods, documents, books or things may be secreted in a place.

Stage 2: Search can be carried out independently, based on Intelligence developed or Information received that incriminating goods, documents, books or things may be secreted in a place.

3.8 **Powers of the Central Tax officer authorized to conduct Search:**

- (I) The officer authorized by the Proper Officer to conduct Search has been vested with vast powers as per Section 67(4) of the CGST Act, 2017.
- (II) In case of non-cooperation from the person whose premises is being searched, the authorized officer has the powers to-
 - (a) Seal the premises;
 - (b) Break open the doors of premises;
 - (c) Break open the almirahs, electronic devices, boxes, receptacles in which any goods, accounts, registers

or documents are suspected to be concealed.

(III) Since vast powers have been placed at the disposal of the authorized officer during Search, certain safeguards have to be followed by the officers during the Search.

(IV) These safeguards ensure that the Search is carried out in a transparent manner and the rights of the individuals are not violated.

3.9 Legal Framework of safeguards to be observed during Search:

(I) As per Section 67(10) of the CGST Act, 2017, the provisions of the Code of Criminal Procedure, 1973 have been made applicable to Search. The safeguards to be observed during Search and the powers of the officers conducting the Search are contained in-

- (a) Section 47 of Code of Criminal Procedure, 1973 - Search of place entered by person sought to be arrested;
- (b) Section 100 of Code of Criminal Procedure, 1973 – Persons incharge of closed place to allow search;
- (c) Section 165 of Code of Criminal Procedure, 1973 – Search by Police Officer;
- (d) Section 187 of Indian Penal Code, 1860 – Omission to assist public servant when bound by law to give assistance.

(II) The above provisions of Code of Criminal Procedure, 1973 have to be read in the context of CGST Act, 2017 to draw a harmonious meaning.

3.10 Preparation for the Search:

After an actionable intelligence has been prepared in the form of an Information Report or AE-I Report and approval of the competent authority has been obtained, necessary preparation for executing the same is required to be carried out depending upon the nature of the intelligence. An 'Operation Chart' should be prepared soon after the Search Authorizations have been signed by the Proper officer. This will enable adequate supervision over actual search work at individual premises.

3.11 Salient features of safeguards to be observed during Search:

The freedom to carry out trade or business is a fundamental right guaranteed under the Constitution of India. Therefore, the power to search a person's residence/business premises and to seize/detain his goods and property is an extraordinary power given to the CGST Officers under the CGST Act, 2017. This power cannot be exercised injudiciously or without proper application of mind. Therefore, while carrying out search operations, the following basic parameters need to be borne in mind:

- (i) Search should be carried out only under a valid Search Authorization issued by the Proper officer. All searches should be made in accordance with the provisions relating to search contained in the Cr. P.C, 1973.
- (ii) The premises of a person cannot be searched on the authority of a Search Authorization issued for the premises of some other person.
- (iii) The officers conducting the Search and the accompanying Panchas should offer themselves for personal search before as well as after the Search.
- (iv) The officers conducting the search should identify themselves by showing their identity cards to the person in-charge of the premises.
- (v) A lady officer should invariably be a part of the Search team, especially if a residence is being searched.
- (vi) The Search Authorization should be executed before the start of the search and should be served on the person in charge of the premises to be searched by showing the same to him and his signature should be taken on the body of the Search Authorization. The signatures of the witnesses should also be taken on the body of the Search Authorization.

- (vii) The search should be made in the presence of two or more independent and respectable inhabitants of the locality, and if no such inhabitants are available or willing, the inhabitants of any other locality should be asked to be witness to the search. The officer conducting the search may issue an order in writing to the inhabitants to witness the search (Section 100 (4) of Cr. P.C, 1973). The witnesses should be told about the purpose of the search.
- (viii) The complete Search proceedings should be recorded by the Panchas under a Panchnama. The Panchnama and the list of goods/documents/things should be signed by the witnesses, the owner of the premises and also by the officer duly authorized for conducting the search.
- (ix) A copy of the Panchnama should be given to the person in charge/owner of the premises which has been searched.
- (x) After the search is over, the duly executed Search Authorization should be returned to the Proper officer who had issued the said Search Authorization with a report regarding the outcome of the search. The names of the officers who had participated in the search should be written on the reverse of the Search Authorization.

3.12 During search proceeding, [Instruction No. 01/2020-21 \(GST-Investigation\) dated 02.02.2021](#) issued by CBIC and any other instruction issued from time to time by CBIC should be followed.

4. PANCHNAMA

- 4.1 Panchnama (Mahazar) is the primary document for establishing an offence under the CGST Act, 2017 as it has a very strong evidentiary value. It is the record of events right from the commencement of search to the conclusion of the search and includes stock taking as well as the entire record of the search proceedings. The manner of drawing the Panchnama should be such that it should be a mirror image of the proceedings on the spot.
- 4.2 Panchnama is a document where the record of proceedings of the search with regard to the recovery of goods, documents, things, etc. are detailed. The Panchnama is required to be signed by the person in whose presence the search was conducted as also by the independent witnesses, besides the officer who executed the Search Authorization.
- 4.3 A copy of the Panchnama is to be handed over to the persons whose signatures were obtained on the Search Authorization at the time of start of the search. This fact should be recorded in the Panchnama itself. Acknowledgement of the Panchnama having been given to the person in charge of the premises should also be obtained.
- 4.4 **Points to be incorporated in a Panchnama:**
 - (I) Panchnama is the single most important document in the context of search and seizure operations. This document should, therefore, be prepared carefully incorporating, inter alia, the following details:
 - (a) Name, age, address, and occupation of Panchas.
 - (b) Date, time, and place of proceedings.
 - (c) Reason/authority for search or purpose of visit.
 - (d) Mention of the fact that the officers conducting the search disclosed their identity to the Panchas.
 - (e) Name and designation of the officer leading the search team.
 - (f) Mention of the fact of presence of the occupants/representatives of the premises to be searched during the course of the search.
 - (g) Mention of the fact of the Execution of the Search Authorization on the occupant/representative of the premises to be searched.
 - (h) Mention of the fact that one of the occupants/representatives of the party and both panchas have signed the Search Authorization.
 - (i) Mention of the fact of offering personal search of each member of the search team before commencing

search and again after conclusion of search.

- (j) Mention of the fact of presence of a lady officer in the party conducting the search in case of search of residence.
 - (k) Mention of any important event taking place during the operation e.g. arrival of more officers/persons, calling a photographer for photography, drawing of samples, detection of large amounts of cash, sealing of almirah, cupboard etc.
 - (l) Mention of the details of production of statutory records and other private records, Account Books etc. presented by the representative of the taxpayer for inspection in case of checking.
 - (m) Mention of how the verification of goods, inputs were undertaken (procedure adopted for weighment, measurement, test checking of standard packages/units etc). It should be supported by inventory of stocks verified.
 - (n) Record of the fact that in respect of goods verified physically, no other stock was available/left over. Current day's production and issue of inputs may be specifically mentioned as excluded.
 - (o) Making of a separate annexure for inventories of records/documents to be resumed and articles/goods seized.
 - (p) Mention of the grounds forming the reasons to believe that goods seized were liable to confiscation under the CGST Act, 2017 or the Rules made thereunder and the provisions under which seizure was made.
 - (q) Mention of the value and duty of goods seized/detained and whether seized goods given in 'supurdagi' or taken into possession.
 - (r) Record of the facts regarding drawal of samples, if any. If sealed, a specimen of the seal to be given on the body of Panchnama.
 - (s) Mention of the details of brand name, trade name, standard packing and markings given on goods verified/seized.
 - (t) In case of concealment of excisable goods, records or evidences, mention of the facts of place of storage (basement etc.) and manner of concealment.
 - (u) Mention of the fact that each page of records resumed/seized has been numbered following one set pattern viz. 1, 2, 3 etc. (and not 1, 3, 5....).
 - (v) Mention of the fact that the first and last page of every file, register, Account Book etc. has been signed by the authorized representative of the taxpayer or the person on whom the Search Authorization was executed.
 - (w) Mention of the fact that every loose paper/vital document has been got signed individually from the concerned person from whose seat or cabin the same was recovered and from the person on whom Search Authorization was executed.
 - (x) In case any portion of the premises, almirah, safe, store etc. is found to be locked and cannot be opened for some reasons or the other, the same may be sealed and a mention may be made accordingly in the Panchnama. This sealed part can be searched using fresh Search Authorization on any following day.
 - (y) The details of any locker, almirah or any section of premises which has been sealed for reasons that the officers could not immediately obtain access for want of the keys, hypothecation to the bank or any other reason, should be incorporated in the Panchnama.
 - (z) The grounds for seizure/resumption of records/documents etc. should also be mentioned in the Panchnama.
- (II) The above list is only illustrative and not exhaustive as there can be numerous factors which may have to be incorporated in Panchnama depending on the nature of proceedings and the events taking place during the search proceedings.

- (III) Further, if two or more firms/units are operating from the same premises or there are common employees etc., the Panchnama should contain relevant details, which may include ground plan, details of plant and machinery installed etc. When no incriminating documents or contraband is found, a 'nil' Panchnama should be drawn.

5. DRAWAL OF SAMPLES

- 5.1 Section 154 of the CGST Act, 2017, empowers the Commissioner or the officer authorized by him to take samples of goods, wherever necessary, and provide a receipt for any samples taken. **(Section 154 of the CGST Act, 2017)**
- 5.2 The procedure governing drawal and testing of samples of goods or inputs for various purposes in order to ascertain identity, classification, eligibility for exemption etc. should be followed as per the existing instructions.

6. RECORDING OF STATEMENT

- 6.1 After the search is completed and the Panchnama has been drawn, it would be expedient for one or two officers led by the senior most officer heading the search team to go through the records on the spot in the context of the intelligence and get explained from the author of such documents and records by recording his statement under summons issued under Section 70 of the CGST Act, 2017. This makes it difficult for the authors to come out with alibis during subsequent investigations or to come out with tutored versions. **(Section 70 of CGST Act, 2017)**
- 6.2 While recording the statement, the following precautions should be taken:
- (a) Every page of the statement should be signed at the bottom by the deponent and the officer recording the statement.
 - (b) In the last page, there should be an endorsement that the deponent has recorded the statement without coercion or undue influence.
 - (c) All corrections/alterations should also be properly authenticated.
- 6.3 Other formalities to be observed while recording the statement are:
- (a) The replies of the person to questions should not be induced by threat, coercion, or fear. The replies should be voluntary.
 - (b) The questions should be precise and clear, preferably in the hand writing of the person recording the statement.
 - (c) If the statement is not recorded in the language which the person understands, then the statement should be interpreted and explained to him in the language which he understands and a certificate to this effect should also be recorded. He shall be at liberty to explain or add to his answers.
 - (d) No police officer/official should be allowed to remain in the room where the statement of the taxpayer is being recorded so that the taxpayer may not take the plea subsequently that the statement was recorded under coercion or pressure.
 - (e) If any person furnishes the name and address of another person, who has evidence to support the statement of the first person, then the authorised officer should get in touch with the coordinating officers so that the other person is also examined before he could be contacted by the party.
 - (f) The person whose statement is being recorded should be confronted with all the relevant and vital documents and he should be asked to sign and explain each such document.
 - (g) All handwritten documents should be got explained by the person in whose hand writing the same are written. Further, he should also be asked to explain as to under whose directions such hand written records were being maintained.
 - (h) In obtaining the thumb impression of an illiterate person, care should be taken to use a good stamp pad to apply ink evenly and to ensure that the impression is clear and shows the ridges prominently so that there is no difficulty in distinguishing the impression by a finger print expert.
 - (i) Copy of the statement should not be given to the deponent on the spot. He may, however, be informed that the copy will be supplied to him if any part of the statement is used against him.

- 6.4 It should be made clear to the person whose statement is being recorded that refusal to answer any question is an offence under Section 179 of the Indian Penal Code, 1860 and refusal to sign the statement is an offence punishable under Section 180 of the Indian Penal Code, 1860. Where a person after giving the statement declines to sign it, the authorized officer should call the witnesses and draw a "Refusal to Sign" Panchnama and record this fact also in the statement and obtain the signatures of the witnesses on the statement as well as on the "Refusal to Sign" Panchnama.

7. SEIZURE DURING SEARCH PROCEEDINGS

7.1 Legal Frame work for Seizure during Search Proceedings:

The legal provisions pertaining to Seizure during Search proceedings are contained in:

- (i) Provisos to Section 67(2), Section 67(3), Section 67(5), Section 67(6), Section 67(7), Section 67(8) and Section 67(9) of the CGST Act, 2017. **(Section 67(2), (3), (5) (6), (7), (8) & (9) of CGST Act, 2017)**
- (ii) Rule 139(2), Rule 139(3), Rule 139(4) and Rule 139(5), Rule 140 and Rule 141 of the CGST Rules, 2017. **(Rule 139(2), (3), (4), (5) & 140, 141 of CGST Rules, 2017)**
- (iii) The Seizure Authorization is issued in [Form GST INS 01](#). The Order of Seizure is issued in [Form GST INS 02](#). The Order of Prohibition is issued in [Form GST INS 03](#). The Bond for Provisional Release of goods is called Form GST INS 04. The Release Order of goods is issued in [Form GST INS 05](#).

7.2 Reasons to believe for Seizure during Search Proceedings:

- (I) For authorizing or carrying out Search, reasons to believe have to be formed by the Proper officer. A Search Authorization is issued in [Form GST INS 01](#) by the Proper Officer if he has reasons to believe that goods liable to confiscation and documents or books or things which, in the opinion of the Proper officer, shall be useful for or relevant to any proceedings under the CGST Act, 2017, are secreted in any place.
- (II) The Search Authorization in [Form GST INS 01](#) issued by the Proper officer itself permits the seizure of such goods, documents, books or things if they are found during the Search proceedings.

7.3 What can be seized during Search Proceedings:

The following can be seized during Search proceedings-

- (i) Goods liable to confiscation which are secreted in any place and are found during Search.
- (ii) Documents or books or things which are useful for or relevant to any proceedings under the CGST Act, 2017, which are secreted in any place and are found during Search.

7.4 Manner of Seizure during Search Proceedings:

During Search proceedings, goods or documents or books or things are seized under an **Order of Seizure** in [Form GST INS 02](#). The **Order of Seizure** contains the following important details:

- (i) Document Identification Number (DIN) of the Order of Seizure.
- (ii) Address of the premises at which seizure has taken place.
- (iii) Details of the Goods or documents or books or things which are seized.
- (iv) Names and addresses of Panchas.

7.5 Preparation of Inventory:

- (I) Detailed inventory should be prepared of the seizures made at the premises itself. It is necessary to record the exact place from where seizures have been made as it helps to establish the ownership at a later stage. The details of all the marks of identification found on the goods under seizure should be mentioned while preparing the inventory and full signature of the person in charge of the premises being searched and that of the Authorised officer with date and his office seal should be taken. The pages of all the seized documents should be got numbered. The blank pages should be cancelled and numbered. The signatures of the witnesses on first and last pages of the numbered files/registers should also be obtained.

- (II) All extracts taken should be properly authenticated. In the case of seizure of loose papers, they should be arranged in bundles in a folder or stitched on the left-hand top. Each paper should be numbered, signed by the authorized representative of the taxpayer, the authorised officer and the witnesses. However, where the number of papers is large, the pages can be numbered and sealed on a side. In the inventory, it may be mentioned that a particular bundle of papers contains specific number of pages.
- (III) After the inventory has been prepared, the seized documents etc. should be packed in separate packages and handed over to an officer designated by the leader of the search party. It will be more appropriate if the seized documents etc. are kept in a trunk belonging to the Department or in a particular almirah, which has been taken into custody by the search party.

7.6 Order of Prohibition in case of goods which are not seized:

- (I) In certain situations, it may not be practicable to seize the goods which have been found during Search. In such cases, an Order of Prohibition in [Form GST INS 03](#) is served on the owner or custodian of goods.
- (II) The Order of Prohibition contains the following important details:
 - (i) Document Identification Number (DIN) of the Order of Prohibition.
 - (ii) Address of the premises where the goods have been found.
 - (iii) Name and designation of the Authorized officer.
 - (iv) Name and address of the Panchas.
 - (v) Details of the Goods in respect of which Order of Prohibition is issued.
- (III) The Order of Prohibition also contains the directions that the owner or custodian of goods shall not remove, part with, or otherwise deal with the goods except with previous permission of the Proper officer.

7.7 Manner in which goods or things shall be dealt with immediately after their seizure:

- (I) Generally, the seized goods or things are kept in the custody of the Department after their seizure. However, in some situations, the seized goods or things are entrusted for safe custody upon the owner or custodian from whom they have been seized.
- (II) The person who is entrusted with safe custody of the goods or things is directed not to remove, part with, or otherwise deal with the goods or things except with previous permission of the Proper Officer.
- (III) The document under which the custody of the goods or things is given, is called 'Supardginama'. The 'Supardginama' forms a part of the Order of Seizure in [Form GST INS 02](#). This part of the Order of Seizure is left unfilled in cases where the custody of the seized goods or things is being taken by the Department itself.
- (IV) Seized goods should be inspected from time to time by the officers to ensure the safety of the goods, particularly when the seized goods have been handed over under Supardginama.
- (V) Similar precautions are required to be taken even in respect of goods placed under detention.

7.8 Manner in which documents or books shall be dealt with immediately after their seizure:

- (I) Unlike in the case of seized goods or things, there is no provision to entrust the custody of seized documents or books with any person. Documents or books have to be necessarily kept in the custody of the Department itself after their seizure.
- (II) The person from whose custody documents are seized, shall be allowed to make copies or take extracts of the seized documents so that his business operations are not affected.
- (III) However, the permission to make copies or take extracts can be refused by the Proper officer, if in the opinion of the Proper Officer, giving the copies or extracts will prejudicially affect the investigation.

- (IV) This situation generally arises when a number of leads are being explored simultaneously and divulging the information contained in the seized documents may expose or reveal the further course of action which may be taken by the Department.
- (V) The Proper Officer who may refuse to give this permission is the Additional Commissioner or Joint Commissioner of Central Tax according to [Circular No. 3/3/2017 –GST dated 5th July 2017](#).

7.9 Return of seized documents or books or things:

- (I) The seized documents or books or things should be retained only for so long as may be necessary for their examination and for any inquiry or proceedings. The seized documents or books or things should be returned at the following stages:
- The copies of seized documents or books or things which are relied upon in the Show Cause Notice will be given back as part of the Show Cause Notice.
 - The seized documents or books or things which are not relied upon in the Show Cause Notice should be returned **within 30 days** of the issue of the Show Cause Notice.
- (II) A preliminary scrutiny of documents at the premises of search would be desirable so as to minimize the documents being seized. Seizure of unnecessary documents during search may create avoidable problems for the Department at a later stage and therefore, must be avoided.

7.10 Provisional release of seized goods:

- (I) The seized goods can be provisionally released on the request of owner or custodian of the goods from whom they were seized. There are two requirements for Provisional release of seized goods:
- (a) Bond has to be executed by the owner or custodian of the goods in [Form GST INS 04](#) equivalent to the value of goods.
 - (b) Security has to be furnished by the owner or custodian of the goods in the form of a Bank Guarantee equivalent to the amount of Tax and Cess, Interest and Penalty payable in respect of the goods.
- (II) The person to whom the seized goods are provisionally released will be directed to produce them on the date and place specified by the Proper officer.
- (III) The Proper officer for this purpose is the Additional Commissioner or Joint Commissioner of Central Tax according to [Circular No.3/3/2017–GST dated 5th July, 2017](#).
- (IV) If the goods are not produced on the specified date and place, the Bank Guarantee shall be encashed and adjusted against the Tax and Cess, Interest and Penalty payable in respect of the goods.

7.11 Final release of notified goods:

- (I) Under the procedure for expedited release of notified goods, the notified goods are finally released to the person from whom they were seized.
- (II) The owner or custodian from whom the notified goods were seized shall be required to pay an amount which is the lower of:
- (i) Market price of the goods;
 - (ii) Amount of Tax and Cess, Interest and Penalty payable in respect of the goods.
- (III) After the payment is made by the owner or custodian, the notified goods shall be finally released to him by a Release Order in [Form GST INS 05](#). Unlike in the case of Provisional release of goods, no request has to be made by the owner or custodian for Final release of notified goods. It is the Department itself which will ascertain whether the seized goods are notified goods and if so, inform the owner or the custodian to pay the specified amount.

7.12 Final disposal of notified goods:

- (I) The seized notified goods shall be finally released after the owner or custodian makes the payment of the specified amount.
- (II) However, if the payment of the specified amount is not made by the owner or custodian of the seized notified goods, the Release Order in [Form GST INS 05](#) cannot be issued. In this situation, the Proper officer shall finally dispose the seized notified goods.
- (III) The amount realized on Final disposal of the seized notified goods shall be adjusted against the Tax and Cess, Interest and Penalty payable in respect of the goods.

7.13. Issue of Show Cause Notice within six months of seizure or within extended period:

- (I) The power of seizure is an extraordinary power based on the reasonable belief, therefore, the law provides that the enquiry should ordinarily be completed **within six months**. But visualizing at the same time that the enquiry may not be completed within the said period in certain cases owing to one difficulty or other, the law in terms of the relevant proviso authorize the Proper officer to extend the prescribed time for a period **not exceeding six months** on sufficient cause being shown and after following the principles of natural justice. The Proper officer for this purpose is the Principal Commissioner/Commissioner of Central Tax according to [Circular No.3/3/2017–GST dated 5th July, 2017](#).

7.14 Return of seized goods:

- (I) If Show Cause Notice is not issued **within six months** or period as extended from the date of seizure, then the seized goods are required to be returned back/ released unconditionally to the person from whom they were seized, irrespective of whether the same were provisionally released, or finally released on payment of specified amount (if they are Notified goods), or finally disposed (if they are Notified goods) **within the period of six months**.
- (II) The return/ release of the seized goods will not affect the legal proceedings, except to the extent that no redemption fine can be imposed after the goods are returned.

8. SEIZURE IN PROCEEDINGS OTHER THAN SEARCH

- 8.1 The legal provisions for Seizure in proceedings other than Search are contained in Section 67(11) of the CGST Act, 2017. This Section empowers the proper officer to seize the accounts, registers or documents produced before him by a person suspected of having evaded tax. The said officer shall grant a receipt for the same and retain the records for so long, as may be necessary in connection with any proceedings under the Act. **(Section 67(11) of CGST Act, 2017)**
- 8.2 The functions of Proper Officer for Seizure in proceedings other than Search have been assigned to the Superintendent of Central Tax vide [Circular No. 3/3/2017–GST dated 5th July, 2017](#).
- 8.3 The violations in respect of which reasons to believe have to be formed by the Proper officer have been specified in Section 67(11) of the CGST Act, 2017 as under:
 - (a) Any person has evaded tax; or
 - (b) Any person is attempting to evade the payment of any tax.

9. INSPECTION, DETENTION, SEIZURE AND RELEASE OF GOODS AND CONVEYANCES IN TRANSIT

- 9.1 The provisions relating to Inspection of goods in movement are contained in Section 68 of the CGST Act, 2017. Section 68 of the CGST Act, authorises the Government to mandate carrying of certain documents or devices by the person in charge of a conveyance carrying any consignment of goods of specified value. Where such conveyance is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the said documents and/or devices for verification. The person in charge of the said conveyance is liable to produce the documents and devices and also allow the inspection of goods. The provisions regarding detention, seizure and release of goods and conveyances in transit are contained in Section 129 of the CGST Act, 2017. **(Section 68 of CGST Act, 2017)**
- 9.2 Section 129 of the CGST Act, 2017 provides for detention or seizure of goods while in transit or being stored

in transit and of conveyance used for transport of such goods that contravene the provisions of this Act or the rules made thereunder. It further provides the procedure for release of such goods and/or conveyance after detention or seizure on payment of tax, specified penalty or furnishing a security equivalent to such tax and penalty. **(Section 129 of CGST Act 2017)**

10. ARREST

- 10.1 The provisions for arrests are created to tackle the situations created by some unscrupulous tax evaders. The provisions for arrests under GST Law have sufficient inbuilt safeguards to ensure that these are used only under authorization from the Commissioner. Besides this, the GST Law also stipulates that arrests can be made only in those cases where the person is involved in offences specified for the purposes of arrest and the tax amount involved in such offence is more than the specified limit. The salient features of these provisions are:
- (I) Provisions for arrests are used in exceptional circumstance and only with prior authorization from the Commissioner.
 - (II) A person can be arrested only if the criteria stipulated under the law for this purpose is satisfied and the tax amount is exceeding rupees 200 lakhs. However, if the offences are committed again even after being convicted earlier i.e. repeat offender of the specified offences can be arrested irrespective of the tax amount involved in the case.
 - (III) However, where the tax involved is less than Rs. 500 lakhs, the offences are classified as non-cognizable and bailable and all such arrested persons shall be released on Bail by Deputy/Assistant Commissioner. But in case of arrests for specified offences where the tax amount involved is more than Rs. 500 lakhs, the offence is classified as cognizable and non-bailable and in such cases the bail can be considered by a Judicial Magistrate only.
- 10.2 Section 132 of CGST Act, 2017 provides that the offences relating to taxable goods and /or services where the amount of tax evaded or the amount of input tax credit wrongly availed or the amount of refund wrongly taken exceeds Rs. 5 Crore, shall be cognizable and non- bailable. Other offences under the act are non-cognizable and bailable. **(Section 132 of CGST Act 2017)**
- 10.3 Offences listed under clauses (a), (b), (c) or (d) of Section 132(1) and punishable under sub-clause (i) or (ii) of Section 132(1) and offences punishable under Section 132(2), in respect of which powers for arrest are provided under Section 69(1), require Commissioner's warrant, commonly understood as 'arrest warrant', to be executed by any Authorized Officer. **(Section 132(1), (2) of CGST Act 2017)**
- 10.4 Officer executing the warrant, is required to establish the identity of the person and place the said person under arrest. The Officer is then required to report execution of warrant back to Commissioner. The Officer is required to inform the detainee (or arrested person) about the grounds for arrest and then to produce before Magistrate **within 24 hours** to consider releasing him on bail or grant remand for further investigation.
- 10.5 Remand application is to be filed by the officer before Magistrate seeking custody for investigation. The Magistrate may grant remand for custodial interrogation or order judicial remand with visitation authorized to conduct interrogation of detainee.
- 10.6 All other cases which do not require Commissioner's warrant, are commonly understood as 'summons cases', that is, cases under other clauses of Section 132(1), which are stated in Section 132(4) to be 'non-cognizable and bailable' offences. **(Section 132(1),(4) of CGST Act, 2017)**
- 10.7 Issuance of show cause notice under Section 74 for offence and detention under Section 69 for prosecution under Section 132 may be taken up in parallel proceedings independently. **(Section 74, 69 & 132 of CGST Act, 2017)**
- 10.8 Offences attracting punishment under section 132, lists 12 offences for which prosecution can be launched. The offences are given hereunder -
- (a) Supply of goods or services or both without the cover of invoice with an intent to evade tax;
 - (b) If any person issues any invoice or bill without actual supply of goods or services or both leading to wrongful input tax credit or refund of tax;

- (c) Any person who avails input tax credit using invoice referred in point (b) above or fraudulently avails input tax credit without any invoice or bill;
- (d) Collection of taxes without payment to the Government for a **period beyond 3 months** of due date;
- (e) Evasion of tax, or obtaining refund with intent of fraud where such offence is not covered in clause (a) to (d) above;
- (f) Falsifying financial records or production of false records/ accounts/ documents/ information with an intent to evade tax;
- (g) Obstructs or prevents any officer from doing his duties under this Act;
- (h) Acquires or transports or in any other manner deals with any goods which he knows or has reasons to believe are liable for confiscation under this Act or rules made thereunder;
- (i) Receives or in any way, deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this law;
- (j) Tampers with or destroys any material evidence or documents;
- (k) Fails to supply any information which he is required to supply under this law or supply false information;
- (l) Attempts or abets the commission of any of the offences mentioned above.

10.9 Section 132 of the CGST Act, 2017 enables institution of prosecution proceedings both against the offenders and also against those persons who are instrumental in committing such offence. Such persons who are aiding the commission of the offence are punishable only if they retain the benefits arising from the offence.

10.10 If any person commits any offence specified in points (f), (g) or (j) in para 10.8 above, he shall be punishable with imprisonment for a term which may **extend to six months** or with fine or with both.

10.11 Repetitive offences, without any specific/ special reasons recorded in the judgment of the Court, will entail an imprisonment term of not **less than 6 months** and can **extend up to 5 years** plus fine. All the offences covered in Section 132 are non-cognizable and bailable except the offences specified in points (a) to (d) as mentioned in para 10.8 above if the amount of tax evaded or input tax credit wrongly availed or utilized or refund wrongly taken exceeds Rs. 5 crores.

10.12 Every prosecution proceeding initiated requires prior sanction of the Commissioner. Placing a person under arrest based on Commissioner's 'order' under Section 69(1) is independent of the 'sanction' by Commissioner to initiate prosecution proceedings (para 3 and 6 of [Instruction No.4/2022-23](#) [GST-Inv.] dated 1 Sept 2022).

10.13 While arrest of persons is limited to cases covered by Section 69(1) of CGST Act, 2017 but prosecution of offences is independent and operates irrespective of whether those persons (accused) have been arrested under Section 69 or not. Omission to arrest does not bar persons (accused) from being prosecuted.

10.14 Section 132(1) of CGST Act, 2017 deals with punishment for offences specified therein. Section 69 grants the power to the Commissioner to arrest a person where he has "reasons to believe" that the alleged offender has committed an offence specified under Sections 132 (1) (a)/(b)/(c)/(d) of CGST Act, 2017, which is punishable under Clause (i) and (ii) of sub-section(1), or sub-section (2) of Section 132 of CGST Act, 2017. Thus, the pre-requisite to arrest a person is that he should be liable for punishment of offences under specific clauses in Section 132 which are referred to in Section 69. Therefore, before placing a person under arrest, the aforesaid legal requirements must be satisfied. **(Section 132(1) (a)/(b)/ (c)/(d) of CGST Act 2017)**

10.15 Power of arrest should be exercised in exceptional circumstances during investigation, which illustratively may be-

- (a) The person was concerned in the non-bailable offence or credible information has been received, or a reasonable suspicion exists, of his having been so concerned;
- (b) The arrest is necessary to ensure proper investigation of the offence;

- (c) The person, if not restricted, is likely to tamper the course of further investigation or is likely to tamper with evidence or intimidate or influence witnesses;
- (d) The person is mastermind or key operator effecting proxy/benami transaction in the name of dummy GSTIN or non-existent persons, etc. for passing fraudulent input tax credit etc;
- (e) As unless such person is arrested, his presence before investigating officer cannot be ensured.

10.16 Arrests in case of offences committed by companies or partnership firms:

- (I) In case the offence has been committed by a limited company or a partnership firm, then as per the provisions of Section 137 of CGST Act, 2017, the following persons are vicariously liable for the offence: **(Section 137 of CGST Act 2017)**
 - (a) Person who, at the time of commission of the offence, was in charge of (i.e. in overall control of the day to day business of the company/ firm) and was responsible to the company/ firm/ association of persons for the conduct of the business of the company, unless he proves that the offence was committed without his knowledge and that he had exercised all due diligence to prevent the commission of the offence.
 - (b) Director of the company, partner of a firm, manager, secretary or any other officer of the company/ firm, if it is proved that the offence has been committed with their consent or connivance or is attributable to their neglect.
- (II) In the case against companies and firms, therefore, the persons vicariously liable can be arrested provided that the ingredients as mentioned in Section 137 are fulfilled. Separate and independent allegations have to be made in such a case for offences committed under Section 137. The vital ingredient for arrest in offences under Section 137 is that "an offence" should have been committed and the person proposed to be arrested is "in-charge of and responsible for running of business".

10.17 Procedures for Arrest:

- (I) Commissioner shall record on file that after considering the nature of offence, the role of person involved and evidence available, he has reason to believe that the person has committed an offence punishable under the CGST Act, 2017 as mentioned in Section 69 of CGST Act, 2017 for which his immediate arrest is necessary. **(Section 69 of CGST Act, 2017)**
- (II) Once a person is arrested in an offence, which is cognizable and non-bailable, the arrested person must be produced before the Magistrate having jurisdiction, **within 24 hours** of the arrest. The Magistrate may take him in judicial custody to further the interest of investigation. However, a person can be kept in judicial custody only for a **maximum period of 60 days**. If a complaint is not filed **within 60 days**, i.e. prosecution not initiated, the accused is granted bail as a matter of right under Section 167 (2) of the Cr. PC.
- (III) Investigating officers may ensure that the following documents are kept handy at the time of arrest:
 - (a) AE-I report where detection is based on a prior information/ intelligence.
 - (b) Preliminary Investigation/Offence Report containing the name of the offender, names of the company/ firms, approx. tax evasion detected or suspected, brief facts of the case, documents and statements relied upon, relevant sections of CGST Act, 2017 or other laws attracted to the case, facts giving rise to the reason to believe that the person has committed an offence punishable under the CGST Act, 2017.
- (IV) Copies of the documents relied upon have to be prepared as these documents might have to be produced before the Magistrate, if the same is asked, when the accused is produced before her/him. As the Courts, generally, insist of submission of relied upon documents like Panchanamas / Mahazars, Statements, etc., in original along with remand application, it is advisable to prepare one additional set of these documents in original, at the time of search proceedings / recording of statement, etc. for the purpose.
- (V) An Arrest Memo containing brief facts of cases, details of person arrested, gist of evidence, relevant sections under CGST Act, 2017, the grounds of arrest, date and time of arrest etc., needs to be given to the arrestee under proper acknowledgement. The Arrest Memo should be made in triplicate and the original should be furnished to the accused. Dated signatures of the person arrested along with the time should be obtained on the other two copies as a token of having received the Arrest Memo. At least one independent witness needs to be present while furnishing arrest memo to the accused. A separate arrest memo has to be made and provided to each individual/ arrested person. This should be kept in mind in the event there are several arrests in a single case.

Format of arrest memo prescribed under [Circular No.128/47/2019-GST dated 23.12.2019](#) is a useful reference. Arrest Memo should be in a language which the accused can understand. In case of an illiterate person or when the Arrest Memo is in a language not understood by the person arrested, the Arrest Memo should be read out and explained in vernacular also to the accused and the fact should be recorded on the Arrest Memo.

(VI) Further there are certain modalities that should be complied with at the time of arrest and pursuant to an arrest, which include the following:

- (a) A person who has been arrested or detained, is entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as possible. Therefore, it is imperative to inform the relative or friend of arrestee. Telephonic information to the satisfaction of the arrestee is sufficient. The fact of intimation along with details of family members/well-wishers intimated may be recorded in the Arrest Memo.
- (b) Immediately after the arrest, the Arresting Officer should conduct a 'Jama Talashi' of the accused and record a report on 'Jama Talashi' on the body of all the three copies of the Arrest Memo along with his dated signatures in the presence of independent witnesses. 'Jama Talashi' essentially means taking an inventory of the goods/valuables which the arrested person is carrying on his person. This includes clothes, ornaments, wallet, watches, shoes, socks, spectacles, pen etc. It is advisable that the valuables which the arrested person is carrying on his person are kept in a sealed cover in custody of the officer authorised to arrest. A precise inventory of such valuables should be made. These valuables should be released to the person on his release on bail.
- (c) A woman should be arrested by a lady officer. Where a woman is to be arrested, unless the police officer is a female, the police officer shall not touch the person of the woman for making an arrest and arrest would be presumed on her submission to custody on oral intimation. Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the same shall be by making a written report and obtaining prior permission of the Judicial Magistrate within whose jurisdiction the offence is committed or the arrest is to be made.
- (d) The arrested person should be medically examined by a medical officer in service of central or state government, or by registered medical practitioner, upon non-availability of such medical officer. If an arrested person is a female then such an examination shall be made only by, or under supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner.
- (e) In case of non-cooperation of the arrested person either during the arrest or post arrest formalities such as refusal to sign the arrest memo, obstruction of medical officer from performing examination, refusal to divulge contact details of family members, etc., while all means may be adopted to effect arrest, it is prudent to document the non-cooperation and obstruction of duty in the form of panchnama for the purpose of record and also for undertaking further necessary legal action.
- (f) After the medical examination, the arrestee should be produced in the Court of Chief Judicial Magistrate with the least delay and **within 24 hours** of the arrest for seeking remand. In case, it is not possible to produce him before the CJM for reason that the court is situated at a distant place, then the arrested person should be produced before a local duty Magistrate for seeking transit remand. Further, in case the arrestee is declared as medically unfit and is prescribed further examination/observation by the medical officer, he/she may still be produced before the CJM who will issue necessary orders based on medical records and facts and circumstances of the case. The amount to be indicated in the personal bail bond and security will depend, inter- alia on the amount of tax involved. Attempts should be made to produce the arrested person before the Magistrate on the same day. Arrested person should generally not be retained in the office in night as it can often lead to allegations of physical injury. In the eventuality that it is not possible to produce the arrested person before the Magistrate on the same day and there are no facilities to keep him in custody for the night, he can be handed over to the jurisdictional police station. However, it may be mentioned here that in such circumstances the officer in-charge of the police station has the power to admit the person to bail with the condition that he will appear before the Magistrate on the next day. Generally, the arresting officer should take back the person arrested from custody of police and then the department should produce the arrestee before the Magistrate.
- (g) The officer authorized under Section 69 to arrest and produce the arrested person before a Magistrate can either request for Judicial Remand or Custodial Remand. Custodial Remand is normally not granted unless special reasons for the same are given like requirement of presence of the accused for recovery

of documents etc. In case the Magistrate remands the accused to judicial custody and the preventive officers want to record a statement at the place of the accused i.e., Judicial Custody (Jail), then they should apply to the Magistrate for the same. A statement in the judicial custody can only be recorded with the permission of the Magistrate. Magistrate, on being satisfied about the urgency and importance of the statement of the accused, grants permission to officers to visit the place where the accused has been kept under Judicial Custody and accordingly directs the Jail Superintendent to facilitate the access of officers to visit the accused for the purpose of investigation. (**Section 69 of CGST Act, 2017**)

10.18 Precautions to be taken during arrest:

- (I) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to arrest and the procedure thereof must be adhered to. It is therefore necessary that all field officers of CGST/SGST be fully familiar with the provisions of the Code of Criminal Procedure, 1973.
- (II) One important provision to be taken note of is Section 57 of Cr.P.C., 1973, which provides that a person arrested without warrant shall not be detained for a longer period than, under the circumstances of the case, is reasonable but this shall not exceed twenty-four hours (excluding the journey time from place of arrest to the Magistrate's court). Within this period, as provided under Section 56 of Cr.P.C., the person making the arrest shall send the person arrested without warrant before a Magistrate having jurisdiction in the case.

10.19 There are certain safeguards provided under Section 69 of the CGST Act, 2017 for a person who is placed under arrest. These are:

- (i) If a person is arrested for a cognizable offence, he must be informed in writing of the grounds of arrest and he must be produced before a magistrate within 24 hours of his arrest;
- (ii) If a person is arrested for a non-cognizable and bailable offence, the Deputy/ Assistant Commissioner of CGST/SGST can release him on bail and he will be subject to the same provisions as an officer in-charge of a police station under Section 436 of the Code of Criminal Procedure, 1973;
- (iii) All arrest must be in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrest.

10.20 Commissioner's warrant must be executed by the Proper Officer speedily and unexecuted warrants will expire within the time specified therein unless extended. Warrants cannot remain outstanding indefinitely. Executed and lapsed warrants must be returned to the Commissioner for noting or declaration of the absconder or for further directions. Refer para 5 in [Instruction No.2/2022- 23 \[GST-Inv.\] dated 17 Aug 2022](#) regarding 'post arrest' formalities.

10.21 Bail and Bond Bail:

- (I) Bail and bond Bail is an acceptance by way of undertaking to comply with the orders of the Magistrate (or Proper Officer) releasing the detainee or arrested person to enter appearance when required in investigation or trial.

10.22 Anticipatory bail:

- (I) Non-bailable cases entitle persons to seek anticipatory bail where there is a reasonable apprehension that the Proper Officer may issue a warrant to arrest; in such cases anticipatory bail under Section 438 of Cr. P.C may be sought from Magistrate or Appellate Court.

11. PROCEDURE FOR SANCTION OF PROSECUTION

11.1 GST Investigation wing, CBIC has issued [Instruction No. 04/2022-23 \[GST Investigation\]](#), dated 01.09.2022 prescribing guidelines for launching of prosecution under the CGST Act, 2017.

11.2 Where during the course of investigation, arrest(s) have been made, all efforts should be made to file prosecution complaint in the Court **within 60 days** of arrest. The proposal of filing complaint in the prescribed format of investigation report should be forwarded to the competent authority (i.e., the sanctioning authority) **within 50 days** of arrest. The proposal shall be examined and decision as per Section 132 of the CGST Act, 2017 shall be taken. If prosecution sanction is accorded, he shall issue a sanction order along with an order authorising investigation officer (Superintendent) of the case to file the prosecution complaint in the competent court.

- 11.3 Officer in the rank of JC/ADC must ensure that all the documents /evidences and list of witnesses be kept ready before forwarding the proposal of filing complaint to the Pr. Commissioner/Commissioner or Pr. ADG/ADG of DGGI, as the case may be.
- 11.4 In cases where it is deemed fit to launch prosecution before adjudication of the case, the officer in the rank of JC/ADC or Jt. Director/Addl. Director, as the case may be, who supervised the investigation shall record the reason for the same and forward the proposal to the sanctioning authority. The decision of the sanctioning authority shall be informed to the adjudicating authority so that there is no need for him to examine the case again from the perspective of prosecution.
- 11.5 In other cases, the adjudicating authority should invariably indicate at the time of passing the order itself whether it considers the case fit for prosecution. Wherever SCNs have been issued by DGGI, the recommendation of adjudicating authority shall be sent to Pr. ADG/ADG of the Zonal Units concerned.
- 11.6 The sanctioning authority may suo moto take into consideration the seriousness of offence, examine whether the case is fit for sanction of prosecution, irrespective of whether the adjudicating authority has recommended for prosecution or not.
- 11.7 Once sanction for prosecution has been obtained, prosecution in the court of law should be filed as early as possible. Any delay **beyond 60 days** shall be brought to the notice of the sanctioning authority.

09 OFFENCES AND PENALTIES

1. INTRODUCTION

- 1.1 This Chapter deals with the different types of offences and the penalties leviable under GST law. The contents of this Chapter would aid the officers, especially while issuing Demand Notices/Show Cause Notices and Adjudication orders.
- 1.2 The provisions of CGST Act and the CGST Rules, relevant to this Chapters, are as under-

Sr. No.	Section/Rules	Provisions pertaining to
1	Section 122	Penalty for certain offences
2	Section 123	Penalty for failure to furnish information return
3	Section 124	Fine for failure to furnish statistics
4	Section 125	General penalty
5	Section 126	General disciplines related to penalty
6	Section 127	Power to impose penalty in certain cases
7	Section 128	Power to waive penalty or fee or both
8	Section 129	Detention, seizure and release of goods and conveyances in transit
9	Section 130	Confiscation of goods or conveyances and levy of penalty
10	Section 131	Confiscation or penalty not to interfere with other punishments Section 132
11	Section 132	Punishment for certain offences
12	Section 133	Liability of officers and certain other persons
13	Section 134	Cognizance of offences
14	Section 135	Presumption of culpable mental state
15	Section 136	Relevancy of statements under certain circumstances
16	Section 137	Offences by companies
17	Section 138	Compounding of offences
18	Rule 162	Procedure for compounding of offences

- 1.3 GST is levied on every value addition at each stage of supply. Apart from the tax, the CGST Act, 2017 and the rules made thereunder, lays down provisions for registration, manner of determination of the tax, classification and valuation of the supply, various mandatory compliances to be made by the taxpayer, etc.
- 1.4 Any breach of these laws leads to offences. Under GST laws, offences are well explained in the CGST Act, 2017. This Act also provides for imposition of penalties, fines, and imprisonment for some type of offences.
- 1.5 The specific identification of offences and defined penal actions for any law is the teeth, which the lawmakers provide to the statute. Without the provision of proportionate punishment, neither deterrent nor retributive, let alone persuasive effect can be created in general. The institutions of State require an effective enforcement mechanism and GST administration, created by the GST law, is no exception.
- 1.6 For effective compliance by the taxpayers, CGST/SGST statutes have codified the offences and penalties in a detailed manner. A cursory reading of the relevant provisions gives an idea that GST Law is complete in itself and merely takes assistance of Criminal Procedure Code and others, only where it is required.
- 1.7 Under the GST system, businesses can commit various offences, resulting in penalties and fines. The penalties and fines deter businesses from engaging in fraudulent activities, non-compliance with tax laws and regulations, and other illegal activities. Some common GST offences include evasion of taxes, failure to register for GST, issuance of incorrect invoices, and claiming excess Input Tax Credit (ITC).

- 1.8 The penalties for these offences can range from monetary fines to imprisonment, depending on the severity of the violation. The CGST Act lists the GST-related offences and the penalties that may be imposed. Sections 122 to 128 of the CGST Act deal with the laws governing offences and penalties. **(Section 122 to 128 of the CGST Act, 2017)**
- 1.9 The CGST Act provides for prosecution of the person indulging in various types of offences covered under the Act, which may lead to imprisonment for the period ranging from six months to five years, depending upon the amount of tax evasion involved. The CGST Act also provides for compounding of offences, subject to the conditions prescribed.

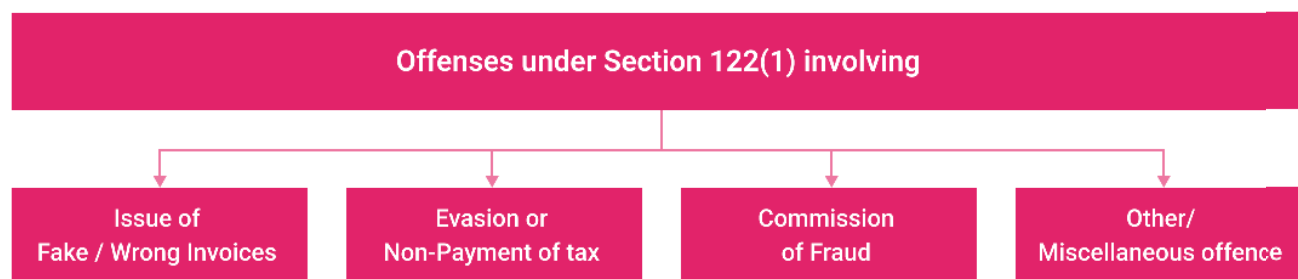
2. COMPLAINTS PRESCRIBED UNDER CGST ACT, 2017

- 2.1 Various Chapters/Sections of the CGST Act, 2017 require compliances by the registered taxpayers and in some cases even by persons not registered under this Act. Non-compliance with the provisions of these sections may lead to imposition of penalties/fines and prosecution under this act. An illustrative list of these chapters is given as under:
- (i) Chapter III covering Sections 7 to 11 provide for levy and collection of tax. **(Sections 7 to 11 of CGST Act, 2017)**
 - (ii) Chapter V provides for provisions relating to availing of input tax credit.
 - (iii) Chapter VI obliges the taxable person(s) to get themselves registered under the GST laws.
 - (iv) Chapter VII provides for rules relating to issue of tax invoices, debit notes and credit notes.
 - (v) Chapter VIII obliges the registered taxable person(s) to maintain books of accounts.
 - (vi) Chapter IX obliges the registered taxable person(s) to file certain periodical returns.
 - (vii) Chapter X obliges the registered taxable person(s) to pay tax. The chapter also provides for obligations to deduct/collect tax at source and deposit the same with Government.
- 2.2 Non-compliance of the provisions of any of these Chapters or the rules made thereunder, may lead to levy of interest, imposition of fine/penalty and prosecution of the defaulting taxable persons. In particular, Chapter XIX, Sections 122 to 138 of the CGST Act, 2017 read with Rule 162 of the CGST Rules give details of various offences penalties prescribed for these offences. These provisions also apply to State/UT Goods and Service laws and Integrated Goods and Service Tax Act, 2017. **(Sections 122 to 138 of the CGST Act, 2017) (Rule 162 of the CGST Rules, 2017)**

3. OFFENCES UNDER GST LAW

- 3.1 An offence under GST is a breach of the provisions of CGST Act and the rules made thereunder. Under the CGST Act, 2017 or any other GST laws there is no specific definition of an offence, however, the provisions for the offences and its penalties are explained in CGST Act, 2017. Hence, any act or conduct that commits a breach of the provisions under the CGST Act is known as an offence under GST laws.
- 3.2 Provisions related to offences are covered under Section 122 of the CGST Act. This section constitutes those offences that attract penalties for any infringement or breach and also apply tax and interest. The provisions of Section 122 of the CGST Act is applicable to the taxable person, meaning that these provisions are not only applicable to the registered persons but also to the persons liable to be registered. **(Section 122 of CGST Act 2017)**
- 3.3 Some of the offences are also provided under Section 132 liable for prosecution, depending upon the gravity of the offences. **(Section 132 of CGST Act, 2017)**
- 3.4 These provisions are made applicable to various State and Union Territories Goods and Service Laws and Integrated Goods and Services Tax Act, 2017.

4. TYPES OF OFFENCES



Section 122 of the CGST Act, consists of a list that includes 21 offences on which the law imposes penalty. For the sake of better understanding, such offences are divided into four broad categories, and these are as follows: - **(Section 122 of the CGST Act, 2017)**

(I) GST Offences related to Invoicing and Documentation:

- Issuing false/incorrect invoice or not issuing invoice for goods/services that have been supplied;
- Issue of GST invoice without actual supply of goods/services;
- Issue of invoice/document using GSTIN of a different GST registered person/entity;
- Transport of taxable goods without adequate/correct documentation;
- Failure to maintain relevant documents/records in line with requirements of the CGST Act, 2017.

(II) GST Offences related to Fraudulent Intent:

- Submission of false information at the time of GST registration or at a later date;
- Obtaining GST refund by supplying fraudulent information;
- Falsification of documents/records or providing false information with the intent of tax evasion;
- Not registering under GST even though required to do so under CGST Act, 2017
- Tampering with/disposing off goods that have been attached, seized or detained under CGST Act, 2017
- Knowingly supplying, transporting or storing any goods that are liable to be confiscated as per GST rules.

(III) GST Offences related to Tax Evasion:

- Under reporting/suppressing turnover resulting in tax evasion;
- Failure to pay tax to the government within three months of due date after collecting the tax from receiver of goods/services;
- Failure to pay tax to the government within three months of due date even though such tax has been collected in contravention of provisions specified by the CGST Act, 2017;
- Taking or utilizing Input Tax Credit (ITC) without actual receipt/supply of goods or services;
- Failure to deduct tax, deducting tax amount less than the actual amount deducted or not paying the tax owed to the government (Tax liability under sub-section 2 of Section 52 of CGST Act, 2017); **(Section 52(2) of CGST Act, 2017)**
- Failure to deduct tax, deducting tax amount less than the actual amount deducted or not paying the tax owed to the government (Tax liability under sub-section 3 of Section 52 of CGST Act, 2017); **(Section 52(3) of CGST Act, 2017)**
- Taking/utilizing input tax credit in breach of Section 20 and its sub-sections under the CGST Act, 2017. **(Section 20 CGST Act, 2017)**

(IV) GST Offences related to Obstruction:

- Obstructing/preventing any officer from discharging his/her duties as per the CGST Act, 2017;
- Destroying/tampering with documents or material evidence;
- Providing false documents or failure to furnish documents/information demanded by an officer acting with authority provided by the CGST Act, 2017.

5. MINOR BREACH AND MAJOR BREACH UNDER CGST ACT, 2017

- 5.1 In context of GST Penalties, a minor breach is defined as a situation where the amount of tax involved is less than Rs. 5,000. Additionally, a minor breach also includes easily rectifiable documentation errors/omission. Under existing rules, minor breaches do not attract substantial GST penalties.
- 5.2 In case the tax amount involved exceeds Rs. 5,000, the situation is classified as a major breach under the CGST Act, 2017 and penalties under GST, including jail sentences may be applicable depending on the tax amount consideration. The minor vs. major breach clause is designed to help businesses, especially those with small turnovers including SME by ensuring that they do not get penalized for genuine errors.

6. PENALTIES UNDER GST LAW

- 6.1 If any of the offenses are committed then a penalty will have to be paid under GST. The principles on which these penalties are based are mentioned by law. Penalty means a temporary punishment (monetary as well as prosecution) imposed by the statute given to a person for the commission of a certain offence.
- 6.2 GST Penalties resulting from breach of the CGST Act, 2017 are subject to fines depending on various factors, including but not limited to the severity of the breach.
- 6.3 Section 122(1) of the CGST Act, 2017 prescribes penalty of Rs. 10,000/- or an amount equivalent to the tax involved, whichever is higher, on the taxable person for the following omissions and commissions - **(Section 122(1) of the CGST Act, 2017)**
- (i) supply of goods or services or both without issue of any invoice or issuance of incorrect or false invoice with regard to any such supply;
 - (ii) issuance of invoice or bill without supply of goods or services or both in violation of the provisions of the CGST Act or the rules made thereunder;
 - (iii) failure to pay any amount collected as tax to the Government **beyond a period of three months** from the date on which such payment becomes due;
 - (iv) collection of any tax in contravention of the provisions of CGST Act and failure to pay the same to the Government **beyond a period of three months** from the date on which such payment becomes due;
 - (v) failure to deduct the tax (TDS) in accordance with the provisions of sub-section (1) of Section 51 of the CGST Act, or deduct an amount less than the amount required to be deducted under the said sub-section, or failure to pay to the Government the amount deducted as tax; **(Section 51(1) of CGST Act, 2017)**
 - (vi) failure to collect tax (TCS) in accordance with the provisions of sub-section (1) of Section 52 of the CGST Act, or collect an amount less than the amount required to be collected under the said sub-section or failure to pay to the Government the amount collected as tax; **(Section 52(1) of CGST Act, 2017)**
 - (vii) availment or utilisation of input tax credit without actual receipt of goods or services or both either fully or partially;
 - (viii) obtaining refund of tax fraudulently;
 - (ix) availment or distribution of input tax credit by Input Service Distributor (ISD) in contravention of Section 20 of the CGST Act; **(Section 20 of the CGST Act, 2017)**
 - (x) falsification or substitution of financial records or producing fake accounts or documents or furnishing false information or return, with an intention to evade payment of tax;
 - (xi) failure to obtain registration despite being liable to be registered;

- (xii) furnishing of false information with regard to registration particulars, either at the time of applying for registration, or subsequently;
- (xiii) obstructing or preventing any officer in discharge of his duties;
- (xiv) transporting any taxable goods without the cover of specified documents;
- (xv) suppression of turnover leading to evasion of tax;
- (xvi) failure to keep, maintain or retain books of account and other documents in accordance with the provisions of CGST Act, 2017 or the rules made thereunder;
- (xvii) failure to furnish information or documents called for by an officer or furnishing false information or documents during any proceedings under CGST Act;
- (xviii) supplying, transporting or storing any goods liable to confiscation under CGST Act;
- (xix) issuance of invoice or document by using the registration number of another registered person;
- (xx) tampering or destroying any material evidence or document;
- (xxi) dispose off or tamper with any goods detained, seized, or attached under CGST Act.

6.4 The following Table depicts the list of offences subjected to penalty under Section 122 of the CGST Act and the applicable penalty - **(Section 122 of the CGST Act, 2017)**

Section	Person liable to pay	Penalty
122(1)	Any taxable person who has committed the following offence	•Rs.10,000/- OR •An amount equivalent to: (i) tax evaded OR (ii) Tax not deducted or short deducted or deducted but not paid to the Government OR (iii) Tax not collected or short collected or collected but not paid to the Government OR (iv) Input tax credit availed of or passed on or distributed irregularly OR (v) the refund claimed fraudulently. Whichever is higher.
	S.No. Nature of Offence Committed	
	(i) Supplying any goods or services or both without issue of any invoice or an incorrect or false invoice.	
	(ii) Issuing any invoice or bill without supply of goods or services or both in violation of GST.	
	(iii) Collecting any amount as tax but failing to pay the same to the Government beyond a period of three months from the due date.	
	(iv) Collecting any tax but failing to pay the same to the Government beyond a period of three months from the due date.	
	(v) Failing to deduct tax, or deducting an amount which is less than the amount required to be deducted, or failing to pay deducted tax to the Government.	
	(vi) Failing to collect tax in accordance, or collecting an amount which is less than the amount required to be deducted, or failing to pay deducted tax to the Government.	
	(vii) Taking or utilizing input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of provisions of CGST Act, 2017 & Rules thereunder.	
	(viii) Fraudulently obtaining refund of tax.	
	(ix) Taking or distributing input tax credit in contravention of provisions of CGST Act, 2017 & Rules thereunder.	
	(x) Falsifying or substituting financial records or producing fake accounts or documents or furnishing any false information or return with an intention to evade payment of tax.	

(xi)	Failing to obtain registration though liable to be registered as per the CGST Act, 2017.
(xii)	Furnishing any false information with regard to registration particulars either at the time of applying for registration, or subsequently.
(xiii)	Obstructs or prevents any officer in discharge of his duties under CGST Act, 2017.
(xiv)	Transports any taxable goods without the cover of documents as may be specified in this behalf.
(xv)	Suppresses his turnover leading to evasion of tax under CGST Act, 2017.
(xvi)	Fails to keep, maintain or retain books of account and other documents in accordance with the provisions of CGST Act, 2017 or the Rules made thereunder.
(xvii)	Fails to furnish information or documents called for by an officer in accordance with the provisions of CGST Act, 2017 or the Rules made thereunder or furnishes false information or documents during any proceedings under the CGST Act, 2017.
(xviii)	Supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under the CGST Act, 2017.
(xix)	Issues any invoice or documents by using the registration number of another registered person.
(xx)	Tampers with, or destroys any material evidence or document.
(xxi)	Disposes off or tampers with any goods that have been detained, seized, or attached under the CGST Act, 2017.

- 6.5 In cases pertaining to non-issuance of invoice or issuance of invoice without supply of goods and/or services, availment of ITC without receipt of goods and/or services and distribution of ITC by ISD, Section 122(1A) of CGST Act, 2017 prescribes penalty of amount equivalent to the tax evaded or ITC availed or passed on. **(Section 122(1A) of CGST Act, 2017)**

As per Section 122(1A) of the CGST Act, any person who retains the benefit of a transaction covered under the below mentioned clauses of Section 122(1) of CGST Act and at whose instance such transaction was conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or an amount equivalent to the Input tax credit availed of or passed on. **(Section 122(1) of CGST Act, 2017)**

(i)	Supplying any goods or services or both without issue of any invoice or an incorrect or false invoice.
(ii)	Issuing any invoice or bill without supply of goods or services or both in violation of GST.
(vii)	Taking or utilizing input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of provisions of CGST Act, 2017 & Rules thereunder.
(ix)	Taking or distributing input tax credit in contravention of provisions of CGST Act, 2017 & Rules thereunder.

- 6.5 Section 122(1B) of the CGST Act, 2017 prescribes penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved, whichever is higher, on the e-commerce operator if he allows supply of goods or services through their platform, by an unregistered person other than a person exempted from registration, allows an inter-State supply of goods or services by a person who is not eligible to make such inter-State supply or fails to furnish the correct details in the statement to be furnished of any outward supply of goods effected by a person exempted from obtaining registration. **(Section 122(1B) of the CGST Act, 2017)**
- 6.6 **Penalty for short payment or non-payment of tax or wrong availment of ITC or erroneous refund** - If the taxpayer supplies goods and services, on which the tax is not paid or partially paid or erroneously refunded or ITC wrongly availed or utilised, penalty is imposable under Section 122(2) of the CGST Act, 2017. The quantum of penalty for the above offences are divided into two parts, i.e. offence committed for any reason other than fraud or any wilful

misstatement or suppression of facts or offence committed for reasons of fraud or any wilful misstatement or suppression of facts. The two sets of penalties provided under Section 122(2) are as under: **(Section 122(2) of the CGST Act, 2017)**

For any reason other than reasons of fraud or any wilful misstatement or suppression of facts	•Rs.10,000/- OR •10% of the tax due from such person, whichever is higher
For reasons of fraud or any wilful misstatement or suppression of facts	•Rs.10,000/- OR •The tax due from such person, whichever is higher

6.7 It is pertinent to mention here that penalty under Section 73(9) and 74(9) of the CGST Act, as applicable, is liable to be imposed in cases where determination of tax not paid or short paid has been ordered. Therefore, if penalty has been imposed on a person under Section 73 or Section 74 of the CGST Act then no penalty for the same act shall be imposed on that person under any other provision of CGST Act. **(Section 73(9) and 74(9) of CGST Act)**

6.8 **Penalty on person other than taxable person** - Section 122(3) of CGST Act, 2017, provides for levy of penalty extending to Rs. 25,000/-, on any person, other than the taxable person for five specific nature of offences as detailed hereunder: **(Section 122(3) of CGST Act, 2017)**

No.	Nature of Offence
a	Aiding or abetting any of the 21 offences specified in Section 122(1).
b	Acquires possession of, or in any way concerning in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner dealing with any goods, which are liable to confiscation under CGST Act, 2017.
c	Receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder.
d	Fails to appear before the officer of Central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;
e	Fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account.

6.9 **Penalty for failure to furnish information return:**

(I) It is mandatory for all taxable persons to provide information return as per Section 150 of the CGST Act. If the person fails to furnish the return within the specified duration, then such person needs to pay penalty at the rate of Rs. 100/- per day for the period during which the failure to provide such information return continues, subject to maximum of Rs. 5000/-, as per Section 123 of the CGST Act. **(Section 150 & 123 of CGST Act, 2017)**

(II) As per Section 150(1) of the Act, the following persons responsible for maintaining record of registration or statement of accounts or any periodic return or document containing details of payment of tax and other details of transaction of goods and/or services or transactions related to a bank account or consumption of electricity or transaction of purchase, sale or exchange of goods or property or right or interest in a property under any law for the time being in force, shall furnish an information return in respect of such periods, within the stipulated time and in prescribed form and manner – **(Section 150(1) of CGST Act, 2017)**

- (a) a taxable person; or
- (b) a local authority or other public body or association; or
- (c) any authority of the State Government responsible for the collection of value added tax or sales tax or State excise duty or an authority of the Central Government responsible for the collection of excise duty or customs duty; or
- (d) an income tax authority appointed under the provisions of the Income-tax Act, 1961 (43 of 1961); or
- (e) a banking company within the meaning of clause (a) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934); or
- (f) a State Electricity Board or an electricity distribution or transmission licensee under the Electricity Act,

2003 (36 of 2003), or any other entity entrusted with such functions by the Central Government or the State Government; or

- (g) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908 (16 of 1908); or
 - (h) a Registrar within the meaning of the Companies Act, 2013 (18 of 2013); or
 - (i) the registering authority empowered to register motor vehicles under the Motor Vehicles Act, 1988 (59 of 1988); or
 - (j) the Collector referred to in clause (c) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013); or
 - (k) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956); or
 - (l) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996); or
 - (m) an officer of the Reserve Bank of India as constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934); or
 - (n) the Goods and Services Tax Network, a company registered under the Companies Act, 2013 (18 of 2013); or
 - (o) a person to whom a Unique Identity Number has been granted under sub-section (9) of section 25; or
 - (p) any other person as may be specified, on the recommendations of the Council, by the Government.
- (III) The Proper officer in respect of the above said Section 150(1) of the CGST Act, is the Assistant/Deputy Commissioner of Central Tax.
- 6.10 **Penalty for failure to furnish statistics** - Commissioner is empowered under Section 151 of CGST Act, 2017 to collect the statistics relating to any matters dealt with under the Act. He may direct the person to furnish the information or return to collect the statistics that he feels necessary. If such person fails to provide the information called for without reasonable cause or provides any false information or returns wilfully, then as per Section 124 of the CGST Act, he shall be liable to pay penalty up to Rs. 10,000/-. If the offence continues, then the penalty may further extend to Rs. 100/- each day after the first day during which the offence continues, subject to maximum of Rs. 25,000/-. **(Section 151 of CGST Act, 2017) (Section 124 of the CGST Act, 2017)**
- 6.11 **General penalty** – If in respect of any violation, contravention, omission or commission under GST a penalty is not specified under any other provision of the CGST Act, then a General Penalty of an amount up to Rs. 25,000/- can be imposed on the person.
- 6.12 **Violations in respect of which no Penalty is applicable** - In case of certain instances no GST penalties are applicable despite some provision being violated/contravened, but these GST offences can incur interest at a specified rate for delayed payment on the amount of tax under consideration. The following are some instances where no penalty under GST is applicable:
- No penalty is applicable for charging incorrect GST, such as charging CGST/SGST instead of IGST. The registered business/entity has to pay the correct GST and get a refund for the wrong GST paid.
 - No penalty under CGST Act, 2017 for incorrect filing of GST returns but interest at the rate of 18% p.a. is chargeable on the tax amount shortfall.
 - No penalty is applicable for delayed invoice payments. But any input tax credit claimed in lieu of such invoices is liable to be reversed if invoice payment is delayed beyond 6 months.
- Further, no penalty is imposed for minor violations, as under -
- Amount involved in the offense is less than Rs. 5000.

- The offense is easily rectifiable, like an omission or an erroneous record in a document.

6.13 The Section wise summarised penalty chart is as under: **(Section 122, 123, 124, 125, 126, 127, 128, 129 of the CGST Act, 2017)**

S. No.	Section	Type of Offence	Penalty
1	122(1)	Specified 21 offences	Rs. 10,000/- (or) equivalent to Tax/ITC involved, whichever is higher
2	122(2)	Other than fraud, suppression, mis-statement, etc.	Rs. 10,000/- (or) 10 % equivalent to Tax/ITC involved, whichever is higher
		Fraud, suppression, misstatement, etc.	Rs. 10,000/- (or) equivalent to Tax/ITC involved, whichever is higher
3	122(3)	Offences where person is not directly involved in any evasion but may be the party to evasion or if he does not attend summons or produce documents	Upto Rs. 25,000/-
4	123	Person fails to furnish an information returns u/s 150.	Rs. 100/- per day (failure period), subject to Max. of Rs. 5,000/-
5	124	Any person required to furnish information u/s 151	Normal Case- Upto 10,000/- Continuing offence- Rs. 100/- per day (failure period), subject to Max. Rs. 25,000/-
6	125	General penalty	Upto Rs. 25,000/-
7	123	Delayed filing of GST Returns	Rs. 200/- per day (Rs. 100/- per day under CGST + Rs. 100/- per day under SGST), up to a maximum of Rs. 5,000/-. Late fee not applicable to IGST unpaid by delayed filing.
8	122(3)	Issuing incorrect invoice	Rs. 25,000/-.
9	126	For minor rectifiable offences and amount of tax/ITC is less than Rs. 5,000/-, which is made without fraudulent intent.	Nil
10	127	Where the Proper Officer is of the view that a person is liable to a penalty and the same is not covered under proceedings related to Assessment of non-filers (Sec, 62), Assessment of unregistered persons (Sec. 63), Summary Assessment (Sec. 64), Demand of tax/ITC on account of reasons other than fraud, suppression, etc. (Section 73), Demand of tax/ITC on account of reasons of fraud, suppression, etc. (Section 74), Detention, Seizure, and release of goods and conveyance (Sec. 129), Confiscation of goods and conveyance (Sec. 130).	Power to levy penalty is with the Proper Officer.
11	128	Waiver of penalty referred in Section 122, 123 and 125 and late fee for delay in filing returns.	Power to waive penalty and late fee with Government on recommendation of GST Council, for the notified class of taxpayers.
12	129	Release of goods and conveyance under detention or seizure: (A) Where owner comes forward for payment of tax and penalty.	(a) In case of taxable goods – Penalty equivalent to 200% of the tax payable (b) In case of exempted goods – Penalty 2% of the value of goods or Rs. 25,000/-, whichever is less
		(B) Where the owner does not come forward for payment of tax and penalty	(a) In case of taxable goods – Penalty equivalent to 50% of value of goods or 200% of the tax payable whichever is higher (b) In case of exempted goods – Penalty equivalent to 5% of the value of goods or Rs. 25,000/-, whichever is less.

7. GENERAL DISCIPLINE RELATED TO PENALTY

- 7.1 Section 126 of the CGST Act deals with General disciplines related to Imposition of penalty. It says that penalty is not to be imposed for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in the documentation which is easily rectifiable and made without fraudulent intent or gross violations. It explains the circumstances as mentioned below, under which a breach and omission or mistake can be considered. **(Section 126 of the CGST Act, 2017)**
- (a) a breach shall be considered a “minor breach” if the amount of tax involved is less than five thousand rupees;
 - (b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.
- 7.2 Section 126 of the CGST Act, 2017 lays down the general principles for imposing penalty, as under –
- (i) The penalty imposed under this Act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.
 - (ii) When a penalty is proposed to be imposed, the offender will be sent a notice and given a fair opportunity to be heard by the tax officials.
 - (iii) The tax authorities will give the offender a summary of the reasons for the penalty and the legal provisions under which the penalty is imposed.
 - (iv) If the offender chooses to voluntarily disclose infringement of law, the tax authorities may use the disclosure as leverage to reduce the penalty.
- 7.3 The provisions of this section shall not apply in cases where the penalty specified is either a fixed sum or expressed as a fixed percentage.

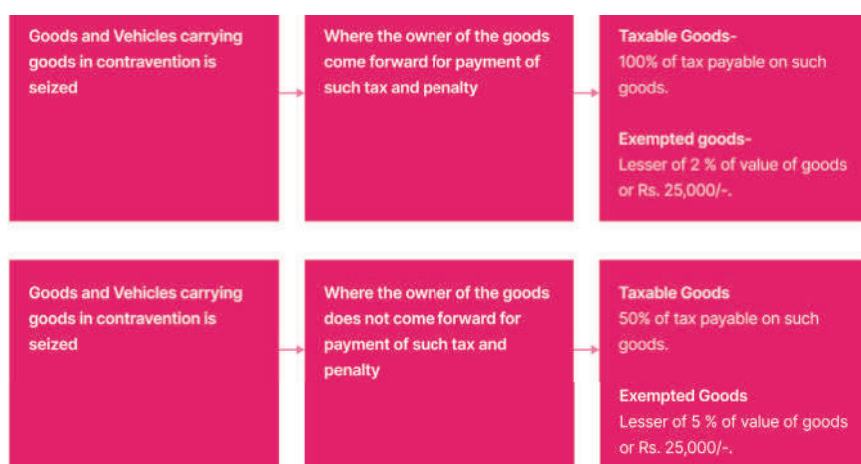
8. POWER TO IMPOSE PENALTY IN CERTAIN CASES

- 8.1 Section 127 of the CGST Act deals with power to impose penalty in certain cases. The section states that where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceedings under Section 62 or Section 63 or Section 64 or Section 73 or Section 74 or Section 129 or Section 130, he may issue an order levying penalty after giving a reasonable opportunity of being heard to such person. **(Section 127, 62, 63, 64, 73, 74, 129, & 130 of the CGST Act, 2017)**
- 8.2 The Proper officer assigned to function in respect of this section is the Deputy or Assistant Commissioner of Central Tax.

9. POWERS TO WAIVE PENALTY

Section 128 of the CGST Act, 2017 provides the power to the Government, to waive the penalty imposable under Section 122 or 123 or 125 or the late fees to be paid for delay in filing returns, on such class of taxpayers under justifying circumstances specified in the notification issued in this regard. **(Section 128, 122, 123 & 125 of the CGST Act, 2017)**

10. DETENTION, SEIZURE AND RELEASE OF GOODS AND CONVEYANCES IN TRANSIT AND PENALTY THEREOF



- 10.1 Section 129 of the CGST Act deals with detention, seizure and release of goods and conveyances in transit. It states that where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of the CGST Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure. **(Section 129 of the CGST Act, 2017)**
- 10.2 Section 129 of the CGST Act further specifies the quantum of penalties as detailed below:

Situation	Quantum of Penalty
a Where the owner of the goods come forward for payment of such penalty	Penalty equal to two hundred per cent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty-five thousand rupees, whichever is less.
b Where the owner of the goods does not come forward for payment of such penalty	Penalty equal to fifty per cent of the value of the goods or two hundred per cent of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent of the value of goods or twenty-five thousand rupees, whichever is less.
c In both the situations as mentioned in a & b above	Upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

- 10.3 As per the proviso to Section 129(1) of the CGST Act, an order of detention or seizure of such goods has to be served on the person transporting the goods before detention/seizure of goods or conveyance.
- 10.4 As per Section 129(3) of the CGST Act, the proper officer detaining or seizing goods or conveyance shall issue a notice **within seven days** of detention or seizure, specifying the penalty payable. The proper officer shall pass an order **within a period of seven days** from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1) of Section 129(1) of the CGST.
- 10.5 The Proper officer assigned to function in respect of Section 129(3) is the Deputy or Assistant Commissioner of Central Tax.
- 10.6 As per Section 129(4) of the CGST Act, no penalty shall be determined under sub-section (3) without giving the concerned person an opportunity of being heard.
- 10.7 As per Section 129(5) of the CGST Act, all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded on payment of the amount mentioned in Section 129(1) by the concerned person.
- 10.8 As per Section 129(6) of the Act, if the person transporting any goods or the owner of goods fails to pay the amount of penalty **within fifteen days** from the date of receipt of the order passed by the proper officer, the goods or conveyance detained or seized shall be liable to be sold or disposed of otherwise, within the prescribed time and manner, to recover the penalty payable.
- 10.9 The conveyance shall be released on payment of penalty or one lakh rupees, whichever is less, by the transporter. If the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, **the stipulated period of fifteen days** may be reduced by the proper officer.
- 10.10 The Proper officer to function in respect of this section is the Additional or Joint Commissioner.

11. CONFISCATION OF GOODS AND CONVEYANCES AND PENALTY THEREOF

- 11.1 Section 130 of the CGST Act deals with confiscation of goods or conveyances and levy penalty on the concerned person.
- 11.2 As per Section 130(1) of the CGST Act, where any person indulges in the following acts, then all such goods or conveyances used shall be liable to confiscation and the person shall be liable to penalty under Section 122 of the CGST Act - **(Section 122 & 130 of the CGST Act, 2017)**
- (i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
 - (ii) does not account for any goods on which he is liable to pay tax under this Act; or

- (iii) supplies any goods liable to tax under this Act without having applied for registration; or
 - (iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
 - (v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was used without the knowledge or connivance of the owner himself, his agent and the person in charge of the conveyance.
- 11.3 As per Section 130(2) of the CGST Act, whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give an option to the owner of the goods to pay fine in lieu of confiscation, as the said officer thinks fit. However, such fine leviable shall not exceed the market value of the confiscated goods, less the tax chargeable thereon. Also, the aggregate of such fine and penalty shall not be less than the penalty equal to 100% of the tax payable on such goods.
- 11.4 If any conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay fine equal to the tax payable on the goods being transported thereon in lieu of the confiscation of the conveyance.
- 11.5 As per Section 130(4) of the CGST Act, no order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.
- 11.6 As per Section 130(5) of the CGST Act, if any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.
- 11.7 As per Section 130(6) of the CGST Act, the proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.
- 11.8 The Proper officer to function in respect of this section is the Deputy or Assistant Commissioner.
- 11.9 As per Section 130(7) of the CGST Act, the proper officer if satisfied that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time **not exceeding three months** to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government. The Proper officer to function in respect of this section is the Deputy or Assistant Commissioner.

12. CONTINUATION OF ALL OTHER PROCEEDINGS UNDER GST LAW

Section 131 of the CGST Act provides that in addition to confiscation of goods or penalty already imposed, all other proceedings may also be initiated or continued under the GST law or any other law, as applicable. This could be prosecution, arrest, cancellation of registration, etc., as applicable, provided for the relevant non-compliance. Therefore, for the same offence both penalty and punishment can be levied. **(Section 131 of the CGST Act, 2017)**

13. PROSECUTION

- 13.1 Section 198 of the Criminal Procedure Code defines “prosecution” as the institution and carrying on of the legal proceedings against a person. It is the process of exhibiting formal charges against the offender.
- 13.2 Section 132 of the CGST Act deals with the punishments for certain offences. Punishments are proposed in respect of the following offences committed or causes to commit and retain the benefits arising out of the same by any person – **(Section 132 of the CGST Act, 2017)**
- (a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;
 - (b) issues any invoice or bill without supply of goods and/or services in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;
 - (c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;
 - (d) collects any amount as tax but fails to pay the same to the Government **beyond a period of three months** from

the date on which such payment becomes due;

- (e) evades tax or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);
- (f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;
- (g) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
- (h) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
- (i) attempts to commit, or abets the commission of any of the offences mentioned in above clauses of this section.

13.3 The punishments prescribed are as under: -

Offence Involved	Punishment (imprisonment extending to)
Amount of duty evaded (or) Amount of ITC wrongly availed or utilized (or) Amount of refund wrongly taken -Exceeds Rs.5 Crore Repeated offenders – for the second and every subsequent offence {Section 132(2)}	5 years and fine
Amount of duty evaded (or) Amount of ITC wrongly availed or utilized (or) Amount of refund wrongly taken -Between ₹2 crore and ₹5 crore	3 years and fine
Amount of duty evaded (or) Amount of ITC wrongly availed or utilized (or) Amount of refund wrongly taken -Between ₹1 crore and ₹2 crore	1 years and fine
Where he commits or abets the commission of an offence specified in: - Clause (f) - falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;	6 months

13.4 As per Section 132(3) of the CGST Act, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, the imprisonment referred to in sub-section (1) and sub-section (2) of Section 132 shall be for a term not less than six months. **(Section 132(3), (4), (5) & (6) of the CGST Act, 2017)**

13.5 In terms of Section 132(4) and 132(5) of CGST/SGST Act-

- (a) All offences where the evasion of tax is less than ₹5 crores shall be non-cognizable and bailable;
- (b) all offences where the evasion of tax exceeds ₹5 crores shall be cognizable and non-bailable.

13.6 As per Section 132(6) of the CGST Act, to launch prosecution against any person for any offence committed under this section, previous sanction of the Commissioner is necessary.

13.7 The term “tax” shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of CGST Act, the SGST Act, the IGST Act or the UTGT Act and cess levied under the Goods and Services Tax (Compensation to States) Act.

13.8 Section 133 of the CGST Act deals with liability of officers and certain other persons. Section 133(1) provides for punishment with imprisonment for a term, which may extend to six months or with fine which may extend to

twenty-five thousand rupees, or with both, to any person engaged in connection with the collection of statistics under Section 151 or compilation or computerisation thereof or having access to information specified under Section 150(1), or engaged in connection with the provision of service on the common portal or the agent of common portal, who wilfully discloses any information or the contents of any return furnished under the CGST Act or rules made thereunder otherwise than in execution of his duties or for the purposes of prosecution for an offence under this Act or under any other Act. **(Section 133, 150 & 151 of the CGST Act, 2017)**

- 13.9 As per Section 133(2) of the CGST Act, for prosecuting a Government servant under this section, previous sanction of the Government is necessary and for prosecuting a person who is not a Government Servant for any offence under this Section, previous sanction of the Commissioner is necessary.
- 13.10 Section 134 of the CGST Act states that no court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class, shall try any such offence.
- 13.11 Section 135 of the CGST Act deals with presumption of culpable mental state of an accused and prosecuted under this Act. It states that in any prosecution for an offence under this Act, which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be in defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. "Culpable Mental State" includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact. A fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability. **(Section 134, 135, 136, 137 of CGST Act, 2017)**
- 13.12 Section 136 of the CGST Act deals with relevancy of statements under certain circumstances. It states that a statement made and signed by a person on appearance in response to any summons issued under Section 70 of the CGST Act, during the course of any inquiry or proceedings, shall be relevant for the purpose of proving an offence in any prosecution under this Act.
- 13.13 Section 137 of the CGST Act deals with offences related to GST committed by companies. Section 137(1) states that if an offence committed by a person under this Act is a company, then every person who was in charge at the time the offence was committed and was responsible for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- 13.14 Section 137(2) of the CGST Act states that if an offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, then such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- 13.15 As per Section 137(3) of the CGST Act provides that a partnership firm or a limited liability partnership or a Hindu Undivided Family or a trust, the partner or karta or managing trustee shall be deemed to be guilty of the offence committed and shall be liable to be proceeded against and punished accordingly.
- 13.16 As per Section 137(4) of the CGST Act, if any person accused of an offence proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence, then such person will not be liable for any punishment provided in the Act.

14. COMPOUNDING OF OFFENCES

- 14.1 Section 138 of the CGST Act deals with compounding of offences. Compounding of offences can be made before or after the institution of prosecution. It can be compounded by the Commissioner. **(Section 138 of the CGST Act 2017)**
- 14.2 Offences can be compounded only after payment tax, interest and penalty involved in such offences by the person accused of the offence, to the Central or State Government, as the case may be. Compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other Law.
- 14.3 In respect of the following cases, compounding cannot be made – Section 138

- (a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f), (h), (i) and (l) of sub-section (1) of section 132; **(Section 138 of CGST Act, 2017)**
 - (b) a person who has been accused of committing an offence under clause (b) of sub-section (1) of section 132;
 - (c) a person who has been convicted for an offence under this Act by a court;
 - (d) any other class of persons or offences as may be prescribed:
- 14.4 Section 138(2) of the CGST Act stipulates the minimum and maximum amount for compounding the offences. The minimum amount not being less than 25% of the tax involved and the maximum amount not being more than 100% of the tax involved. **(Section 138(2) & (3) of the CGST Act, 2017)**
- 14.5 As per Section 138(3) of the CGST Act, on payment of such compounding amount, as determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.
- 14.6 Rule 162 of CGST Rules, 2017 prescribes the procedure for compounding of offences. The applicant desiring to compound his offences has to make application in **FORM GST CPD-01** to the Commissioner. **(Rule 162 of the CGST Rules, 2017)**
- 14.7 The Commissioner shall call for a report from the concerned officer with reference to the particulars furnished in the application and after taking into account the contents of the said application, pass an order in **FORM GST CPD-02**, on being satisfied about the disclosure of facts relating to the case, indicating the compounding amount and grant him immunity from prosecution or reject such application, **within ninety days** of the receipt of the application.

15. PROVISIONS TO BE FOLLOWED BY THE OFFICER

The Officers have to follow the following relevant provisions for imposition of penalties:

- Provisions related to offences and their corresponding penalties are covered under Section 122 of the CGST Act.
- If a person who is required to furnish an information return under Section 150 fails to do so within the period specified in the notice issued under sub-section (3) thereof, the proper officer may direct that such person shall be liable to pay a penalty of one hundred rupees for each day of the period during which the failure to furnish such return continues.
- Section 124 of the CGST Act, 2017 prescribes penalty for failure to furnish any information or return under Section 151 of the CGST Act.
- Any person, who contravenes any of the provisions of this Act or any rules made thereunder, for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees under Section 125 of the CGST Act, 2017.
- Section 127 of the CGST Act prescribes power to impose penalty in cases where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceedings under Section 62 or Section 63 or Section 64 or Section 73 or Section 74 or Section 129 or Section 130, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.
- Section 129 of the CGST Act governs the detention, seizure, and release of goods and conveyances in transit.
- Confiscation of goods or conveyances and levy of penalty are provided under Section 130 of the CGST, Act, 2017.



10 RECOVERY OF TAX

1. INTRODUCTION

- 1.1 The recovery proceedings are final step towards realisation of any tax or amount. This Chapter deals with the law and procedure relating to recovery of the unpaid GST dues, including interest, penalties and late fees. The provisions of CGST Act, 2017 and CGST Rules, 2017, relevant to this Chapter are as under –

Sr. No.	Section/Rules	Provisions pertaining to
1	Section 75	General provisions relating to determination of tax
2	Section 78	Initiation of recovery proceedings
3	Section 79	Recovery of tax
4	Section 80	Payment of tax and other amount in instalments
5	Section 81	Transfer of property to be void in certain cases
6	Section 82	Tax to be first charge on property
7	Section 83	Provisional attachment to protect revenue in certain cases
8	Section 84	Continuation and validation of certain recovery proceedings
9	Section 85	Liability in case of transfer of business
10	Section 86	Liability of agent and principal
11	Section 87	Liability in case of amalgamation or merger of companies
12	Section 88	Liability in case of company in liquidation
13	Section 89	Liability of directors of private company
14	Section 90	Liability of partners of firm to pay tax
15	Section 91	Liability of guardians, trustees, etc.
16	Section 92	Liability of Court of Wards, etc.
17	Section 93	Special provisions regarding liability to pay tax, interest or penalty in certain cases
18	Section 94	Liability in other cases
19	Section 119	Sums due to be paid notwithstanding appeal, etc.
20	Rule 142	Notice and order for demand of amounts payable
21	Rule 142 A	Procedure for recovery of dues under existing laws
22	Section 161	Rectification of errors apparent on the face of record
23	Rule 88C	Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return.
24	Rule 88D	Intimation by electronic means regarding excess availment of ITC by taxpayer
25	Rule 143	Recovery by deduction from any money owed
26	Rule 144	Recovery by sale of goods under the control of proper officer
27	Rule 144 A	Recovery of penalty by sale of goods or conveyance detained or seized in transit
28	Rule 145	Recovery from a third person
29	Rule 146	Recovery through execution of a decree
30	Rule 147	Recovery by sale of movable or immovable property
31	Rule 148	Prohibition against bidding or purchase by officer
32	Rule 150	Assistance by police
33	Rule 151	Attachment of debts and shares, etc.
34	Rule 152	Attachment of property in custody of courts or Public Officer

35	Rule 153	Attachment of interest in partnership
36	Rule 154	Disposal of proceeds of sale of goods and movable or immovable property
37	Rule 155	Recovery through land revenue authority
38	Rule 156	Recovery through court
39	Rule 157	Recovery from surety
40	Rule 158	Payment of tax and other amounts in instalments
41	Rule 159	Provisional attachment of property
42	Rule 160	Recovery from company in liquidation

- 1.2 The provisions, Forms, Circulars, Notification, etc., can be seen by clicking ctrl+click on the respective hyperlink, which will open the <https://taxinformation.cbic.gov.in> page. On clicking GST option on the Menu bar, 'Information-GST' page will appear, below which the option of Act, Rules, Notification, etc. is provided. The required page of the relevant provision/Form/Circular/Notification can be seen by clicking the appropriate option.
- 1.3 GST law mandates payment of tax on supply of goods and/or services by the taxpayers. The tax self-assessed by the taxpayer has to be paid by due date prescribed under the CGST Act. There may be a situation where the tax dues are not paid correctly by the taxpayers, either inadvertently or deliberately.
- 1.4 The provisions of CGST Act and the rules made thereunder contain elaborate provisions to safeguard the revenue due to the Government. In case of any failure to pay the tax dues to the Government appropriate provisions have been incorporated in the GST law for recovery of such unpaid tax by following the procedure and guidelines stipulated in the CGST Act and the rules made thereunder.
- 1.5 The statutory provisions providing for recovery of the Central Tax dues under the GST law are contained in Section 78 to 83 of the CGST Act, 2017 and Rules 142 to 161 of the CGST Rules, 2017. These legal provisions of recovery contained in the CGST Act, 2017 can broadly be divided in the following three parts:
 - (I) When the recovery proceeding can be started by tax officer (Section 78)
 - (II) The various modes of the recovery of the dues (Section 79)
 - (III) Protective measures to safeguard the interest of Revenue (Section 80 to 83).
- 1.6 There are no independent provisions for recovery of tax dues of IGST, interest thereon and penalties. However, Section 20 of the IGST Act, 2017 provides for applicability of the provisions of CGST Act, 2017 relating to demands and recovery, offences and penalties and other miscellaneous provisions. Thus, the recovery of dues under IGST Act can be made under the relevant provisions of CGST Act, 2017 read with Section 20 of the IGST Act, 2017 and the CGST Rules, 2017. Similarly, for recovery of dues under GST (Compensation to States) Act, 2017, Section 11 of GST (Compensation to States) Act provides for applicability of the provision of CGST Act, 2017 to intra-state supplies and for applicability of the provision of IGST Act, 2017 to inter-state supplies. **(Section 11 of GST (Compensation to States) Act and Section 20 of IGST Act, 2017)**
- 1.7 In order to comply with the principles of natural justice, the GST law lays down certain procedures to be followed before taking action for recovery of the tax and other amounts like, interest, penalty, late fees, etc. One such procedure is raising demand and determination of the short-paid or not-paid tax, wrongly availed input tax credit and erroneously refunded amount in the prescribed manner, which is being disputed by the taxpayer. The details of the manner prescribed to demand and determine the short-paid or not-paid tax, wrongly availed input tax credit and erroneously refunded amount has been elaborately dealt in the Chapter on "Demand and Determination thereof".
- 1.8 The GST law also contains provisions to encourage voluntary compliance, wherein if the tax dues and the mandatory interest thereof are paid within the time period prescribed in the law, then no penalty or lesser penalty, as applicable, is charged. The law provides an opportunity for payment of tax, interest and a nil or nominal penalty (depending on nature of offence) before issuance of Notice and stipulates that in all such cases no Notice shall be issued and consequently there shall be no other consequences for recovery of the default.
- 1.9 Even after issuance of a show cause notice, there is another chance to discharge tax and interest liability with applicable penalty (depending on nature of offence) voluntarily within 30 days of issuance of the Notice. If all dues are paid within 30 days then the GST law provides that all proceedings in respect of such Notice shall be deemed to be concluded. Thus, there are sufficient opportunities to correct the errors made and discharge the

tax liability with nil or nominal penalties.

- 1.10 The taxpayer is required to self-assess his tax liability on the supplies made in the course of business or in furtherance of business. Such self-assessed tax is an undisputed tax liability as the same is determined by the taxpayer himself as payable to the Government. As per Section 75 of CGST Act, 2017, where there's any unpaid self-assessed tax, it can be recovered without issuing any show-cause notice and the proceedings for recovery as provided under Section 79 of the CGST Act, 2017 can be directly invoked. **(Section 75 and 79 of CGST Act, 2017)**
- 1.11 GST is paid at the time of filing GSTR-3B return and this return cannot be filed unless and until the tax payable declared in the return is not paid fully. There is a possibility that the taxpayer shows higher sales in the GSTR-1 return, wherein the invoice wise details of the sales/supplies is declared, so as to pass on excess ITC to the recipient and under-reports the supplies while declaring in GSTR-3B for evading the tax. For dealing with such situations the Explanation to Section 75(12) of the CGST Act clarifies that the self-assessed tax would include the GST payable for outward supplies reported in the GSTR-1 but not included in the GSTR-3B return. In such cases, the recovery proceedings can be directly invoked under Section 79 of the CGST Act, 2017 for recovering the self-assessed tax and interest thereof. **(Section 75(12) of CGST Act, 2017)**
- 1.12 If the tax dues and other amounts confirmed as payable after following the due process of adjudication by the proper officer remain unpaid, despite all these beneficial provisions mentioned above, and the taxpayer fails to pay the dues after the orders are passed and statutory limit for appeal is over and no appeal is filed, then such dues are considered as 'arrears' and the proper officer may initiate recovery proceedings in terms of Section 79 of the CGST Act for recovery of arrears. **(Section 79 of CGST Act, 2017)**

2. MEANING OF 'ARREARS' AND TYPES OF ARREARS

- 2.1 The demand of tax may be confirmed fully or partially or dropped in the process of adjudication. On issuance of the Order after adjudication proceedings the amount of tax, interest, penalty, late fees, etc., determined as payable by the taxpayer, become arrears and recoverable from the taxpayer. If the arrears are paid by taxpayer, then the dispute concludes. However, in case, it is not paid then the mechanism prescribed in GST law has to be used to recover the same from the taxpayer or other person concerned.
- 2.2 Thus, arrears are the overdue payment of the amount of tax, cess, interest, fine, late fee or penalty that is payable by the taxpayer to the exchequer. The arrears may arise as a result of Order-in-Original, Order of Appellate Authority, Appellate Tribunal and the Courts (High Court/Supreme Court).
- 2.3 The amount involved in the case under investigation, unconfirmed demands (i.e. the amount demanded in the Show Cause Notice but not adjudicated, and Order-in-Original set aside or remanded for de-novo adjudication by Appellate authority are not the arrears.
- 2.4 The following are the categories of arrears:
 - (i) Arrear in Litigation/Appeal: where the confirmed demand is under appeal or litigation before any appellate authorities, namely, Supreme Court/High Court/Appellate Tribunal /Commissioner (Appeals);
 - (ii) Restrained Arrears: Taxpayer against whom financial/operational creditors have initiated insolvency or bankruptcy proceeding before NCLT/DRT under Insolvency and Bankruptcy Code, 2016;
 - (iii) Arrear where appeal period is not yet over;
 - (iv) Recoverable arrear other than the above.
- 2.5 The time period allowed under Section 107 of the CGST Act, 2017 for filing appeal before the Appellate Authority or Appellate Tribunal is three months from the date of receipt of the Order-In-Original or the Order-In-Appeal, as the case may be. The taxpayer may, consequent to any order passed, pay the dues **within 3 months** from the date of receipt of order. **(Section 107 of CGST Act, 2017)**
- 2.6 For filing an appeal before the Appellate Authority or Appellate Tribunal, the taxpayer has to make a mandatory pre-deposit of the prescribed amount, as prescribed under Section 107(6) and 112(8) of the CGST Act respectively. If a taxpayer files the appeal before the Appellate Authority or Appellate Tribunal and deposits the mandatory pre-deposit, then the balance amount of dues shall be deemed as stayed. If any demand proceedings have attained finality either on account of no appeal filed against the Order-In-Original or on account of litigation process being finally over or attained finality on account of taxpayer having exhausted all appellate remedies available under the law, then such confirmed demand becomes recoverable arrears. **(Section 107(6) of CGST Act, 2017)**
- 2.7 As per Section 119 of the CGST Act, 2017, if an appeal has been preferred to the High Court or the Supreme

Court, sums due to the Government as per the order passed by the Appellate Tribunal or an order passed by the High Court, as the case may be, shall be payable in accordance with the order so passed. **(Section 119 of CGST Act, 2017)**

- 2.8 In respect of cases where proceedings have been initiated by financial or operational creditors before National Company Law Tribunal or before Debt recovery Tribunal (DRT), as applicable, under Insolvency and Bankruptcy Code, 2016, (IBC Code, 2016), against the taxpayer or defaulter person from whom GST arrears are also due for recovery, the provision of Insolvency and Bankruptcy Code has overriding effect over the provision of GST Laws. Therefore, any action for recovery of arrears, where the proceedings have already been initiated by financial / operational creditors against the defaulter before NCLT, has to be considered in the light of provision of IBC, 2016. Such arrears are 'restrained arrears'. [Circular No. 134/04/2020-GST](#) dated 23rd March, 2020 and [Circular No. 187/19/2022-GST](#), dated 27.12.2022 issued by CBIC contain the instructions and clarifications on dealing with the restrained arrears in such cases before NCLT/DRT.

3. **MODES OF RECOVERY OF TAX**

- 3.1 Section 79(1) of the CGST Act, 2017 lays down various modes of recovery of tax or any amount due. The following are the modes of recovery- **(Section 79(1) of CGST Act, 2017)**

- (i) Recovery by Deduction from any money owed which may be under control of proper officer or specified officer.
- (ii) Recovery by detain and sale of goods belonging to such persons which are under the control of proper officer or such other specified officer.
- (iii) Recovery from third person.
- (iv) Recovery through execution of a decree (verdict).
- (v) Recovery through sale of movable or immovable property, like, attachment of debt and shares, etc., attachment of property in custody of courts or public officer, attachment of interest in partnership.
- (vi) Recovery through land revenue authority.
- (vii) Recovery through court.
- (viii) Recovery through surety.

4. **PROPER OFFICER FOR RECOVERY OF GST ARREARS**

- 4.1 [Circular No. 3/3/2017-GST](#), dated 05.07.2017, amended vide [Circular No. 31/05/2018-GST](#), dated 09.02.2018, further amended vide [Circular No. 169/01/2022-GST](#), dated 12.03.2022, have assigned function of 'Proper Officer' under Sections 77 to 84 of the CGST Act, 2017 and Rules 142 to 161 of the CGST Rules, 2017, in respect of recovery of tax or other dues, to the officers of different ranks as per details given in Table below:

Section/ Rule	Subject Heading	Rank/ designation of Proper Officer
Section 78	Initiation of Recovery Proceedings (for Proviso to section 78)	Commissioner
Section 79	Recovery of Tax	Deputy or Assistant Commissioner
Section 80	Payment of tax and amount in instalment	Commissioner
Section 81	Transfer of property to be void in certain cases (for Proviso to section 81)	Additional or Joint Commissioner
Section 83	Provisional attachment to protect revenue in certain cases	Commissioner
Section 84	Continuation and Validation of Certain Recovery Proceedings	Commissioner
Rule 142	Notice and Order for demand of amounts payable under the Act [for Sub-rule (1), (2), (3) and (7)]	Superintendent of Central Tax
Rule 143	Recovery by deduction from any money owed	Deputy or Assistant Commissioner
Rule 144	Recovery by sale of goods under the control of proper officer [for Sub-rules (1), (3), (4), (5), (6) and (7)]	Deputy or Assistant Commissioner
Rule 145	Recovery from a third person (for Sub-rules (1) and (2) of Rule 145)	Deputy or Assistant Commissioner

Rule 146	Recovery through execution of a decree	Deputy/ Assistant Commissioner
Rule 147	Recovery by sale of moveable or immovable property [for Sub-rules (1), (2), (3), (5), (6), (7), (8), (10),(11), (12), (14) and (15)]	Deputy or Assistant Commissioner
Rule 150	Assistance by Police	Superintendent of Central Tax
Rule 151	Attachment of debt and shares, etc. [for Sub rules (1),(2) and (3)]	Deputy or Assistant Commissioner
Rule 152	Attachment of property in custody of courts or Public Officer	Deputy or Assistant Commissioner
Rule 153	Attachment of interest in partnership	Deputy or Assistant Commissioner
Rule 155	Recovery through land revenue authority	Deputy or Assistant Commissioner
Rule 156	Recovery through court	Deputy or Assistant Commissioner
Rule 158	Payment of tax and other amounts in instalment	Commissioner
Rule 159	Provisional attachment of Property	Commissioner
Rule 160	Recovery from company in liquidation	Commissioner

5. RECOVERY MECHANISM

- 5.1 The recovery provisions under the CGST Act, 2017 and the rules made thereunder lay down proper procedure for initiation of the recovery proceedings.
- 5.2 As per Section 78 of the CGST Act, any amount payable by a taxable person in pursuance of an order passed under the CGST Act, shall be paid by the taxpayer **within a period of three months** from the date of service of such order, failing which recovery proceedings shall be initiated. However, as per proviso to Section 78 of CGST Act, if the proper officer considers it appropriate in the interest of revenue, he may, after recording the reasons in writing, ask the said taxpayer to make the payment within a specified period, before the completion of three months. The Commissioner of Central Tax has been assigned the functions of Proper Officer in this regard. **(Section 78 of CGST Act, 2017)**
- 5.3 As per rule 142(5) of the CGST Rules, 2017, a summary of the order issued under section 52, 62, 63, 64, 73, 74, 75, 76, 122, 123, 124, 125, 127, 129 or section 130 of CGST Act, 2017 shall be uploaded electronically in **FORM GST DRC-07**, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax. DRC-7 to be treated as Notice for Recovery (Refer Rule 142(6) of the CGST Rules, 2017). As per Rule 142(7) of the CGST Rules, 2017 if a rectification of the order has been passed in accordance with the provisions of Section 161 (Rectification of error) or if an order uploaded on the system has been withdrawn, then a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in **FORM GST DRC-08**. **(Rule 142(5), (6) and (7) of CGST Rules, 2017) (Section 161 of CGST Act, 2017)**
- 5.4 Section 79 of Goods and Services Tax Act, 2017, deals with the provisions relating to the recovery of the self-assessed tax when the person fails to pay tax to the Government. Before proceeding with the recovery action, it is important to ascertain whether the difference in reporting of outward supplies in the **GSTR-1** return and in the **GSTR-3B** return is due to a genuine mistake or otherwise.
- 5.5 There is a possibility of typographical error or unintentional wrong reporting of any detail in **GSTR-1** or **GSTR-3B**. Such errors or omissions can be rectified by the taxpayer in a subsequent GSTR-1/ GSTR-3B as per the provisions of Section 37(3) of CGST Act or the provisions of Section 39(9) of the Act, as the case may be. Also there can be cases where Outward Supply was not declared in the past, but the tax was paid under GSTR-3B and to correct this error, such outward supplies are reported in later tax period. In such cases, there could be a mis-match between GSTR-1 and GSTR-3B. Therefore, in such cases, an opportunity needs to be provided to the concerned taxpayer by sending a communication to him, asking him to explain the differences between GSTR-1 and GSTR-3B, if any, and for making good short payment or non-payment of the amount of self-assessed tax liability, and interest thereon by paying the same within a reasonable time, before any action under Section 79 of the Act is taken for recovery of the said amount. If, the concerned person is able to justify the differences between GSTR-1 and GSTR-3B, or is able to explain the reasons of such short-payment or non-payment of tax, to the satisfaction of the proper officer, or pays such short paid or not paid amount, then there is no requirement to initiate proceedings for recovery under section 79 except in cases where the taxpayer fails to rectify errors of omission by 30th day of November following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier. **(Section 37(3) of CGST Act, 2017) (Section 39(9) of CGST Act, 2017)**
- 5.6 If the taxpayer fails to reply to the Proper Officer or fails to make the payment of the short paid or not paid amount within the time prescribed in the communication or as permitted by the Proper Officer, then the proceedings

under Section 79 for recovery of such amount has to be initiated. Further, where the taxpayer fails to explain the reasons for such difference/ short payment of tax to the satisfaction of the Proper Officer then he may proceed for recovery of the said amount as per provisions of Section 79.

5.7 With effect from 26.12.2022 specific provisions by way of Rule 88C of CGST Rules, 2017, have been incorporated in the CGST Rules, 2017, for dealing with difference in liability reported in GSTR-1 and GSTR-3B. **(Rule 88C of CGST Rules, 2017)**

- (i) The provisions of Rule 88C of CGST Rules, 2017 provide that where the tax payable by a taxpayer as per the statement of outward supplies furnished in **FORM GSTR-1** in respect of a tax period exceeds the amount of tax payable as per the return in **FORM GSTR-3B** for that period then such taxpayer shall be intimated about such difference, in **Part A of FORM GST DRC-01B**, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended, highlighting the said difference and directing him to pay the differential tax liability, along with interest through **FORM GST DRC-03** or explain the difference in tax payable on the common portal, within the stipulated period.
- (ii) The taxpayer shall either pay the amount of the differential tax liability, fully or partially, along with interest and furnish the details thereof or furnish a reply, explaining the reasons for the differential tax liability that has remained unpaid, in **Part B of FORM GST DRC-01B** electronically on the common portal, within the stipulated period.
- (iii) If any amount specified in the intimation remains unpaid and if no explanation or reason is furnished by the taxpayer in default or if the explanation or reason furnished by such person is not found acceptable by the Proper Officer then the said amount shall be recovered in accordance with the provisions of Section 79.

5.8 With effect from 04.08.2023 specific provisions by way of Rule 88D have been incorporated in the CGST Rules, 2017. **(Rule 88D of CGST Rules, 2017)**

- (i) Rule 88D provides that if the amount of input tax credit availed by a taxpayer in the **FORM GSTR-3B** return for a tax period or periods exceeds the input tax credit available to such person in accordance with the auto-generated statement containing the details of input tax credit in **FORM GSTR-2B** for the corresponding period then the said taxpayer shall be intimated of such difference in **Part A of FORM GST DRC-01C**, electronically and a copy of such intimation shall also be sent to his e-mail address, highlighting the said difference and directing him to pay the excess input tax credit amount availed in the said **FORM GSTR-3B**, along with interest, through **FORM GST DRC-03** or explain the reasons for the aforesaid difference.
- (ii) The taxpayer shall either pay the excess input tax credit amount, fully or partially, along with interest through **FORM GST DRC-03** and furnish the details thereof or furnish a reply, electronically, giving reasons in respect of the excess input tax credit, in **Part B of FORM GST DRC-01C**, within the specified period.
- (iii) If any amount remains to be paid and where no explanation or reason is furnished by the taxpayer in default or where the explanation or reason furnished by such person is not found to be acceptable by the Proper Officer, then the said amount shall be liable to be demanded under the provisions of Section 73 or Section 74, as the case may be. **(Section 73 and Section 74 of CGST Act, 2017)**

5.9 Rule 142B has been inserted in the CGST Rules, 2017 vide notification No. 38/2023-CT, dated 04.08.2023, w.e.f. 04.08.2023, which lays down the procedure for intimating the taxpayer online about the amount liable to be recovered under Section 79 of the CGST Act, 2017, as under:- **(Rule 142B of CGST Rules, 2017)**

- (i) If any amount of tax or interest has become recoverable under Section 79 of the CGST Act in accordance with Section 75 ibid read with Rule 88C of CGST Rules, 2017 and is unpaid, the Proper Officer shall intimate the details of the said amount in **FORM GST DRC-01D**, electronically on the common portal, directing the taxpayer to pay the said amount along with applicable interest, within the specified time and the said amount shall be posted in Part-II of Electronic Liability Register in **FORM GST PMT-01**. **(Section 75 of CGST Act, 2017) (Rule 88C of CGST Rules, 2017)**
- (ii) The intimation shall be treated as the notice for recovery.
- (iii) If amount of tax or interest specified in the intimation remains unpaid on the expiry of the period specified in the said intimation, the Proper Officer shall proceed to recover such amount in accordance with various modes of recovery prescribed under Rule 143 to Rule 147 or Rule 155 to Rule 157 or Rule 160.

6. MODES OF RECOVERY

The following modes of recovery are prescribed under the CGST Rules –

(I) **Recovery by Deduction from any money owed which may be under control of Proper Officer or Specified Officer:**

- (i) Section 79(1)(a) of the CGST Act states that the Proper Officer may deduct or may ask any other Specified Officer to deduct the amount due from the taxpayer from any money owing to such taxpayer, which may be under the control of the Proper Officer or the Specified Officer. **(Section 79(1)(a) of CGST Act, 2017)**
- (ii) Rule 143 of CGST Rules, 2017 prescribes the procedure of recovery in this regard. It states that if any amount payable by a taxpayer under any of the provisions of the CGST Act or the rules made thereunder is not paid, the Proper Officer may ask the Specified Officer in **FORM GST DRC-09** electronically, to deduct the amount from any money owing to such taxpayer. **(Rule 143 of CGST Rules, 2017)**
- (iii) As per explanation to Rule 143 of the CGST Rules, 2017, "Specified Officer" means any officer of the Central Government or a State Government or the Government of a Union territory or a local authority, or of a Board or Corporation or a company owned or controlled, wholly or partly, by the Central Government or a State Government or the Government of a Union territory or a local authority.
- (iv) Proper officer for recovery through deduction from any money owed is the concerned Deputy Commissioner /Assistant Commissioner.

(II) **Recovery by detaining & sale of goods belonging to the defaulting taxpayer under the control of proper officer or such other specified officer:**

- (i) As per Section 79(1)(b) of the CGST Act, 2017, the Proper Officer may recover or may ask any other Specified Officer to recover the amount payable by detaining and selling any goods belonging to the defaulting taxpayer, which are under the control of the Proper Officer or the Specified Officer.
- (ii) Rule 144 of the CGST Rules, 2017 lays down the procedure to be followed by the Proper Officer, viz., the Deputy/Assistant Commissioner, for recovery of dues by sale of goods belonging to taxpayer under his control. **(Rule 144 of CGST Rules, 2017)**
- (iii) The Proper Officer shall prepare an inventory and estimate the market value of such goods and proceed to sell only so much of the goods as may be required for recovering the amount payable along with the administrative expenditure incurred on the recovery process.
- (iv) The said goods shall be sold through a process of auction, including e-auction, for which a notice shall be issued in **FORM GST DRC-10**, indicating the goods to be sold and the purpose of sale.
- (v) Minimum time period of 15 days to be given for submission of Bid or Auction date. However, if the goods are of perishable or hazardous nature or if the expenses of keeping them in custody is likely to exceed their value, the Proper Officer may sell them forthwith.
- (vi) The Proper Officer may specify the amount of pre-bid deposit to be furnished in the manner specified, to make the bidders eligible to participate in the auction. Such pre-bid deposits are required to be returned to the unsuccessful bidders and forfeited in case the successful bidder fails to make the payment of the full amount.
- (vii) The proper officer shall issue a notice to the successful bidder in **FORM GST DRC-11** requiring him to make the payment **within a period of fifteen days** from the date of auction. On payment of the full bid amount, the proper officer shall transfer the possession of the said goods to the successful bidder and issue a certificate in **FORM GST DRC-12**.
- (viii) If the defaulter pays the amount under recovery, including the expenses incurred on the process of recovery, before the issue of the notice **FORM GST DRC-10**, the Proper Officer shall cancel the process of auction and release the goods.
- (ix) The Proper Officer shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be non-competitive due to lack of adequate participation or due to low bids.
- (x) Rule 144A of the CGST rules, 2017 lays down the procedure for recovery of penalty by sale of goods or conveyance detained or seized in transit. If the person transporting any goods or the owner of such goods fails to pay the amount of penalty specified under Section 129 (3) of the CGST Act, 2017 **within fifteen days** from the date of receipt of the copy of the order passed by the Proper Officer, he shall proceed with the sale or disposal of the goods or conveyance detained or seized by preparing an inventory and estimating the market value of such goods or conveyance. If the detained or seized goods are perishable

or hazardous in nature or are likely to depreciate in value with passage of time, the period of fifteen days may be reduced. The said goods or conveyance shall be sold through the process of auction, including e-auction after issuing notice in [FORM GST DRC-10](#). The procedure and safeguards are same as in respect of the goods. **(Rule 144A of CGST Rules, 2017) (Section 129(3) of CGST Act, 2017)**

- (xi) If any appeal has been filed by the concerned person then the proceedings for recovery of penalty by sale of goods or conveyance detained or seized in transit shall be deemed to be stayed. However, this provision shall not be applicable in respect of goods of perishable or hazardous nature.

(III) Recovery from third person:

- (i) As per Section 79(1)(c) of the CGST Act, 2017, the Proper Officer, viz., the Deputy/Assistant Commissioner, may issue a notice in writing to any other person from whom money is due or may become due to the defaulting taxpayer or who holds or may subsequently hold money for or on account of such defaulting taxpayer, asking to pay to the Government the money becoming due or being held, within the time specified in the notice. **(Section 79(1)(c) of CGST Act, 2017)**
- (ii) The procedure has been prescribed in Rule 145 of the CGST Rules, 2017. **(Rule 145 of CGST Rules, 2017)**
- (iii) The proper officer may serve a notice in [FORM GST DRC-13](#) to the third person mentioned above, directing him to deposit the amount specified in the notice.
- (iv) If the third person makes the payment of the amount specified in the notice in [FORM GST DRC-13](#), the Proper Officer shall issue a certificate in [FORM GST DRC-14](#) to the third person, indicating the details of the liability to be discharged and liability discharged.
- (v) Every person to whom the notice [FORM GST DRC-13](#) is issued, shall be bound to comply with such notice. If the said notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment,
- (vi) In case the third person to whom the said notice in [FORM GST DRC-13](#) has been issued, fails to make the payment to the Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of the CGST Act or the rules made thereunder shall follow.
- (vii) The Proper Officer may, at any time, amend or revoke the said notice or extend the time for making any payment in pursuance of the notice.
- (viii) If the third person makes any payment in compliance with the said notice then the same shall be deemed to have made the payment under the authority of the defaulting taxpayer and such payment being credited to the Government shall be deemed to constitute a discharge of the liability of such third person to the defaulting taxpayer to the extent of the amount specified in the receipt.
- (ix) The third person to whom the notice in [FORM GST DRC-13](#) has been issued, shall be personally liable to the Government to the extent of the liability discharged or to the extent of the liability of the defaulting taxpayer for tax, interest and penalty, whichever is less.
- (x) If the third person to whom the notice in [FORM GST DRC-13](#) is served, proves to the satisfaction of the Proper Officer that the money demanded or any part thereof was not due to the defaulting taxpayer or that he did not hold any money for or on account of such taxpayer at the time the notice was served, nor the money demanded or any part thereof is likely to become due to the taxpayer then such third person shall not pay to the Government any money or part thereof.

(IV) Recovery through execution of a decree:

Rule 146 of the CGST Rules, 2017 provides that if any amount is payable to the defaulting taxpayer in the execution of a decree of a Civil Court for the payment of money or for sale in the enforcement of a mortgage or charge, the Proper Officer, viz., the Deputy or Assistant Commissioner shall send a request in FORM GST DRC-15 to the said court and the court shall, subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), execute the attached decree and credit the net proceeds for settlement of the amount recoverable. **(Rule 146 of CGST Rules, 2017)**

(V) Recovery through sale of movable or immovable property:

- (i) As per provisions of Section 79(1)(d) of the CGST Act, 2017, the Proper Officer, viz., the Deputy or Assistant Commissioner may distrain any movable or immovable property belonging to or under the control of the defaulting taxpayer and detain the same until the amount payable is paid. In case any part of the amount payable or of the cost of the distress or keeping of the property, remains unpaid within the specified period then he may proceed to sell the said property and the sale proceeds may be appropriated against the amount payable and the costs, including cost of sale remaining unpaid. Balance or surplus amount, if any, shall be refunded to such defaulting taxpayer. **(Section 79(1)(d) of CGST Act, 2017)**
- (ii) Rule 147 of the CGST Rules, 2017 lays down the procedure for recovery of due by sale of movable or immovable property. **(Rule 147 of CGST Rules, 2017)**
- (iii) The Proper Officer shall prepare a list of movable and immovable property belonging to the defaulter, estimate their value as per the prevalent market price and issue an order of attachment or distraint and a notice for sale in **FORM GST DRC-16**, prohibiting any transaction with regard to such movable and immovable property.
- (iv) The Proper Officer should send a copy of the order of attachment or distraint to the concerned Revenue Authority or Transport Authority or any such Authority, to place encumbrance on the said movable or immovable property. The attachment or distraint shall be removed only on the written instructions from the Proper Officer to that effect.
- (v) Rule 147(3) of the CGST Rules, 2017 provides that if the property subjected to attachment or distraint is an immovable property then the order of attachment or distraint shall be affixed on the said property and shall remain affixed till the confirmation of sale. If such property is a movable property then the Proper Officer shall seize the said property and it shall either be taken by the Proper Officer himself or an officer authorised by him. **(Rule 147(3) of CGST Rules, 2017)**
- (vi) Rule 147(4) of the CGST Rules, 2017 states that the property attached or distrained shall be sold through auction, including e-auction, for which a notice should be issued in **FORM GST DRC- 17** indicating the property to be sold and the purpose of sale. **(Rule 147(4) of CGST Rules, 2017)**
- (vii) If the property for sale is in the form of Negotiable Instrument or Share in a Corporation then the Proper Officer, instead of selling it by public auction, may sell such instrument or a share through a broker and the said broker, after reducing his commission and from the sale proceeds he shall deposit to the Government account the amount due to be paid for the discharge of the amount under recovery and the balance amount, if any, be paid to the owner of such instrument or a share.
- (viii) In respect of the property which is not in the form of Negotiable Instrument or Share in a Corporation, the Proper Officer may recover the amount by auctioning the property. The procedure to be followed for auctioning is same as in the case of goods, which is elaborated in para 3.10(II) above.
- (ix) Rule 147(8) of the CGST Rules, 2017 provides that where any claim is preferred or any objection is raised with regard to the attachment or distraint of any property on the ground that such property is not liable to such attachment or distraint, the Proper Officer shall investigate the claim or objection and may postpone the sale for time being. **(Rule 147(8) of CGST Rules, 2017)**
- (x) The person making the claim or objection must adduce evidence to show that on the date of the order he had some interest in, or was in possession of, the property in question under attachment or distraint. **(Rule 147(9) of CGST Rules, 2017)**
- (xi) On investigation if the Proper Officer is satisfied that the reason stated in the claim or objection is correct and such property was not in the possession of the defaulter taxpayer or of any other person on his behalf or if in his possession it was not on his own account or as his own property but on account of trust or partly on his own account and partly on account of some other person, then he (Proper Officer) shall issue an order releasing the property, wholly or to such extent as he deems fit, from attachment or distraint. **(Rule 147(10) of CGST Rules, 2017)**
- (xii) If the Proper Officer is satisfied that the property was in the possession of the defaulter as his own property and not on account of any other person or was in the possession of some other person in trust for him or in the occupancy of a tenant or other person paying rent to him, then he (Proper Officer) shall reject the claim and proceed with the process of sale through auction. **(Rule 147(11) of CGST Rules, 2017)**
- (xiii) The proper officer shall issue a notice in **FORM GST DRC-11** to the successful bidder requiring him to

make the payment within the specified period and after the payment is made, he shall issue a certificate in **FORM GST DRC-12** specifying the details of the property, date of transfer, the details of the bidder and the amount paid. Upon issuance of the said certificate, the rights, title and interest in the property shall be deemed to be transferred to such bidder. However, where the highest bid is made by more than one person and one of them is a co-owner of the property then he shall be deemed to be the successful bidder.

- (xiv) Any amount, including stamp duty, tax or fee payable in respect of the transfer of the property shall be paid to the Government by the person to whom the title in such property is transferred.
- (xv) Rule 147(14) of the CGST Rules, 2017 provides that if the defaulter pays the amount under recovery, including the expenses incurred on the process of recovery, before the issuance of the notice in **FORM GST DRC-17** the Proper Officer shall cancel the process of auction and release the goods. **(Rule 147(14) of CGST Rules, 2017)**
- (xvi) If no bid is received or the auction is considered to be non-competitive due to lack of adequate participation or due to low bids then the Proper Officer shall cancel the process and proceed for re-auction.
- (xvii) Rule 148 of the CGST Rules, 2017 prohibits bidding or purchase by Officer having any duty to perform in connection with any sale. **(Rule 148 of CGST Rules, 2017)**
- (xviii) Rule 149 of the CGST Rules, 2017 prohibits sale on holidays notified by the Government. **(Rule 149 of CGST Rules, 2017)**
- (xix) Rule 150 of the CGST Rules, 2017 provides that the Proper Officer may seek assistance from the officer-in-charge of the jurisdictional police station, as may be necessary in the discharge of his duties. The said Police officer shall depute sufficient number of police officers for providing assistance. **(Rule 150 of CGST Rules, 2017)**
- (xx) Rule 151 of the CGST Rules, 2017 provides for the manner of attachment of any property in debt, which is not secured by a negotiable instrument, a share in a corporation, or other movable property not in the possession of the defaulter, except for property deposited in or in the custody of any Court. The Rule provides that such property in debt shall be attached by a written order in **FORM GST DRC-16**, prohibiting, the creditor of debt from recovering the debt and the debtor from making payment. In the case of a share, the person in whose name the share may be standing shall be prohibited from transferring the same or receiving any dividend thereon. In the case of any other movable property, the person in possession of the same shall be prohibited from giving it to the defaulter, until the receipt of a further order from the Proper Officer. **(Rule 151 of CGST Rules, 2017)**

A copy of the order shall be affixed on some conspicuous part of the office of the Proper Officer and another copy shall be sent to the debtor or to the registered address of the share corporation or to the person in possession of the property, as the case may be. The aforesaid debtor may pay the amount of his debt to the Proper Officer, and such payment shall be deemed as paid to the defaulter taxpayer.

- (xxi) Rule 152 of the CGST Rules, 2017 provides that if the property to be attached is in the custody of any court or Public Officer, the Proper Officer, viz., the Deputy or Assistant Commissioner, shall send the order of attachment to such court or officer, requesting that the property and any interest or dividend payable thereon, may be held till the recovery of the amount payable. **(Rule 152 of CGST Rules, 2017)**
- (xxii) If the property to be attached consists of an interest of the defaulter, being a partner, the Proper Officer may issue an order charging the share of such partner in the partnership property and profits with payment of the amount due under the certificate. He may, by the same or subsequent order, appoint a receiver of the share of such partner in the profits and any other money due to him in respect of the partnership. He may also direct enquiries and make an order for the sale of such interest. In such case, the other partners shall be at liberty to redeem the interest charged or purchase the same. **(Rule 153 of the CGST Rules, 2017) (Rule 153 of CGST Rules)**
- (xxiii) The amounts realised from the sale of goods, movable or immovable property, for the recovery of dues from a defaulter shall, in the following sequence-
 - (a) be appropriated against the administrative cost of the recovery process;
 - (b) be appropriated against the amount to be recovered or to the payment of the penalty payable;
 - (c) be appropriated against any other amount due from the defaulter under the GST law;

- (d) the balance, if any, shall be credited to the electronic cash ledger of the owner of the goods or conveyance, as the case may be, in case the person is registered under the Act. If the said person is not required to be registered under the CGST Act, the said amount shall be credited to the bank account of the person concerned. If it is not possible to pay the balance of sale proceeds in the aforesaid manner to the person concerned **within six months** from the date of sale of such goods or conveyance or such further period allowed by the Proper Officer, such balance of sale proceeds shall be deposited with the Fund.

(VI) **Recovery through land revenue authority:**

Section 79(1)(e) of the CGST Act, 2017 read with Rule 155 of the CGST Rules, 2017 stipulate that the Proper Officer, viz. Deputy or Assistant Commissioner, shall send a certificate in **FORM GST DRC-18**, specifying the amount due from such person, to the District Collector or to any officer authorised by the Government, in which such defaulter taxpayer/person owns any property or resides or carries on his business. The said Collector or the said officer, on receipt of such certificate, shall proceed to recover the amount specified thereunder, as if it were an arrear of land revenue. **(Section 79(1)(e) of CGST Act, 2017) (Rule 155 of CGST Rules, 2017)**

(VII) **Recovery through court:**

Section 79(1)(f) of the CGST Act, 2017 read with Rule 156 of the CGST Rules, 2017 prescribe that the Proper Officer, viz., the Deputy or Assistant Commissioner, file an application in FORM GST DRC-19 to the appropriate Magistrate and the Magistrate shall proceed to recover from such person the amount specified thereunder, as if it were a fine imposed under the Code of Criminal Procedure, 1973. **(Rule 156 of CGST Rules, 2017)**

(VIII) **Recovery through surety**

Section 79(2) of CGST Act, 2017 read with Rule 157 of the CGST Rules, 2017 prescribe that where the terms of any bond or other instrument executed under the CGST Act, 2017 or any rules or regulations made thereunder provide that any amount due under such instrument should be recovered in the manner laid down in Section 79(1), then the Proper Officer may recover the amount from the person standing as surety for the amount due from the defaulter taxpayer/person, as if he was the defaulter. **(Section 79(2) of CGST Act, 2017) (Section 79(1) of CGST Act, 2017) (Rule 157 of CGST Rules, 2017)**

(IX) **Recovery of CGST Dues by Proper Officer of State Tax or Union Territory Tax:**

Section 79(3) of CGST Act, 2017 empowers the officers of State Tax or Union Territory Tax to recover any amount of tax, interest or penalty payable by a defaulter taxpayer to the Government under any of the provisions of the CGST Act or the rules made thereunder, as if it were an arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government. If the amount of arrears recovered is less than the amount due to the Central Government and State Government then the amount shall be credited to the account of the respective Governments in proportion to the amount due to each Government. **(Section 79(3) of CGST Act, 2017)**

7. PAYMENT OF TAX AND OTHER AMOUNT IN INSTALMENTS

- (I) As per Section 80 of the CGST Act, 2017, if a taxpayer makes an application for payment of dues of tax and other amount, the Pr. Commissioner/Commissioner may extend the time for payment or allow payment of any amount due under the CGST Act, 2017 other than the self-assessed liability amount, in monthly instalments not exceeding twenty-four, subject to payment of interest under Section 50 and subject to such conditions and limitations as may be prescribed. **(Section 80 of CGST Act, 2017) (Section 50 of CGST Act, 2017)**
- (II) If there is default in payment of any one instalment on its due date then the whole outstanding balance payable on such date shall become due and payable forthwith and will be liable for recovery without any further notice.
- (III) Rule 158 of the CGST Rules, 2017 lays down the conditions and limitation for exercising the power to allow payment of tax and other amounts in instalment. **(Rule 158 of CGST Rules, 2017)**
- (IV) The taxpayer has to file an application electronically in **FORM GST DRC- 20**, seeking extension of time for the payment of taxes or any amount due under the CGST Act or for allowing payment of such taxes or amount in instalments.
- (V) The Commissioner shall call for a report from the jurisdictional officer about the financial ability of the taxable person to pay the said amount.
- (VI) If the application filed by the taxpayer is found proper and legally acceptable and the report of the jurisdictional officer on financial ability is satisfactory, the Commissioner may issue an order in **FORM GST DRC- 21**, allowing

the taxable person further time to make payment or to pay the amount in monthly instalments, not exceeding twenty-four, as he may deem fit.

(VII) The above said facility of deferred payment of dues or payment of dues in monthly installments, shall not be allowed –

- (a) if the taxpayer has defaulted on the payment of any amount due, for which the recovery process is on;
- (b) the taxable person has not been allowed to make payment in instalments in the preceding financial year;
- (c) the amount for which instalment facility is sought is less than twenty-five thousand rupees.

8. TRANSFER OF PROPERTY TO BE VOID IN CERTAIN CASES

- (I) As per Section 81 of the CGST Act, 2017, if the defaulting taxpayer/person creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer of any of his properties in favour of any other person with the intention of defrauding the Government revenue due from him, then such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said defaulting taxpayer/person. **(Section 81 of CGST Act, 2017)**
- (II) Such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under CGST Act, 2017 or without notice of such tax or other sum payable or with the previous permission of the Proper Officer, viz., the Additional or Joint Commissioner.

9. TAX TO BE FIRST CHARGE ON PROPERTY

- (I) In terms of Section 82 of the CGST Act, 2017, any amount payable by a taxpayer/person on account of tax, interest or penalty to the Government shall be a first charge on the property of such taxpayer/ person. **(Section 82 of CGST Act, 2017)**
- (II) In case of conflict in the provisions of Section 82 of the CGST Act, 2017 and the Insolvency and Bankruptcy Code, 2016 (IBC, 2016), the provision of Insolvency and Bankruptcy Code, 2016 shall prevail. **(Section 82 of CGST Act, 2017)**

10. PROVISIONAL ATTACHMENT TO PROTECT REVENUE IN CERTAIN CASES

- (I) The provisions of Section 83(1) of the CGST Act, 2017 provide for provisional attachment in certain cases. The said provision provides that if after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV of the CGST Act, the Pr. Commissioner/Commissioner in order to protect the interest of the Government revenue may pass an order to attach provisionally, any property, including bank account, belonging to the defaulting taxpayer/person specified in Section 122(1A) of the CGST Act, 2017 in the manner prescribed. **(Section 83(1) of CGST Act, 2017) (Section 122(1A) of CGST Act, 2017)**
- (II) The provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the above said order.
- (III) The following guidelines have been prescribed by CBIC Vide [Instructions No. CBEC-20/16/05/2021-GST/359](#), dated 23.02.2021, with regard to Provisional Attachment of Property-
 - (i) There must be pendency of a proceeding against a defaulting taxpayer/person under sections mentioned in Section 83 of the CGST Act, 2017.
 - (ii) The Commissioner must have formed the opinion that provisional attachment of the property belonging to the defaulting taxpayer/person is necessary for the purpose of protecting the interest of the Government Revenue.
 - (iii) For forming an opinion under Section 83 of the CGST Act, 2017 it is important that the Pr. Commissioner/Commissioner must exercise due diligence and carefully examine all the facts of the case, including the nature of offence, amount of revenue involved, establish nature of business and extent of investment in capital assets and reasons to believe that the defaulting taxpayer/person against whom the proceedings are pending, may dispose of or remove the property if not attached provisionally. **(Section 83 of CGST Act, 2017)**

- (iv) The basis, on which Commissioner has formed the opinion should be duly recorded on file.
- (v) The power of provisional attachment must not be exercised in a routine/mechanical manner and careful examination of all the facts of the case is important to determine whether the case(s) is fit for exercising power under Section 83.
- (vi) The collective evidence, based on the proceedings/enquiry conducted in the case, must indicate that the prima-facie a case has been made out against the defaulting taxpayer/person, before going ahead with any provisional attachment. The remedy of attachment being, by its very nature, extraordinary has to be resorted to without utmost circumspection and with maximum care and caution.

(IV) Procedure for Provisional Attachment of Property :

- (i) Upon forming the opinion to attach any property, including bank account, of the defaulting taxpayer/ person, the Pr. Commissioner/ Commissioner should duly record on file the basis on which he has formed such an opinion and pass an order in [FORM GST DRC-22](#), mentioning therein the details of property being attached.
- (ii) A copy of the order of attachment should be sent to the concerned Revenue authority or Transport Authority or Bank or the relevant authority to place encumbrance on the said movable or immovable property. The property, thus attached, shall be removed only on the written instructions from the commissioner.
- (iii) A copy of such attachment order should be provided to the said defaulting taxpayer/person so that objections, if any, can be made by him within the time frame prescribed under Rule 159 of the CGST Rules, 2017 in [FORM GST DRC-22A. \(Rule 159 of CGST Rules, 2017\)](#)
- (iv) If the objection is filed, the Pr. Commissioner/Commissioner should provide a Personal hearing.
- (v) After considering the facts in the written objections, even those not filed within the time prescribed, as well as during a personal hearing, the Pr. Commissioner/Commissioner should form a reasoned view whether the property is still required to be attached or not and pass an order to this effect.
- (vi) In case, the Pr. Commissioner/Commissioner is satisfied that the property is no longer liable for attachment, he may release such property by issuing order in [FORM GST DRC 23](#).
- (vii) Each such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of order of attachment.
- (viii) If the provisionally attached properties are of perishable/ hazardous nature, then such property shall be released to the defaulting taxpayer/person by issuing order in [FORM GST DRC-23](#), after such person pays an amount equivalent to the market price of such property or the amount that is or may become payable by him.
- (ix) In case the defaulting taxpayer/person fails to pay the said amount, then the said property of perishable or hazardous nature may be disposed of and the amount recovered from such disposal of property shall be adjusted against the arrears of tax, interest, penalty, fee or any other amount payable. The sale proceeds thus obtained must be deposited with the Government Treasury or Branch of any nationalized bank in fixed deposit and the receipt thereof must be retained for record, so that same can be adjusted against the amount determined to be recoverable from the said defaulting taxpayer/person.
- (x) As the remedy of attachment being extraordinary, needs to be resorted to with utmost circumspection and with maximum care and caution. It normally should not be invoked in cases of technical nature and should be resorted to mainly in cases where there is an evasion of tax or where wrongful input tax credit is availed or utilized or wrongfully passed on.

(V) Types of cases fit for provisional attachment:

The following are some of the type of cases, where provisional attachment can be considered to be resorted to, subject to specific facts of the case:

- (i) Where taxable person has supplied any goods and/or services without issue of any invoice, with an intention to evade tax or issued any invoice or bill without supply of goods and/or services or availed input tax credit using the invoice or bill without receiving the goods or services.
- (ii) Fraudulently availed input tax credit without any invoice or bill.
- (iii) Collected any amount as tax but failed to pay the same to the Government beyond a period of three months from the date of which such payment becomes due.

- (iv) Fraudulently obtained refund.
- (v) Passed input tax credit fraudulently to the recipients but has not paid the commensurate tax.
- (VI) **Types of property to be attached:**
 - (i) The provisional attachment of property shall be to the extent it is required to protect the interest of revenue, i.e., the value of attached property should be as near as possible to the estimated amount of pending revenue.
 - (ii) More than one property may be attached in case value of one property is not sufficient to cover the estimated amount of pending revenue. Further, different properties of the taxpayer can be attached at different points of time subject to the conditions specified in Section 83 of the CGST Act, 2017.
 - (iii) The provisional attachment can be made only of the property belonging to the defaulting taxpayer/ person, against whom the proceedings are pending.
 - (iv) Movable property should normally be attached only if the immovable property, available for attachment, is not sufficient to protect the interests of revenue.
 - (v) The attachment should not hamper normal business activities of the taxpayer/person. This would mean that raw materials and inputs required for production of finished goods should not normally be attached by the Department.
 - (vi) In cases where the movable property, including bank account, belonging to the defaulting taxpayer/person has been attached, such movable property may be released if he offers, in lieu of movable property, any other immovable property which is sufficient to protect the interest of revenue. It should be free from any subsisting charge, liens, mortgages or encumbrances, property tax fully paid up to date and not involved in any legal dispute. The defaulting taxpayer/person must produce the original title needs and other necessary information relating to the property, for the satisfaction of the concerned officer.
 - (vii) As the provisional attachment of property is resorted to protect the interests of the revenue and may also affect the working capital of the taxable person, it should be ensured that in all such cases, the investigation and adjudication are completed at the earliest, well within the period of attachment, so that the due liability of tax as well as interest, penalty etc. arising upon adjudication can be recovered and the purpose of attachment is achieved.
 - (viii) If the property to be provisionally attached consists of the share or interest of the concerned taxpayer/person in property belonging to him and another as co-owners, the provisional attachment shall be made by order to the concerned person prohibiting him from transferring the share or interest or charging it in any way.
 - (ix) All property exempted from attachment and sale for execution of a Decree of a Civil Court by the Code of Civil Procedure, 1908 (5 of 1908), shall be exempt from provisional attachment.

11. CONTINUATION AND VALIDATION OF CERTAIN RECOVERY PROCEEDINGS

- (I) In terms of Section 84 of the CGST Act, 2017, if any notice of demand in respect of any tax, penalty, interest or any other amount payable (Government dues) is served upon any taxpayer or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such demand, then - **(Section 84 of CGST Act, 2017)**
 - (a) where such Government dues are enhanced in the appeal, revision or other proceedings, the Pr. Commissioner/Commissioner shall serve upon the taxpayer or any other person another notice of demand in respect of the differential amount and any recovery proceedings in relation to such Government dues be continued;
 - (b) where such Government dues are reduced in such appeal, revision or in other proceedings then it shall not be necessary to serve a fresh notice of demand but an intimation of such reduction should be given to the concerned taxpayer/person and to the appropriate authority with whom recovery proceedings is pending and the recovery proceedings initiated on the basis of the demand served may be continued in relation to the amount so reduced,
- (II) The intimation or notice for the reduction or enhancement of any demand under Section 84 shall be issued in **FORM GST DRC- 25**.

12. LIABILITY TO PAY IN CERTAIN CASES

(I) To recover the dues and to initiate the recovery procedure, it is a must to have clarity as to from whom the dues of tax is to be recovered. The GST law has inbuilt provisions which impart clarity in this regard to administer and implement GST laws and to reduce litigation on this count.

(II) **Liability in case of transfer of business before the date of transfer:**

Section 85(1) of the CGST Act, 2017 provides that if a taxpayer transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner then the taxpayer and the person to whom the business is transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxpayer till the time of such transfer, whether or not such dues have been determined before such transfer. **(Section 85(1) of CGST Act, 2017)**

(III) **Exclusive Liability of Transferee of Business from the date of transfer:**

The provisions of Section 85(2) of the CGST Act, 2017 stipulate that if the transferee of a business carries on such business either in his own name or in some other name, he shall be liable to pay tax on the supply of goods and/or services effected by him from the date of such transfer. **(Section 85(2) of CGST Act, 2017)**

(IV) **Liability of agent and principal:**

As per Section 86 of the CGST Act, 2017, if an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall be jointly and severally liable to pay the tax on such goods. **(Section 86 of CGST Act, 2017)**

(V) **Liability in case of amalgamation or merger of companies:**

Section 87(1) of the CGST Act, 2017, provides that when two or more companies are amalgamated or merged in pursuance of an order of Court or Tribunal and effective from an earlier date and any two or more of such companies have supplied or received any goods and/or services to or from each other during the period commencing from the effective date of the order, then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly. **(Section 87(1) of CGST Act, 2017)**

(VI) As per Section 87(2) of the CGST Act, 2017, companies amalgamating or merging are to be treated as distinct companies for the purpose of GST for period upto the date of Order of Court or Tribunal and the registration certificates of these companies shall be cancelled with effect from the date of the said order. **(Section 87(2) of CGST Act, 2017)**

(VII) **Liability in case of company in liquidation:**

(i) Section 88 of the CGST Act, 2017 contains provision for determination of liability in case where the company is under liquidation. When any company is being wound up, whether under the orders of a court or Tribunal or otherwise, the receiver (liquidator) of any assets of a company shall give intimation of his appointment to the Commissioner **within thirty days** after his appointment. The Pr. Commissioner/ Commissioner has to notify the Liquidator of the amount sufficient to provide for any tax, interest or penalty in **FORM GST DRC-24, within 3 months**. **(Section 88 of CGST Act, 2017)**

(ii) The Liability to pay dues of tax, interest or penalty lies on every person who was a Director of Private Company in case of Winding Up of Private Companies, unless he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect or breach of duty on his part in relation to the affairs of the company.

(iii) Provision of Companies Act, 2013 not applicable if it is in conflict with the above provision contained in CGST Act, 2017.

(VIII) **Liability of Directors of Private Company:**

Section 89(1) of the CGST Act, 2017 provides that if any amount of tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of the said amount unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company. This provision shall not to apply in case of conversion from Private Company to public Company but applies for recovery of personal penalty imposed on Director. **(Section 89(1) of CGST Act, 2017)**

(IX) **Liability of partners of firm to pay tax:**

- (i) Section 90 of the CGST Act, 2017 provides for determination of liability of firms or partners in case of partnership firm. The Firm and Partners of Firms are liable to pay any tax, interest or penalty, Jointly and severally. **(Section 90 of CGST Act, 2017)**
- (ii) The liability of Retired Partner shall be only upto the date of his retirement or intimation of date of Retirement to the Commissioner, whether the liability is determined or not, on that date. In case of failure to intimate the date of retirement **within one month**, the liability of Retired Partner will continue.

(X) Liability of guardians, trustees, etc.:

Section 91 of the CGST Act, 2017 provides that if the business is carried on by any guardian, trustee or agent of a minor or other incapacitated person on behalf of a minor or incapacitated person, the tax, interest or penalty payable shall be recoverable from such guardian, trustee or agent to the extent determined and recoverable from any such minor or incapacitated person. **(Section 91 of CGST Act, 2017)**

(XI) Liability of Court of Wards, etc.:

Section 92 of the CGST Act, 2017 provides that if the estate or any portion of the estate of a taxpayer is under the control of the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager appointed by a court, the tax, interest or penalty shall be recoverable from such Court of Wards, Administrator General, Official Trustee, receiver or manager. **(Section 92 of CGST Act, 2017)**

(XII) Section 93 of the CGST Act, 2017 contains special provision regarding liability to pay tax, interest or penalty in certain specific situations. **(Section 93 of CGST Act, 2017)**

(i) Liability to pay when person liable to pay dies –

- (a) If a business carried on by the person is continued after his death by his legal representative or any other person, then the liability to pay tax, interest or penalty will be on such legal representative or other person.
- (b) If the business carried on by the person is discontinued before or after his death then his legal representative shall be liable to pay the tax, interest or penalty due from such person, whether determined before or after his death, from the estate of the deceased to the extent to which the estate is capable of meeting the charge.
- (ii) If the taxpayer liable to pay dues of tax, interest or penalty is Hindu Undivided Family (HUF) or an Association of Persons and the property of the HUF or the association of persons is partitioned amongst the various members or groups of members, then each member or group of members shall, jointly and severally, be liable to pay such dues up to the time of the partition, whether such dues were determined before partition or after the partition. (Section 93(2) of the CGST Act, 2017) **(Section 93(2) of CGST Act, 2017)**
- (iii) If the taxpayer liable to pay dues of tax, interest or penalty is a firm and the firm is dissolved then the partners of the firm shall, jointly and severally, be liable to pay such dues from the firm up to the time of dissolution, whether determined before the dissolution or after dissolution. (Section 93(3) of the CGST Act, 2017). **(Section 93(3) of CGST Act, 2017)**
- (iv) If the taxpayer liable to pay dues of tax, interest or penalty is a guardian of a ward or trustee, on whose behalf the business is carried on by the guardian or is a trustee who carries on the business under a trust for a beneficiary, and if the guardianship or trust is terminated, then the ward or the beneficiary shall be liable to pay such dues from the taxpayer upto the time of the termination of the guardianship or trust, whether such dues are determined before the termination of guardianship or trust or thereafter. (Ref: Section 93(4) of the CGST Act, 2017). **(Section 93(4) of CGST Act, 2017)**

(XIII) Liability in other cases:

- (i) Section 94 of the CGST Act, 2017 provides that if the taxpayer liable to pay is a firm or an association of persons or a HUF and the business is discontinued then the tax, interest or penalty payable by such firm, association or family up to the date of such discontinuance may be determined as if no such discontinuance had taken place and every person who was a partner of such firm, or a member of such association or family, shall, jointly and severally, be liable for the payment of the said dues, whether such dues are determined prior to or after such discontinuance. **(Section 94 of CGST Act, 2017)**
- (ii) When there is change in constitution of a firm or an association of persons, the partners of the firm or member of association shall, jointly and severally, be liable to pay tax, interest or penalty due from such firm or association for any period before its reconstitution. (Section 94(2) of the CGST Act, 2017). **(Section 94(2) of CGST Act, 2017)**

11 APPEALS & REVISION

1. INTRODUCTION

- 1.1 Any person aggrieved by any decision or order passed by an adjudicating authority may appeal to Appellate Authority. An appeal is a request made to a higher judicial or quasi-judicial authority to review, uphold or and potentially overturn a decision made by a lower judicial or quasi-judicial authority. Tax law recognizes that on any given set of facts and laws, there can be different opinions or viewpoints/ interpretations hence, it is likely that the taxpayer may not agree with the "adjudication order" so passed by the tax officer. It is equally possible that the Department may itself not be in agreement with the adjudication order in some cases. It is for this reason that the statute provides further higher forums of appeal, to both sides. "Revisional Authority" means an authority appointed or authorised for revision of decision or orders as defined under Section 2(99) read with Section 108 of the CGST Act, 2017.
- 1.2 The relevant provisions for appeal and revision are contained in Chapter XVIII of the CGST Act, 2017, summary of which are as under –

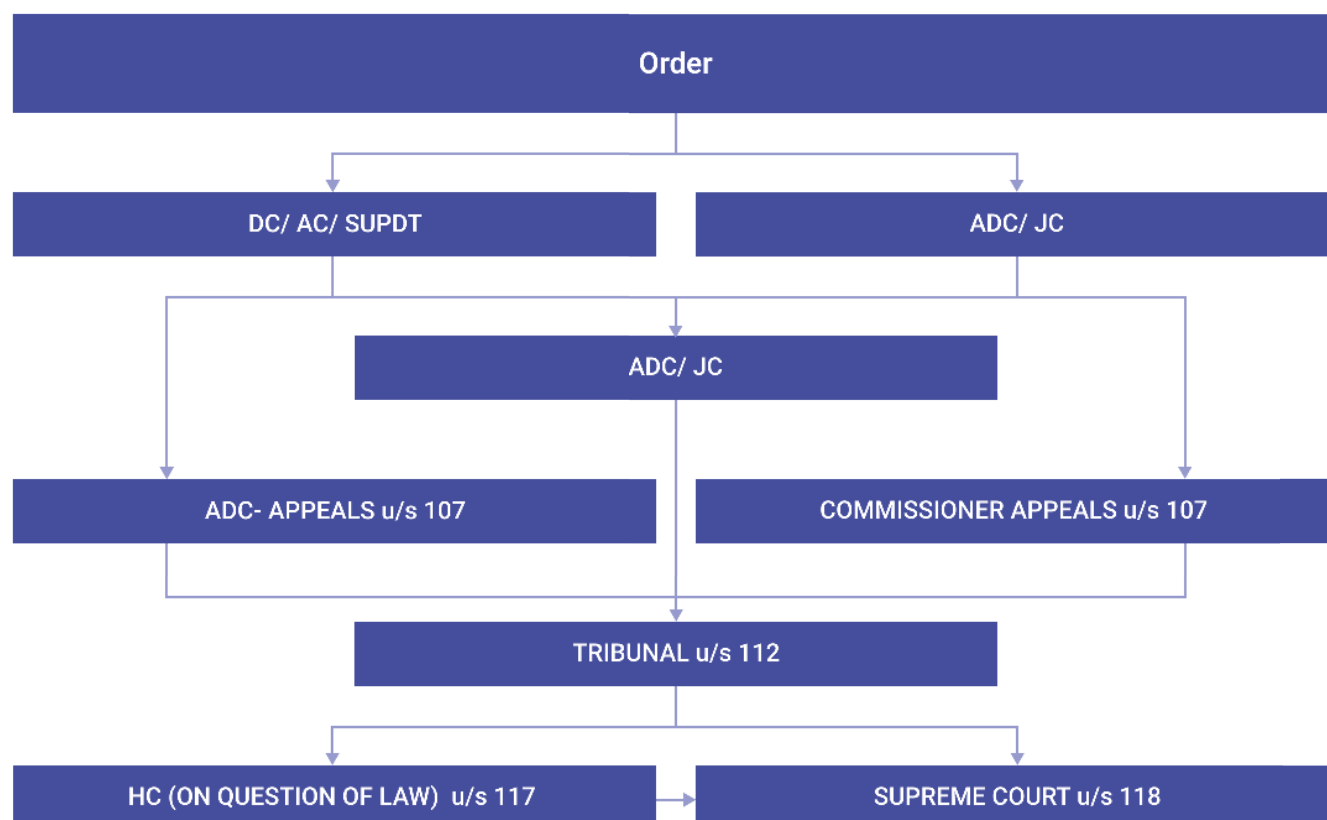
Sr. No.	Section/Rules	Provisions pertaining to
1	Section 2(8)	Definition of Appellate Authority
2	Section 2(99)	Definition of Revisional Authority
3	Section 107	Appeals / Application to Appellate Authority
4	Section 108	Powers of Revisional Authority
5	Section 109	Constitution of Appellate Tribunal and Benches thereof
6	Section 110	President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc.
7	Section 111	Procedure before Appellate Tribunal
8	Section 112	Appeals to Appellate Tribunal
9	Section 113	Orders of Appellate Tribunal
10	Section 115	Interest on refund of amount paid for admission of appeal
11	Section 116	Appearance by authorised representative
12	Section 117	Appeal to High Court
13	Section 118	Appeal to Supreme Court
14	Section 119	Sums due to be paid notwithstanding appeal, etc.
15	Section 120	Appeal not to be filed in certain cases
16	Section 121	Non-appealable decisions and orders
17	Rule 108	Appeal to the Appellate Authority
18	Rule 109	Application to the Appellate Authority
19	Rule 109A	Appointment of Appellate Authority
20	Rule 109B	Notice to person and order of revisional authority in case of revision
21	Rule 109C	Withdrawal of Appeal
22	Rule 110	Appeal to Appellate Tribunal
23	Rule 111	Application to Appellate Tribunal
24	Rule 112	Production of additional evidence before the Appellate Authority or the Appellate Tribunal
25	Rule 113	Order of Appellate Authority or Appellate Tribunal

26	Rule 114	Appeal to High Court
27	Rule 115	Demand confirmed by the Court
28	Rule 116	Disqualification for misconduct of an authorised representative
29	Rule 26	Method of authentication

- 1.3 Any person aggrieved by any decision or order passed under this Act by an adjudicating authority may appeal before the higher judicial/ quasi-judicial authority as prescribed. Under the Act, both the taxpayer and the department have been conferred with a right of remedies against the order passed by the adjudicating authority.
- 1.4 Appeals do not always originate from adjudication orders, but in taxation laws, people are often allowed to appeal, in court, against a communication of the decision made by executive bodies, which can be either the Commissioner(s)/ Commissionerate(s) or any other jurisdictional body. Appeals can be either discretionary or of right. A right of appeal of right is the one that the higher judicial or quasi-judicial authority must hear, if the losing party demands it, while a discretionary appeal is the one that the higher court may, but does not have to, consider.
- 1.5 Appeal is the right to get remedy guaranteed by law to each and every individual by our constitution and declining the same will render the whole process ultra vires to the constitutional provisions. In this way the losing party is able to have the decision reviewed by another independent authority or judge or judges. The judicial or quasi-judicial authority determining an appeal will correct errors by the primary quasi-judicial/judicial authority and the right of appeal ensures that, as far as possible, appellate authorities arrive at correct decisions. The decisions of appellate courts are fully reasoned and widely available.
- 1.6 A person who is aggrieved by a decision or order passed against him by an adjudicating authority, can file an appeal to the Appellate Authority within 3 months from the date of communication of the impugned order along with minimum 10% of disputed amount as pre-deposit.
- 1.7 The aggrieved person pursuing an appeal is called an appellant, while the person defending the ruling is called the respondent.
- 1.8 Deciding appeal under this Act is a quasi-judicial function of the authority. Hence, the Appellate Authority has to follow the principles of natural justice – such as hearing the appellant, allowing reasonable adjournments (**not more than 3**), permitting additional grounds (if found reasonable), etc. On conclusion of the appeal process, the Appellate Authority will pass his speaking order (Order-in-Appeal) which may confirm, modify or annul the decision or order appealed against. The Order-in-appeal has to be a “speaking order” i.e. it should state the points for determination, the decision thereon and the reasons for the decision.
- 1.9 Appellate Stages: The Appellate remedy available for order passed by different adjudicating authorities is as follow: -

Sr No	Order passed by	Appellate Authority
1	All officers upto AC/DC	Joint/ Additional Commissioner (Appeals) (u/s 107)
2	JC/ADC	Commissioner (Appeals) (u/s 107)
3	All officers upto & including JC/ADC	Revisional Authority (u/s 108)
4	ADC (Appeals) & Commissioner (Appeals)	Tribunal (to be formed) (u/s 112)
5	Tribunal	High Court on question of law (u/s 117)
		Supreme Court (u/s 118)
6	High Court	Supreme Court (u/s 118)

FLOW CHART



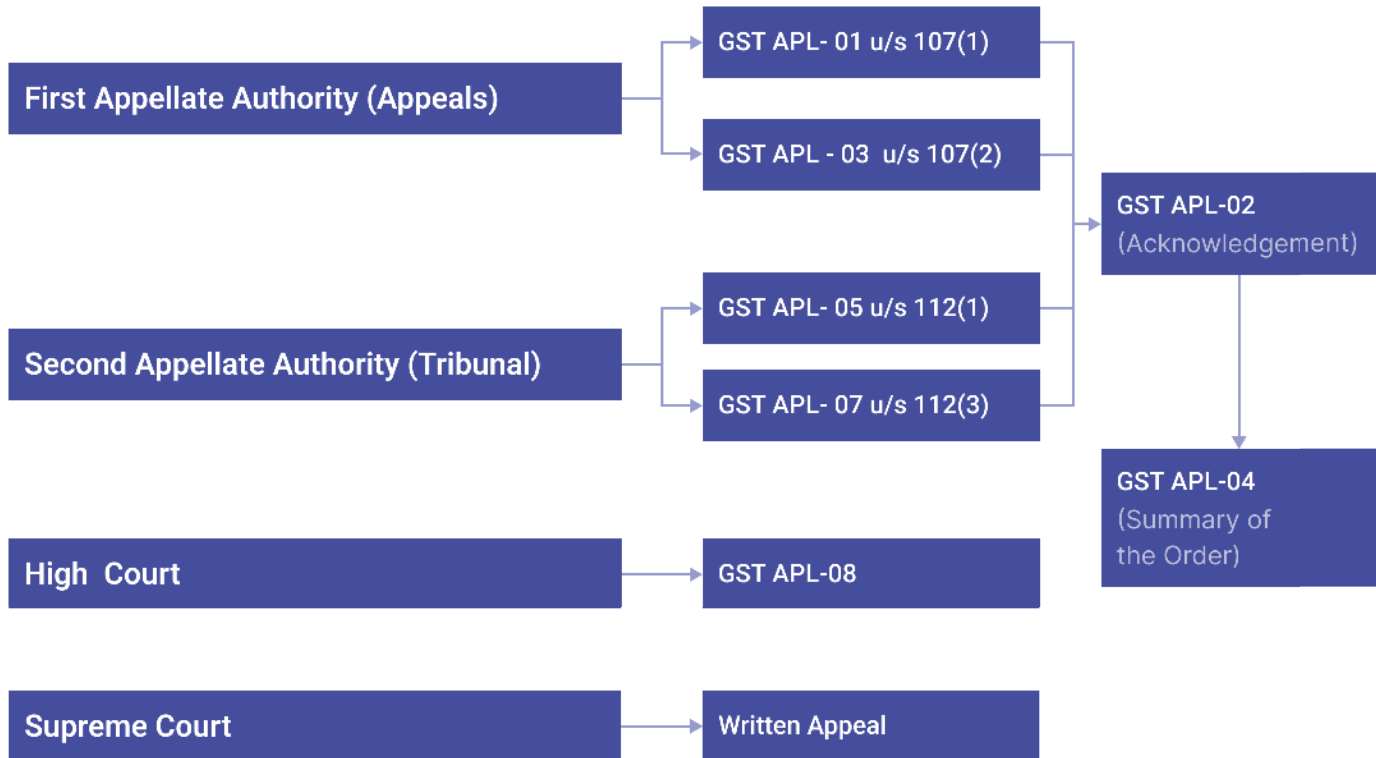
* Amount of mandatory pre-deposit for filing appeal before Commissioner (Appeals) or ADC/ JC (Appeals) is equal to the admitted liabilities [S. 107 (6) (a)] and 10% of remaining amount of tax in dispute arising out of the impugned order subject to maximum of Rs. 25 Crores or/and 25% of penalty amount for the cases covered under Section 129(3) [S. 107 (6) (b)] and appeal by taxpayer should be filed within 3 months [s. 107 (1)] and by department within 6 months [S. 107 (2)].

** Amount involved should not be less than Rs. 50,000/- at the discretion of the Appellate Tribunal [S. 112 (2)]. Amount of mandatory pre-deposit for filing appeal before Tribunal is equal to the admitted liabilities and 20% of remaining amount of tax in dispute arising out of the appellate order (over and above an amount of 10% already paid under S/ 107 (6)(b)), subject to maximum of Rs. 50 Crores [S. 112 (8) (b)] and appeal by taxpayer should be filed within 3 months [S. 112 (1)] and by department within 6 months [S. 112 (3)] from the date of communication of the Order-in-Appeal.

*** As per Section 117 of CGST Act, 2017 an appeal shall lie to the High Court of any order passed by the Principal Bench/State Bench of Appellate Tribunal in cases wherein the Hon'ble High Court is satisfied that the case involves a substantial question of law.

**** As per Section 118 of CGST Act, 2017 an appeal shall lie to the Supreme Court of any order passed by the Principal Bench or State Benches of Appellate Tribunal or from judgement or order passed by the High Court in an appeal made under Section 117 of the Act.

Procedure Flow Chart



2. APPEAL AGAINST ADJUDICATION ORDER

- 2.1 GST law imposes certain obligation on the Taxpayer. The obligations are broadly of two types, viz., tax-related and procedure-related. The taxpayer's compliance with these obligations is verified by the tax officer by various methods like scrutiny, audit, anti-evasion, etc. In this process sometimes situations of actual or perceived non-compliance arise. If the difference in views persists, it results into a dispute, which is then required to be resolved. The Act itself provides that the proper officer shall pass suitable adjudication order.
- 2.3 However, it is likely that the taxpayer may not agree with the "adjudication order" so passed by the tax officer. It is equally possible that the Department may itself not be in agreement with the adjudication order in some cases. It is for this reason that the statute provides further higher forums of appeal, to both sides.
- 2.4 The right to appeal is a statutory right. The time limits prescribed by the statute for filing of appeals and the requirement of pre-deposit of a certain sum, before the appeal can be heard by the competent authority, are examples of check mechanism /deterrent to prevent mis-use on the statutory right.
- 2.5 The Section 6(1) of the Act makes provisions for cross empowerment between CGST and SGST/ UTGST officers so as to ensure that if a proper officer of one Act (say CGST) passes an order with respect to a transaction, he will also act as the proper officer of SGST for the same transaction and issue the order with respect to the CGST as well as the SGST/UTGST component of the same transaction. However, Section 6(2) of the Act also provides that where a proper officer under one Act (say CGST Act) has passed an order, any appeal/review/revision/ rectification against the said order will lie only with the proper officers of that Act only (CGST Act, 2017). So also if any order is passed by the proper officer of SGST/UTGST, as the case may be, any appeal/review/revision/ rectification will lie with the proper officer of SGST/UTGST, as the case may be only.

3. APPELLATE MECHANISM

- 3.1 The Taxpayer or the Department if aggrieved by a decision or order passed by an adjudicating authority, can file an appeal to the Appellate Authority. It is important to note that only the aggrieved party can file the appeal and also, the appeal must be against a decision or order passed under this Act. The First Appellate Authority: -
 - (i) The first appellate authority would be Joint/ Additional Commissioner (Appeals) where the adjudicating authority is Deputy or Assistant Commissioner or Superintendent. or
 - (ii) The first appellate authority would be Commissioner (Appeals) where the adjudicating authority is Additional or Joint Commissioner.

- 3.2 It is to be noted that as per provisions contained in Section 121 of the CGST Act, 2017, no appeals, whatsoever, can be filed against the following orders:
- (a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or
 - (b) an order pertaining to the seizure or retention of books of account, register etc.; or
 - (c) an order sanctioning prosecution under the Act; or
 - (d) an order passed under section 80 (payment of tax in instalments).

4. APPEAL BY THE TAXPAYER

- 4.1 The taxpayer can file the appeal in [FORM GST APL-01](#) along with the relevant documents **within 3 months** from the date of communication of the order of adjudicating authority [S.107 (1)], which can be further extended by, **one month**, on sufficient cause being shown [S.107 (4)]. On filing of the appeal a provisional acknowledgement shall be issued to the appellant. **(Section 107(1) & (4) of CGST Act 2017)**
- 4.2 The Ground of Appeal and the form of verification contained in [FORM GST APL-01](#) shall be submitted electronically with digital signature certificate or through e-signature.
- 4.3 Certified copy of the decision or order shall be submitted **within seven days** of filing the appeal. The final acknowledgement indicating the appeal number shall be issued in [FORM GST APL-02](#) by the Appellate Authority or the officer authorised by him.
- 4.4 The date of filing of the appeal shall be the date of issue of provisional acknowledgement where the certified copy of the decision/order is submitted **within seven days** and where the said copy is submitted **after seven days**, the date of filing of the appeal shall be the date of submission of such copy.
- 4.5 Besides the procedural part of appeal, the appellant (taxpayer) is required to pay entire amount of tax admitted with interest, fine and penalty [S.107 (6)(a)] and 10% of the remaining tax amount, subject to a maximum of Rs. 25 crores [S.107 (6)(b)], with exception of appeals under Section 129, where the amount required to be paid is 25%. These payments are known as pre-deposit. **(Section 107(6)(a)(b) and 129 of CGST Act 2017)**
- 4.6 The recovery proceedings against the balance amount stands stayed, after making the pre-deposit while filing of appeal [S.107 (7)]. **(Section 107(7) of CGST Act, 2017)**
- 4.7 The principles of natural justice are of essential nature in all judicial proceedings and appeals are no different. Hence, it is incumbent upon the appellate authority to grant personal hearing to the taxpayer, irrespective of whether he is appellant or respondent [S.107 (8)], and it can be extended on sufficient grounds [S.107 (8)], subject to a maximum of **3 adjournments** [S.107 (9)]. **(Section 107(8), (8)(a) & (9) of CGST Act 2017)**
- 4.8 If the grounds of appeal contain any omission, which was neither wilful nor unreasonable, such omissions can be allowed to be added during but before completion of this process [S.107 (10)]. **(Section 107(10) of CGST Act 2017)**
- 4.9 The appellate authority, wherever it is possible to do so, shall pass detailed and reasoned order in writing against the appeal [S.107 (12)], **within one year** of the appeal being filed [S.107 (13)], except for the instances where issuance of order is stayed by an order of a court or Tribunal, and the period of such stay shall be excluded in computing the period of **one year**.

5. HANDLING OF FIRST STAGE APPEAL MADE BY THE TAXPAYER

- 5.1 All decisions to file an appeal or to accept an order by the adjudicating authorities are taken at Headquarters of the Commissionerate, therefore, it is imperative upon the officers working in Appeal/ Review/ Legal Sections in the Headquarters to understand the need of urgency in appeal matter and act swiftly.
- 5.2 It is desirable that the Inspectors/ Superintendents, working in Appeal/ Review/ Legal sections, maintain register/s, which should contain the details available in the order, such as Name & address of the taxpayer, Designation of adjudicating authority, SCN number & date, OIO number & date, amount involved, date of receipt of order in HO, issue in brief & last date for filing of appeal. These details can be filled up immediately on receipt

of the order in original.

- 5.3 Division office, Range Office and all concerned sections in the Commissionerate should send copies (either in physical or digital form) of SCN, taxpayers submissions, etc., as a matter of rule, so that no delay is caused in assimilating these vital documents.
- 5.4 The file shall be processed at the earliest by the officers, and put up to the next level, so as to make it available to the 'Proper Officer', at the earliest, for considering the merits of the case. Proposals/ suggestions, with regard to the next course of action should be logical, legal and keeping in mind the judicial pronouncements.
- 5.5 As soon as a decision is made about future course of action, an entry should be made in the 'register', as to whether the order has been accepted or is proposed to be appealed against. If it is decided to appeal against the order, the concerned section should be asked to immediately digitalize all the 'original' documents – specially the relied upon documents' so that, the same could be presented before the forum, where it is being put up, in case need so arises. History of several failed appeals in past, has the ingredient of non-availability of original documents. A note should also be kept on the file, regarding the location of such digital records, so that, it can be easily traced when needed, and without any delay.
- 5.6 The officers in the section, should monitor, the process of filing appeal and as soon as the appeal is filed, make an entry in 'the register', showing the forum at which appeal is filed and date of filing of appeal.
- 5.7 Information from the taxpayer about having challenged an order, is accompanied by a copy of appeal. Immediately on receipt of a copy of the appeal, the officer concerned is required to conduct a primary check of date of filing of appeal & date of receipt of the order appealed against. If the appeal is time barred, it should be checked if any application has been filed by the taxpayer for condonation of delay. If not, then the appellate authority should be informed immediately about the delay, which will render the appeal liable for rejection.
- 5.8 The officer concerned should also go through the contents of the appeals, especially the section containing 'facts of the case' and if there is any misrepresentation of the facts, it should be categorically brought to the notice of the appellate authority.
- 5.9 At times, it is seen that some of the decisions of Tribunal, High Courts & Supreme Court are reversed at later stage. Therefore, case laws relied by the taxpayer in their appeal should be checked out to examine, understand and come to a conclusion as to whether those are still effective or have been ruled out by the Courts. Many a times, the courts have conflicting views of same matter. The taxpayer and their legal luminaries will rely only on such pronouncements which are in their favour. It is for the departmental officers to point out pronouncements which are in favour of department, so that, such orders can also be brought to the notice of the appellate authority, which will help in fair analysis of the situation and correct legal pronouncements.
- 5.10 If the decision in first stage appeal is against the department, similar exercise, which was carried out at the time of processing of file for first stage appeal, needs to be carried out with due approval of the competent authority.

6. APPEAL BY THE DEPARTMENT

- 6.1 The department has a **period of 6 months** from the date of communication of the decision or order of the adjudicating authority to file an appeal [S.107 (2)], which can be further extended by, **one month**, on sufficient cause being shown [S.107 (4)]. **(Section 107(2) & (4) of CGST Act 2017)**
- 6.2 The Commissioner, either suo-moto or under reference from equivalent officer of either State or Union Territory, call for the records of the case and examines the legality or propriety of the said decision or order. He may, by order, specifically determine the points arising out of the decision and direct any officer subordinate to him to apply to the Appellate Authority, by the officer so authorized by him. [S. 107 (3)]. **(Section 107(3) of CGST Act 2017)**
- 6.3 The Application is required to be filed in [FORM GST APL-03](#), along with the relevant documents.
- 6.4 If the decision or order appealed against is uploaded on the common portal then a final acknowledgement indicating appeal number shall be issued in [FORM GST APL-02](#) by the Appellate Authority or an officer authorised by him and the date of issue of the provisional acknowledgement shall be considered as the date of filing of appeal/application.
- 6.5 If the decision or order appealed against is not uploaded on the common portal, the appellant (Department) shall submit a self-certified copy of the said decision or order **within a period of seven days** from the date of filing of

the application and a final acknowledgement, indicating appeal number, shall be issued in [FORM GST APL-02](#) by the Appellate Authority or an officer authorised by him and the date of issue of the provisional acknowledgement shall be considered as the date of filing of appeal. In case the self-certified copy of the decision or order is not submitted [within a period of seven days](#) then the date of submission of such copy shall be considered as the date of filing of appeal.

7. [WITHDRAWAL OF APPEAL](#)

- 7.1 In terms of Rule 109C of CGST Rules, 2017, the appellant (either supplier or the Department) may, at any time before issuance of show cause notice under sub-section (11) of Section 107 or before issuance of the order under the said sub-section, whichever is earlier, file an application for withdrawal of the said appeal by filing an application in [FORM GST APL-01/03W](#), as the case may be. **(Section 107(11) of CGST Act, 2017 and Rule 109C of CGST Rules, 2017)**
- 7.2 If the final acknowledgement in [FORM GST APL-02](#) has been issued, the withdrawal of the said appeal would be subject to the approval of the appellate authority. The application made for withdrawal of the appeal shall be decided by the appellate authority **within seven days** of filing of such application.
- 7.3 Any fresh appeal filed by the appellant pursuant to such withdrawal shall be filed **within three months or six months**, as the case may be, specified in sub-section (1) or sub-section (2) of section 107. **(Section 107(1)&(2) of CGST Act 2017)**

8. [ORDER OF APPELLATE AUTHORITY](#)

- 8.1 The Appellate Authority shall pass the order, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back (remand back) to the adjudicating authority that passed the said decision or order under section 107(11) of the Act.
- 8.2 An order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order under first proviso under section 107(11) of the Act. **(Section 107(11) of CGST Act 2017)**
- 8.3 Where the Appellate Authority is of the view that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, the order requiring the appellant to pay such tax or input tax credit shall be passed only after the appellant is given notice to show cause against the proposed order and the order is passed **within the time limit specified under section 73 or section 74** under second proviso to section 107(11) of the Act. **(Section 73 & 74 of CGST Act, 2017)**
- 8.4 The order of the Appellate Authority disposing of the appeal shall be a speaking order in writing and should provide a detailed reasoning for the points for determination and the decision thereon. [S. 107(12)]
- 8.5 The Appellate Authority shall, where it is possible to do so, hear and decide every appeal **within a period of one year** from the date on which it is filed. If the issuance of order is stayed by an order of a court or Tribunal then the period of such stay shall be excluded in computing the period of **one year**.
- 8.6 The Appellate Authority shall communicate the order passed to the appellant, respondent and to the adjudicating authority. A copy of the order shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.
- 8.7 Every order passed under section 107(11) shall, subject to the provisions of section 108 or section 113 or section 117 or section 118 be final and binding on the parties. **(Section 107(11) of CGST Act , 2017)**
- 8.8 The Appellate Authority shall, along with its order under section 107(11) of the Act, issue a summary of the order in [FORM GST APL-04](#), indicating the final amount of demand confirmed. [Rule 113(1)]

9. [REVISION BY REVISIONAL AUTHORITY](#)

- 9.1 'Revisional Authority' has been defined under Section 2 (99) of the CGST Act, 2017, as an authority appointed or authorized for revision of decision or orders as referred in Section 108. The underlying principle for approaching the Revisional Authority, is that, subject to provisions of Section 121 of the Act and any rules made thereunder, the order under consideration should be 'prejudicial' to the interest of revenue [S. 108 (1)] and is illegal or improper

or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, stay the operation of such decision or order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order. This underlying principle makes it clear that no tax-payer would be approaching this authority, as it is designated to cover only such cases, which are against the interest of revenue. **(Section 2(99), 108 & 108(1) of CGST Act, 2017)**

9.2 The CGST Act, 2017, provides for Revisional Authority (RA), to take cognizance of any order passed by an officer sub-ordinate to him is erroneous suo-moto or under reference from Commissioner(s), subject to the provisions of Section 121 of the Act, stay the operation of such decision or order for such period, as he deems fit and after giving the person concerned an opportunity of being heard and after making further inquiry, if necessary, pass order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order [S. 108 (1)], as prescribed in [FORM GST RVN-01](#), after giving him a reasonable opportunity of being heard. **(Section 121 & 108(1) of CGST Act, 2017)**

9.3 However, RA shall not exercise these powers in cases where:-

- an appeal has already been filed against the order [S. 108 (2)(a)] or **(Section 108(2)(a), (b), (c) & (d) of CGST Act, 2017)**
- period of appeal has not expired or **more than 3 years** have lapsed since the issue of the order [S. 108 (2)(b)], or
- the order has previously been taken for revisions [S. 108 (2)(c)], or
- an order has already been passed under Section 108(1) [S. 108 (2)(d)].

An exception has been provided to these instances under proviso to Section 108 (2) (d) whereby the RA may pass an order on any point which has not been raised and decided in an appeal before the expiry of a **period of one year** from the date of the order in such appeal or before the expiry of a **period of three years** referred to in clause (b) of that sub-section, whichever is later.

9.4 Every order passed in revision under sub-section (1) of Section 108 of the Act shall, subject to the provisions of Section 113 or Section 117 or Section 118, be final and binding on the parties. There are some exceptions related to limitations as per sub-sections (4) & (5) to Section 108 where such order is stayed by the court or Appellate Tribunal. **(Section 113, 117, 118 & 108(4) (5) of CGST Act 2017)**

9.5 It is relevant to note that RA is totally different and distinct from the appellate authorities and has its task, jurisdiction and nature of work clearly cut out. In almost all cases, it is the revenue which would be approaching the Revisional Authority in cases of orders passed by officers subordinate to him is prejudicial in interest of revenue. An application has to be made before any appeal is filed against the order, against which the Revisional Authority is being approached. Once an appeal is filed, the proceedings become void.

9.6 Let's consider a hypothetical situation, where the adjudicating authority, i.e., Superintendent or DC/ AC or ADC/ JC, passes an order-in-original, thereby setting aside the demand notice. In other words, if the case is decided in favour of a taxpayer it is natural that the taxpayer will not go in appeal. Legal parameters at the material time are such that the order appears to be correct even legally to the department, hence, it results in acceptance of the order-in-original. Say, after **lapse of a year**, there is a judicial pronouncement, which changes the legal principle and interpretation, relying on which benefit was extended to the taxpayer and demand was set-aside. In such instances, the Commissioner, can stay such order and revisit the entire issue, either on his own, or on any reference being made to him, in his capacity as being Revisional Authority, follow principles of natural justice, and then pass an order as per the legal provisions. The essence of having Revisional Authority, is that it can protect the department from potential revenue loss, **upto 3 years** from the date of issuance of orders by the adjudicating authority, whereas time limit to appeal before any of the appellate body is **180 days/ 90 days**.

9.7 [Notification No. 05/2020- Central Tax, dated 13th January, 2020](#), authorizes following officers as Revisional Authorities:

- (a) Principal Commissioner or Commissioner of Central Tax for decisions or orders passed by the Additional or Joint Commissioner of Central Tax; and
- (b) Additional or Joint Commissioner of Central Tax for decisions or orders passed by the Deputy Commissioner or Assistant Commissioner or Superintendent of Central Tax.

10. APPEALS TO APPELLATE TRIBUNAL - GSTAT (GOODS & SERVICES TAX APPELLATE TRIBUNAL)

- 10.1 The Appellate Tribunal is the second level of appeal, where appeal can be filed against the Order-in-Appeal passed by the first Appellate Authority or order in revision passed by Revisional Authority, by any person aggrieved by such an order-in-appeal/order in revision. If the taxpayer or department is aggrieved with order-in-appeal passed by the Appellate Authority, the aggrieved parties have a right to approach the Hon'ble Tribunal. Section 112 of the CGST Act, 2017 provides that any person aggrieved by an order passed against him under Section 107 or Section 108 of this Act may appeal to the Appellate Tribunal against such order **within three months.** **(Section 107, 108 & 112 of CGST Act, 2017)**
- 10.2 Sections 109, 110 & 111 of the CGST Act, 2017, lay down the constitution, composition, jurisdiction, qualification of the members of Tribunal, etc. **(Section 109, 110 & 111 of CGST Act, 2017)**
- 10.3 Appeal against order of Appellate Authority or Revisional Authority lies before Appellate Tribunal. Appellate Tribunal is a quasi-judicial authority.
- 10.4 The jurisdiction, powers and authority conferred on the Appellate Tribunal shall be exercised by the Principal Bench and the State Benches constituted under section 109(3) of CGST Act, 2017 and section 109(4) of CGST Act, 2017. **(Section 109(3) & (4) of CGST Act, 2017)**
- 10.5 The cases in which any one of the issues involved relates to the place of supply, shall be heard only by the Principal Bench (Section 109(5) of CGST Act, 2017). **(Section 109(5) of CGST Act, 2017)**
- 10.6 The matter will be heard by division bench when issue involved exceeds Rs. 50 lakhs or where question of law is involved (in such cases, the amount can be less than Rs. 50 lakhs).
- 10.7 Appeals, where the tax or input tax credit involved or the amount of fine, fee or pen-alty determined in any order appealed against, does not exceed fifty lakh rupees and which does not involve any question of law may be heard by a single Member, and in all other cases, shall be heard together by one Judicial Member and one Technical Member (Section 109(8) of CGST Act, 2017). **(Section 109(8) of CGST Act, 2017)**
- 10.8 If, after hearing the case, the Members differ in their opinion on any point or points, such Member shall state the point or points on which they differ, and the President shall refer such case for hearing –
- (a) where the appeal was originally heard by Members of a State Bench, to another Member of a State Bench within the State or, where no such other State Bench is available within the State, to a Member of a State Bench in another State
- (b) where the appeal was originally heard by Members of the Principal Bench, to another Member from the Principal Bench or, where no such other Member is available, to a Member of any State Bench.
- Such point or points shall be decided according to the majority opinion including the opinion of the Members who first heard the case. (Section 109(11) of CGST Act, 2017). **(Section 109(11) of CGST Act, 2017)**
- 10.9 Appellate Tribunal is not bound by Code of Civil Procedure but will be guided by principles of natural justice. Appellate Tribunal has same powers as civil court in specified matters - Section 111 (1) of CGST Act, 2017. **(Section 111 (1) & (2) of CGST Act, 2017)**
- 10.10 All proceedings before Appellate Tribunal are judicial proceedings.
- 10.11 The Tribunal has the powers to remand back the case to the Appellate Authority or the Adjudicating Authority, as the case may be.
- 10.12 GSTAT (Goods & Service Tax Appellate Tribunal) has been formed vide [Notification S.O. 4073\(E\) dated 14.09.2023](#), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), issued under F. No. A-50050/150/2018-CESTAT-DoR, and will have total 31 Benches, across the country.
- 10.13 The list of GSTAT Benches and state-wise locations are detailed below:-

S No	State Name	No. of Benches	Location
1	2	3	4
1	Andhra Pradesh	1	Vishakhapatnam and Vijayawada
2	Bihar	1	Patna
3	Chhattisgarh	1	Raipur and Bilaspur
4	Delhi	1	Delhi
5	Gujarat	2	Ahmedabad, Surat and Rajkot
6	Dadra & Nagar Haveli & Daman & Diu		
7	Haryana	1	Gurugram & Hissar
8	Himachal Pradesh	1	Shimla
9	Jammu and Kashmir	1	Jammu & Srinagar
10	Ladakh		
11	Jharkhand	1	Ranchi
12	Karnataka	2	Bengaluru
13	Kerala	1	Ernakulum and Trivandrum
14	Lakshadweep		
15	Madhya Pradesh	1	Bhopal
16	Goa	3	Mumbai, Pune, Thane, Nagpur, Aurangabad and Panaji
17	Maharashtra		
18	Odisha	1	Cuttack
19	Punjab	1	Chandigarh and Jalandhar
20	Chandigarh		
21	Rajasthan	2	Jaipur and Jodhpur
22	Tamil Nadu	2	Chennai, Madurai, Coimbatore and Puducherry
23	Puducherry		
24	Telangana	1	Hyderabad
25	Uttar Pradesh	3	Lucknow, Varanasi, Ghaziabad, Agra and Prayagraj
26	Uttarakhand	1	Dehradun
27	Andaman & Nicobar Islands	2	Kolkata
28	Sikkim		
29	West Bengal		
30	Arunachal Pradesh	1	Guwahati, Aizawl (Circuit), Agartala (Circuit), Kohima (Circuit)
31	Assam		
32	Manipur		
33	Meghalaya		
34	Mizoram		
35	Nagaland		
36	Tripura		

Explanation- Locations shown as 'Circuit' shall be operational in such manner as the President may order, depending upon the number of appeals filed by suppliers in the respective States.

11. APPEALS FILED BY THE Taxpayer BEFORE TRIBUNAL

- 11.1 The taxpayer can file appeal before the tribunal against order of Appellate Authority (who may be ADC (Appeals) or Commissioner (Appeals); depending on the Order-in-original) or Revisional Authority. (Section 112(1) of CGST Act, 2017) (**Section 112 (1) of CGST Act 2017**)
- 11.2 The period to file an appeal before the Tribunal is **within three months** from the date on which the order sought to be appealed against is communicated to the taxpayer preferring the appeal.

11.3 Since the Tribunal was not constituted at the time of enactment of the Act, for all such orders passed by the Appellate Authority or Revisional Authority, which fall in the category of being appealed against at Appellate Tribunal level, the limitation time of **three months** will commence from the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under Section 109, enters office.

[Refer CGST (Ninth Removal of Difficulties) Order, 2019 issued under [Order No. 9/2019-C.T., dated 3.12.2019](#) [S.112 (1)]. (**Section 112 (1) & (2) of CGST Act 2017**)

11.4 The Tribunal has the discretion to refuse to admit any appeal where the amount involved is less than fifty thousand rupees. [S.112 (2)]

11.5 Besides the procedural part of appeal, the appellant (read taxpayer), is required to pay entire amount of tax admitted with interest, fine and penalty [S.112 (8)(a)], and 20% of the remaining tax amount, in addition to the amount paid under sub-section (6) of Section 107, (subject to maximum of Rs. 50 Crores) which is being subject to dispute [S.112 (8)(b)], by way of such appeal. These payments are known as pre-deposit. (**Section 112 (8)(a) & (b) & 107(6) of CGST Act 2017**)

11.6 The recovery proceedings against the balance amount stands stayed, after making the pre-deposit and filing of appeal. [S.112 (9)] (**Section 112(9) of CGST Act, 2017**)

11.7 An appeal to the Appellate Tribunal under sub-section (1) of Section 112 read with Rule 110(1) of the CGST Rules, 2017 shall be filed along with the relevant documents either electronically or otherwise, as may be notified by the Registrar, in [FORM GST APL-05](#), on the common portal and a provisional acknowledgement shall be issued to the appellant immediately.

11.8 A memorandum of cross-objections to the Appellate Tribunal shall be filed either electronically or otherwise, as may be notified by the Registrar, in [FORM GST APL-06](#).

11.9 Appellate Tribunal can condone delay in filing of appeal by the taxable person or applicant or departmental officer upto **three months** and cross objection **upto 45 days**, if it is satisfied that there was sufficient cause for not presenting it within specified period. (Section 112(6) of CGST Act, 2017) (**Section 112(6) of CGST Act 2017**)

11.10 A certified copy of the decision or order appealed against along with fees shall be submitted to the Registrar **within seven days** of the filing of the appeal and a final acknowledgement, indicating the appeal number shall be issued thereafter in [FORM GST APL-02](#) by the Registrar. If the certified copy of the decision or order is submitted **within seven days** from the date of filing the [FORM GST APL-05](#), the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted **after seven days**, the date of filing of the appeal shall be the date of the submission of such copy.

11.11 The appeal shall be treated as filed only when the final acknowledgement indicating the appeal number is issued.

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

11.13 In case an amount paid by the appellant under Section 107(6) or Section 112(8) is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, interest at the rate specified under Section 56 shall be payable in respect of such refund, from the date of payment of the amount till the date of refund of such amount. (Section 115 of CGST Act, 2017) (**Section 107(6), 112(8) & 115 of CGST Act 2017**)

11.14 The Appellate Tribunal, after giving the parties an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the Appellate Authority or to Revisional Authority or to the original adjudicating authority, with directions for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary. (Section 113(1) of CGST Act, 2017) (**Section 113(1) of CGST Act 2017**)

11.15 The Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal **within a period of one year** from the date on which it is filed (Section 113(4) of CGST Act, 2017).

11.16 The Appellate Tribunal shall send a copy of every order passed to the Appellate Authority, or the Revisional authority or to the original adjudicating authority, as the case may be, the appellant, the jurisdictional Commissioner

of CGST and the jurisdictional Commissioner or Commissioner of SGST/UTGST (Section 113(5) of CGST Act, 2017).

- 11.17 The Appellate Tribunal may amend any order passed by it under Section 113 (3) of Section 112 read with Rule 11 (1), so as to rectify any error apparent on the face of record, if such error is noticed by it on its own accord, or is brought to its notice by the Commissioner or the other party to the appeal **within a period of three months** from the date of the order. Amendment which has the effect of enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability of the taxpayer, shall not be made, unless the taxpayer has been given an opportunity of being heard. **(Section 113 (3) of CGST Act 2017)**

12. APPEALS FILED BY THE DEPARTMENT BEFORE TRIBUNAL

- 12.1 An application/appeal to the Appellate Tribunal under sub-section (1) of Section 112 read with Rule 11 (1) shall be filed along with the relevant documents either electronically or otherwise, as may be notified by the Registrar, in [FORM GST APL-07](#), on the common portal and a provisional acknowledgement shall be issued to the appellant immediately. **(Section 112 (1) of CGST Act 2017)**
- 12.2 The CGST or SGST department has a **period of 6 months** to file an appeal against the order of the adjudicating authority [S.112 (3)]. The **time of 6 months** will commence from the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under Section 109, enters office. [As per CGST (Ninth Removal of Difficulties) [Order, 2019 issued under CBIC Order No. 9/2019-C.T.](#), dated 3.12.2019] **(Section 112(3) & 109 of CGST Act 2017)**
- 12.3 The appeal is required to be filed, after the Commissioner, either suo-moto or under reference from equivalent officer of either state or union territory, calls for the records of the case and examines the legality or propriety of the decision or order. He may, by order, specifically determine the points arising out of the decision, direct any officer subordinate to him to apply to the Appellate Authority, by the officer so authorized by him. [S. 112 (3) & (4)] **(Section 112 (3) & (4) of CGST Act 2017)**
- 12.4 Memorandum of cross-objection is required to be filed **within 45 days** of receipt of notice that an appeal has been preferred under this section, by the party against whom the appeal has been preferred. [S. 112 (5)] **(Section 112(5) of CGST Act 2017)**
- 12.5 The Tribunal has power to admit appeal **within 3 months** of expiry of the period for appeal and also permit filing of memorandum of cross-objections **within forty-five days** after the expiry of the period, subject to the party showing sufficient cause for the delay. [S. 112 (6)] **(Section 112(6) of CGST Act 2017)**
- 12.6 The appeal is required to be filed in prescribed form, after due verification. No fees is payable in case of appeal by the Department.
- 12.7 The Department can file application for rectification of error or restoration of appeal or an application.
- 12.8 There shall be no fee for application made by the Department before the Appellate Tribunal for rectification of errors.
- 12.9 The Appellate Tribunal, after hearing both the parties, pass the orders, confirming, modifying or annulling the decision or order appealed against or may refer the case back (remand back) to the Appellate Authority or to Revisional Authority or to the original adjudicating authority, with directions for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary. [Section 113(1)]
- 12.10 The Appellate Tribunal shall send a copy of every order passed to the Appellate Authority, or the Revisional authority or to the original adjudicating authority, as the case may be, the appellant, the jurisdictional Commissioner of CGST and the jurisdictional Commissioner or Commissioner of SGST/UTGST. (Section 113 (5) of CGST Act, 2017)

13. SECTION 115 -INTEREST ON REFUND OF AMOUNT OF AMOUNT PAID FOR ADMISSION OF APPEAL.

In the event of appeal filed by a taxpayer being decided in favour of the taxpayer, the amount of pre-deposit shall be refunded with interest at rate specified under Section 56 of the CGST Act, 2017. The period for payment

of interest payable shall be computed from date of payment of pre-deposit till date of refund of the amount.
(Section 115 & 56 of CGST Act 2017)

14. APPEALS BEFORE HON'BLE HIGH COURT

- 14.1 The law provides that either side (department or taxpayer), if aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court within a period of one hundred and eighty days from the date of receipt of the order appealed against by the aggrieved person and the High Court may admit such appeal if it is satisfied that the case involves a substantial question of law. It is to be noted that on facts, the tribunal is the final authority. Appeals to High Court (HC) can be filed against any order passed by Tribunal, only if the case involves a substantial question of law. [S. 117(1)] (Section 117(3) of CGST Act 2017)
- 14.2 This means that cases involving interpretation of the statute or notification, will invariably land in the High Courts. Cases of clandestine removal, may go to HC, for appeal, if there is question of denial of evidences, process of natural justice, etc. [S. 117(3)]
- 14.3 The officers of legal section, should remain pro-active, in as much as, soon after receipt of the notice from taxpayer, regarding they approaching the HC, a detailed examination of the appeal should be done to come to a conclusion that there is question of law involved, and if there are no questions of law involved, efforts should be made to oppose the appeal at the stage of admission itself. (Section 117(1) of CGST Act 2017 & Rule 114 (1) of CGST Rules, 2017)
- 14.4 An appeal to the High Court under Section 117(1) of the CGST Act, 2017, shall be filed in [FORM GST APL-08](#).
- 14.5 The grounds of appeal and the form of verification as contained in [FORM GST APL-08](#) shall be signed in the manner specified in Rule 26 of CGST Rules, 2017. (Rule 26 of CGST Rules, 2017)
- 14.6 The jurisdictional officer shall issue a statement in [FORM GST APL-04](#) clearly indicating the final amount of demand confirmed by High Court.
- 14.7 Appeals before High Court should be filed **within a period of 180 days**. Appeals filed beyond the prescribed period may be entertained by the High Court, if sufficient cause is shown to explain the delay. [s. 117(2)]. (Section 117(2) of CGST Act 2017)
- 14.8 If the HC is satisfied that a substantial question of law is involved in the appeal, then such question shall be formulated and appeal shall be heard on such question of law.
- 14.9 The High Court and Supreme Court have absolute powers, and therefore, they have power to hear, for reasons to be recorded, the appeal on any other question of law, which was not formulated initially, if it is satisfied that such questions too are involved. [S. 117(3)] (Section 117(3) of CGST Act 2017)
- 14.10 Consequent to formulating question of law, the HC shall deliver such judgment containing the grounds on which the decision is founded. The HC has power to award cost, as it deems fit. [S. 117(4)] (Section 117(4) of CGST Act 2017)
- 14.11 The HC can determine any issue, which has either not been determined by the State Bench or Area Benches; or has been wrongly determined by the State Bench or Area Benches, by reason of a decision on such question of law. [S. 117(5)] (Section 117(5) of CGST Act 2017)
- 14.12 The appeal before HC shall be heard by a Bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges. [S. (117)(6)] (Section 117(6) of CGST Act 2017)
- 14.13 In stalemate situation, the Judges shall state the point of law upon which they differ and the case shall then be heard upon that point only, by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it. [S. 117(7)] (Section 117(7) of CGST Act 2017)
- 14.14 Consequent to the judgment by HC, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment. [S. 117 (8)] (Section 117(8) of CGST Act 2017)

- 14.15 The provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall apply in the case of appeals under Section 117 of the CGST Act, 2017. **(Section 117 of CGST Act 2017)**

15. APPEALS TO HON'BLE SUPREME COURT

- 15.1 The law provides for appeals to the Supreme Court from any judgment or order passed by the High Court, in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court. A direct appeal shall also lie to the Supreme Court from any orders passed by the Principal Bench of the Tribunal.
- 15.2 An appeal shall lie to the Supreme Court –
- (a) from any order passed by the Principal Bench of Appellate Tribunal, or
 - (b) from any judgment or order passed by the High Court in an appeal made under Section 117 of the CGST Act, 2017 in any case which, on its own motion or on an application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court. **(Section 117 of CGST Act 2017)**
- 15.3 Appeals to Supreme Court can be filed against any order passed by Tribunal, or judgment or order passed by HC. [S. 118(1)] **(Section 118 (1) of CGST Act 2017)**
- 15.4 Consequent to the judgment by Supreme Court, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment. [S. 118(3)] **(Section 118(3) of CGST Act 2017)**
- 15.5 Instructions issued by CBIC Board vide various circulars/Instructions on filing of Appeal before Hon'ble Supreme Courts, have to be strictly followed. Some of such Circular/Instructions are –
- (a) Instruction No. S-29012/12/2017-ST-1-DoR, dated 27.11.2017
 - (b) Circular No. 1077/01/2021-CX, dated 19.01.2021
 - (c) Instruction F. No. 275/06/2022-CX.8A, dated 14.03.2022

16. SUMS DUE TO BE PAID NOT WITHSTANDING APPEAL, ETC.

Section 119 of the CGST Act, 2017 stipulates that the Amount of tax, interest, penalty etc. due as payable, as a result of an order passed by the Principal Bench of the Appellate Tribunal under sub-section (1) of Section 113 or an order passed by the State Benches of the Appellate Tribunal under sub-section (1) of Section 113 or an order passed by the High Court under Section 117 (if appealed to Supreme Court), as the case may be, shall be payable in accordance with the order so passed, irrespective of the fact that an appeal has been preferred before High Court or Supreme Court. **(Section 119, 113(1) & 117 of CGST Act 2017)**

17. APPEAL NOT TO BE FILED IN CERTAIN CASES.

Appeals are to be filed by the revenue, subject to monetary limit fixed from time to time, as decided and communicated by the Board, on the recommendations of the Council [S. 120] **(Section 120 of CGST Act 2017)**

18. GENERAL GUIDELINES FOR APPEALS

- 18.1 Every order issued by the department is likely to be tested for its legality and propriety at appellate level, and hence, the preparations to counter the appeals by taxpayers as well as the possibility of the requirement of department going in appeal, should commence at the time of commencement of dispute itself, which can be either at the onset of an investigation against a taxpayer or conduct of audit on the records of the taxpayer.
- 18.2 The original documents resumed during the course of investigation, should be safely kept, and at the time of issue of demand notice, such documents should be carefully listed, paginated and handed over to the adjudicating authority. There have been many instances, where adjudication process has been vitiated due to non-availability of the original relied upon documents, which has resulted in either loss or locking up of precious Government revenue. Similarly, the original copies of statements of persons recorded during the course of investigation should be safe kept.

- 18.3 During the adjudication process, it is advisable and desirable that the adjudicating authority keeps all the original relied upon documents safe, or at least prepares and keeps digital copies of such documents, which will help in defending the orders. Original documents are important, which determines the final outcome of the appeals, especially in cases of clandestine removals, which involves huge Government revenue. The higher the revenue involved, higher are the chances of the defendants hiding behind the veil of technicalities.
- 18.4 The most important aspect is adhering to the time lines prescribed in the statutes. Therefore, as soon as the orders by adjudicating authorities or appellate bodies are received, it should be taken up for legal scrutiny notwithstanding the period available for filing of appeal. Last minute of processing the orders for filing of appeal can be hindered by technical glitches as well as unforeseen hindrances.
- 18.5 In so far as the departmental appeals are concerned, the courts on occasions have acceded to the request of condonation of delay, but many a times the courts have come down heavily on the department for long delays. One such case is the judgement passed by Hon'ble Supreme Court in July 2021, in the case of Union of India & Ors v/s M/s Vishnu Aroma Pouching Pvt. Ltd. & Anr. in SLP (CIVIL) Diary No(s). 1434/ 2021, wherein the Apex Court has come down heavily on the department for late filing of appeals. The department not only drew flak and criticism from the Hon'ble Supreme Court, but was also imposed costs of Rs.25,000/- to be recovered from the officers responsible for the delay and ordered the same to be deposited with the Supreme Court Advocates on Record Welfare Fund. Hon'ble Supreme Court further ordered to place a copy of the order before the Secretary, Ministry of Finance, Department of Revenue. In another incidence of delay, the Hon'ble Supreme Court in the order dated 19th December, 2022, imposed penalty of Rs. 1 lakh on UP Government, as cost.
- 18.6 In order to avoid such unpleasant situation, it is desirable that the files are processed in time, and hence, endeavours towards future course of action against any order should commence from the moment the order is received in the respective office, with first marking the date of receipt, then collecting all relevant documents.
- 18.7 In the quest to safeguard Government revenue, which is paramount objective, one should also be able to distinguish and differentiate that no frivolous appeals are filed. If the law is not in favour and the impugned order is judiciously correct and in line with previous judicial pronouncements, then, one should desist from going ahead with appeal in such cases, without looking at the 'revenue' implication, as it is the law which is the deciding factor and not the magnanimity of revenue.
- 18.8 Role of the department is not only limited to reviewing the orders and filing appeals, but it is also desirable from the officers of the executive Commissionerate that the appeals filed by the taxpayers are followed in right earnest. Many a times the taxpayer, knowingly/ unknowingly, deliberately/ unconsciously, mis-represents the facts of the case, especially those related to the facts of the matter, including the date of service of orders, etc. A copy of the appeal filed by the taxpayer, is always marked to the field officers. The field officers, immediately on receipt of the copies of the appeals, should examine the legality and propriety along with the facts of the case, as per available records and anomalies noticed, if any, should immediately be brought to the notice of the appellate authority.
- 18.9 The range officer can play an important role, if the law points raised in appeals are discussed with the concerned section/ officer handling the original adjudication of the appeals, as this will enable pointing out the correct legal position to the appellate authority and also weed out unnecessary citations relied upon by the taxpayer in their appeals. This will also help build a strong case for the department and if any new judgments/ pronouncements have come from SC/ HC or Tribunal, which impact the case in favour of revenue, same can be brought to the notice of the appellate authority.

19. ADDITIONAL EVIDENCES

- 19.1 All evidences should be normally submitted at the time of original hearing only. Additional evidence during appeal is normally allowed only in genuine cases. Any party cannot submit additional evidence, either oral or documentary, before Tribunal as a matter of right. The appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or the Appellate Authority.
- 19.2 Additional evidence shall be permitted only in the following circumstances: -

- (a) where the adjudicating authority or the Appellate Authority has refused to admit evidence which ought to have been admitted; or
 - (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or the Appellate Authority; or
 - (c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or the Appellate Authority any evidence which is relevant to any ground of appeal; or
 - (d) where the adjudicating authority or the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.
- 19.3 Additional evidence shall be admitted only after the Appellate Authority or the Appellate Tribunal records it in writing the reasons for its admission.
- 19.4 The Appellate Authority or the Appellate Tribunal shall not take any additional evidence unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity – [Rule 112(3) of the CGST Rules, 2017]
- (a) to examine the evidence or document or to cross-examine any witness produced by the appellant.
 - (b) to produce any evidence or any witness in rebuttal of the additional evidence produced by the appellant.

12 JOB WORK, ANTI PROFITEERING AND OTHER MISC. PROVISIONS

1. INTRODUCTION

- 1.1 Chapter XXI of the CGST Act, 2017 and Chapter IX of the IGST Act, 2017 contain the miscellaneous provisions, covering various Sections of CGST Act. State GST laws also prescribe identical miscellaneous provisions.
- 1.2 The following are the provisions of CGST Act, 2017 covered in this Chapter:

Sr. No.	Section/Rules	Provisions pertaining to
1	Section 143	Job work procedure
2	Section 144	Presumption as to documents in certain cases
3	Section 145	Admissibility of micro films, facsimile copies of documents and computer print-outs as documents and as evidence
4	Section 146	Common portal
5	Section 147	Deemed exports
6	Section 148	Special procedure for certain processes
7	Section 149	Goods and services tax compliance rating
8	Section 150	Obligation to furnish information return
9	Section 151	Power to collect statistics
10	Section 152	Bar on disclosure of information
11	Section 153	Taking assistance from an expert
12	Section 154	Power to take samples
13	Section 155	Burden of proof
14	Section 156	Persons deemed to be public servants
15	Section 157	Protection of action taken under this Act
16	Section 158	Disclosure of information by a public servant
17	Section 158A	Consent based sharing of information furnished by taxable person
18	Section 159	Publication of information in respect of persons in certain cases
19	Section 160	Assessment proceedings, etc., not to be invalid on certain grounds
20	Section 161	Rectification of errors apparent on the face of record
21	Section 162	Bar on jurisdiction of civil courts
22	Section 163	Levy of fee
23	Section 164	Power of Government to make rules
24	Section 165	Power to make regulations
25	Section 166	Laying of rules, regulations and notifications
26	Section 167	Delegation of powers
27	Section 168	Power to issue instructions or directions
28	Section 168 A	Power of Government to extend time limit in special circumstances
29	Section 169	Service of notice in certain circumstances
30	Section 170	Rounding off of tax, etc.
31	Section 171	Anti-profiteering measure
32	Rule 123	Constitution of the Standing Committee and Screening Committees
33	Rule 126	Power to determine the methodology and procedure
34	Rule 127	Functions of the Authority
35	Rule 128	Examination of application by the Standing Committee and Screening Committee

36	Rule 129	Initiation and conduct of proceedings
37	Rule 130	Confidentiality of information
38	Rule 131	Cooperation with other agencies or statutory authorities
39	Rule 132	Power to summon persons to give evidence and produce documents
40	Rule 133	Order of the Authority
41	Rule 135	Compliance by the registered person
42	Rule 136	Monitoring of the order
43	Section 172	Removal of difficulties
44	Section 173	Amendment of Act 32 of 1994
45	Section 174	Repeal and saving

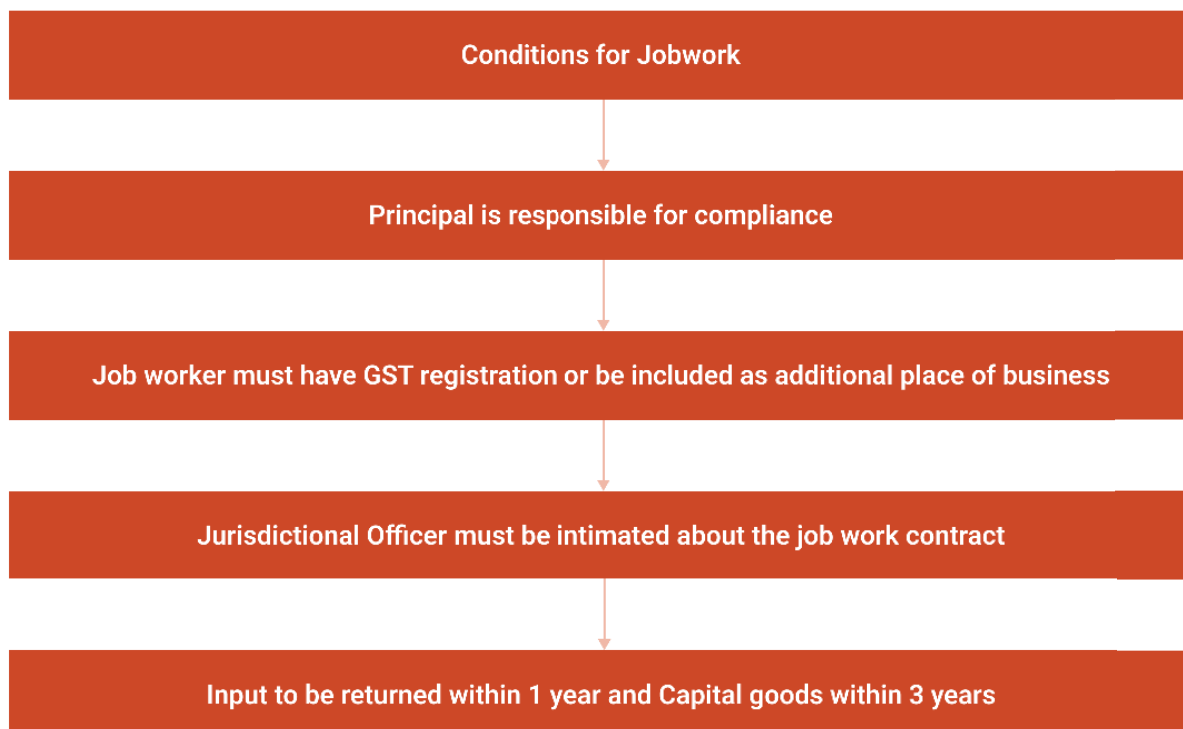
1.3. The following provisions of the IGST Act, 2017 have been covered in this chapter –

Sr. No.	Section / Rules	Provision pertaining to
1	Section 17	Apportionments of tax and settlement of funds
2	Section 18	Transfer of input tax credit
3	Section 19	Tax wrongfully collected and paid to Central Government or State Government
4	Section 20	Application of provisions of Central Goods and Services tax Act
5	Section 21	Import of services made on or after the appointed day
6	Section 22	Power to make rules
7	Section 23	Power to make regulations
8	Section 24	Laying of rules, regulations and notifications
9	Section 25	Power to issue instructions or directions
10	Section 26	Removal of difficulties

2. JOB WORK UNDER GST

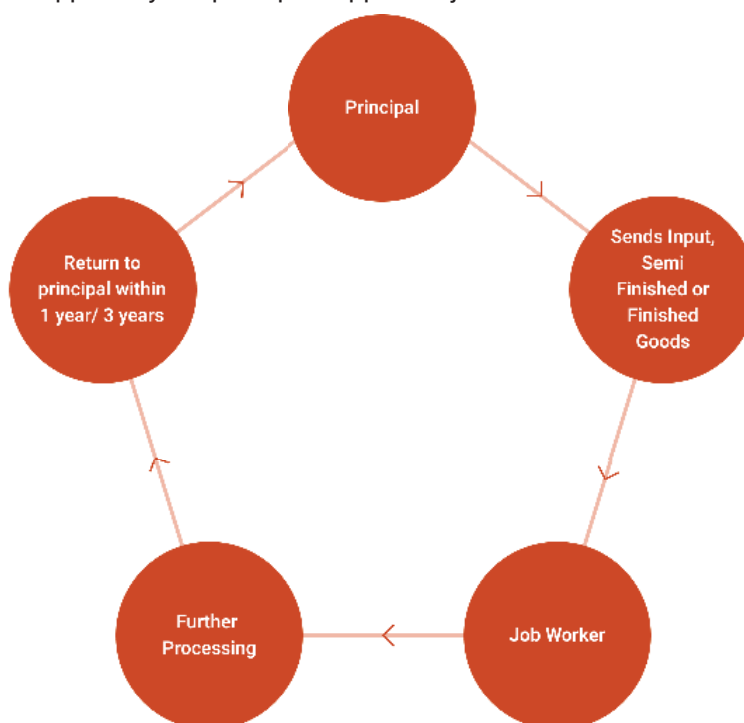
- 2.1 Job-work sector constitutes a significant industry in Indian economy. It includes outsourced activities that may or may not culminate into manufacture of finished goods.
- 2.2 Job-work means processing of goods supplied by the principal supplier. The principal supplier can send inputs or semi-finished goods to a job worker for further processing.
- 2.3 Many facilities, procedural concessions have been given to the job workers as well as the principal supplier who sends goods for job work. The whole idea is to make principal supplier responsible for meeting compliances on behalf of the job-worker on the goods processed by him (job-worker), considering the fact that typically the job workers are small persons who are unable to comply with the discrete provisions of the law.
- 2.4 The CGST Act, 2017 makes special provisions with regard to removal of goods for job-work and receiving back the goods after processing from the job-worker without payment of GST. The benefit of these provisions shall be available both to the principal supplier and the job-worker.
- 2.5 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’. **(Section 2(68) of CGST Act, 2017)**
- 2.6 The one who does the said job would be termed as ‘job worker’. The job-worker is required to carry out the process specified by the principal, on the goods.
- 2.7 The ownership of the goods does not transfer to the job-worker but it rests with the principal.
- 2.8 The GST law provides for certain facilities with certain conditions in relation to job work, some of which are as under:
 - (i) A registered person (Principal supplier) 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 supplier is not required to reverse the ITC availed on inputs or capital goods dispatched to job-worker.

- (ii) Principal supplier can send inputs or capital goods directly to the job worker without bringing them to his premises, still the principal supplier can avail the credit of tax paid on such inputs or capital goods.
- (iii) The 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.
- (iv) After processing of goods, the job-worker may clear the goods to:
- Another job-worker for further processing;
 - Dispatch the goods to any of the place of business of the principal supplier without payment of tax;
 - Remove the goods on payment of tax within India or without payment of tax for export outside India on fulfilment of conditions.



- 2.9 The facility of supply of goods by principal supplier to the third party directly from the premises of the job-worker on payment of tax in India likewise with or without payment of tax for export may be availed by the principal supplier on declaring premises 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.
- 2.10 Before supply of goods to job-worker, principal supplier would be required to intimate the Jurisdictional Officer containing the details of description of inputs intended to be sent by the principal supplier and the nature of processing to be carried out by the job-worker. The said intimation shall also contain the details of another job-worker, if any.
- 2.11 The inputs or capital goods shall be sent to the job worker under the cover of a challan issued by the principal supplier. The challan shall be issued even for the inputs or capital goods sent directly to the job worker. The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal supplier.
- 2.12 **Availment of Input Tax Credit** - Section 19 of the CGST Act, 2017 provides that the principal supplier (a person supplying taxable goods to the job worker) shall be entitled to take the credit of input tax paid on inputs sent to the job-worker for the job work. Further, the proviso also provides that the principal supplier can take the credit even when the goods have been directly supplied to the job-worker without bringing into the premise of the principal supplier. The principal supplier need not wait till the inputs are first brought to his place of business. **(Section 19 of the CGST Act 2017)**
- 2.13 **Time Limits for return of processed goods** - Section 19 of the CGST Act, 2017, stipulates that inputs and capital goods after processing shall be returned back to principal supplier **within one year or three years** respectively

of their being sent out. Further, the provision of return of goods is not applicable in case of moulds and dies, jigs and fixtures or tools supplied by the principal supplier to job-worker.



- 2.14 As per the explanation provided in Section 143 of the CGST Act, 2017, where certain process is carried out on the input before removal of the same to the job worker, such product after carrying out the process to be referred as the intermediate product. Such intermediate product can also be removed without the payment of tax. Therefore, both input and intermediate product can be cleared without payment of duty to job-worker. **(Section 143 of the CGST Act, 2017)**
- 2.15 **Waste clearing provisions** – In terms of 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 such waste may be cleared by the principal supplier, in case the job-worker is not registered. **(Section 143(5) of CGST Act, 2017)**

3. PRESUMPTION AS TO DOCUMENTS IN CERTAIN CASES [SECTION 144]

- 3.1 Presumption means an act of accepting that something is true until it is proved not true. Section 144 of the CGST Act, 2017 lays down presumptions that are taken cognizance of by the Court when certain documents, like documents produced by any person under the CGST Act, 2017 or under any other law, documents seized from the custody of any person under the CGST Act, 2017 or under any other law, documents received from any place outside India in the course of any proceedings, are submitted as evidence by the prosecution in a proceeding under the CGST Act, 2017 against any person. **(Section 144 of CGST Act, 2017)**
- 3.2 As per the Evidence Act, 1872, the contents of a document must be proved by evidence and signature or handwriting of a person on the document must be proved to be of the person of whom it is alleged to be.
- 3.3 A document which is required by law to be attested shall not be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, except in certain cases.
- 3.4 Section 144 of the CGST Act, 2017 enables the court of law to make departure from the above general principles, in respect of the documents mentioned above given in the diagram above, and presume:
- truth of the contents of the document;
 - that the signature which purports to be in the handwriting of any particular person is in that person's handwriting;
 - execution or attestation in the document has been made by the person by whom it purports to have been so executed or attested.

3.5 This implies that in case of such documents, if the said person claims that the document is not true or not signed or handwritten by him or not attested or executed by him, the burden of proof in respect of the same shall lie on him.

3.6 The Stamp Act, 1899 provides that a document which is not duly stamped shall be inadmissible in evidence. However, section 144 allows the Court to depart from such general provision by providing that a document shall be admissible in evidence even if it is not duly stamped.

4. ADMISSIBILITY OF MICRO FILMS, FACSIMILE COPIES OF DOCUMENTS AND COMPUTER PRINTOUTS AS DOCUMENTS AND AS EVIDENCE [SECTION 145]

4.1 'Document' has been defined in section 2(41) of the CGST Act, 2017 to include written or printed record of any sort and electronic record as defined in the Information Technology Act, 2000. **(Section 2(41) of CGST Act, 2017)**

4.2 Deemed documents- As per section 145(1) of the CGST Act, 2017, the following shall be deemed as 'documents': **(Section 145(1) of CGST Act, 2017)**

- (i) A micro film of a document or the reproduction of the image(s) embodied in such micro film, whether enlarged or not - Microfilms are films containing microphotographs of a document. Such images are generally provided as negatives
- (ii) A facsimile copy of a document - A facsimile is a copy or reproduction of a document that is as true to the original source as possible. An exact copy of a document is a facsimile.
- (iii) A statement contained in a document and included in a printed material produced by a computer.
- (iv) Information stored electronically in any device or media, including any hard copies made of such information - It refers to the information stored in digital form, which requires the use of computer hardware and software. Also, such information is normally created and altered in the digital form. This category would include the information stored in ERP systems that are employed by most businesses presently. It also includes printouts of such digital information.

4.3 Such documents shall be admissible in any proceedings under the Act, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

4.4 Certification - As per section 145(2) of the CGST Act, 2017, a certificate, - **(Section 145(2) of CGST Act, 2017)**

- (a) identifying the document containing the statement and describing the manner in which it was produced;
 - (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer,
- shall constitute evidence of any matter stated in the certificate.

4.5 A certificate shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

5. COMMON PORTAL [SECTION 146]

5.1 Section 146 of the CGST Act, 2017 enables the Government to notify the GST Common Portal on recommendation of the GST Council for facilitating the following: **(Section 146 of CGST Act, 2017)**

- Registration
- Payment of Tax
- Furnishing of returns
- Computation and settlement of integrated tax

- Electronic way bill
- Other functions and prescribed purposes

5.2 CBIC has notified www.gst.gov.in as the GST common portal to carry out the above stated functions. However, the Common GST Electronic Portal for furnishing electronic way bill is www.ewaybillgst.gov.in.

6. DEEMED EXPORTS [SECTION 147]

6.1 Section 147 of the CGST Act, 2017 lays down the provisions for deeming certain supplies as exports, so as to extend the benefit of export to such supplies. Supplies may be notified as deemed exports if they meet the following conditions: **(Section 147 of the CGST Act, 2017)**

- Goods supplied do not leave India.
- Payment for such supplies is received either in Indian rupees or in convertible foreign exchange.
- Such goods are manufactured in India.

6.2 It may be noted that this provision is applicable only in case of supply of goods, and not supply of services.

7. SPECIAL PROCEDURE FOR CERTAIN PROCESSES [SECTION 148]

7.1 Section 148 of the CGST Act, 2017 is an enabling provision for prescribing special procedures for certain processes. The following are noteworthy in this regard: **(Section 148 of CGST Act, 2017)**

- Such procedures shall be prescribed by way of a notification issued by the Government, on recommendations of the GST Council.
- The conditions and safeguards and the classes of registered persons to whom such procedures will be applicable shall be stated in the notification itself.
- The special procedures may be prescribed with regard to the following matters:
 - Registration
 - Filing of returns
 - Payment of tax
 - Administration

7.2 Some notifications issued by the Government under this section are:

- [Notification No. 57/2017 CT dated 15.11.2017](#) seeks to prescribe quarterly furnishing of return in Form GSTR-1 for taxpayers having aggregate turnover of up to Rs. 1.5 crores.
- [Notification No. 04/2018 CT \(Rate\) dated 25.01.2018](#) seeks to provide special procedure with respect to payment of tax by registered person supplying service by way of construction against transfer of development rights and vice versa.

8. GOODS AND SERVICES TAX COMPLIANCE RATING [SECTION 149]

As per section 149 of the CGST Act, 2017, every registered person shall be assigned a compliance rating based on the record of compliance in respect of specified parameters. Such ratings shall not be permanent and will be revised from time to time. The ratings shall be intimated to the taxable person and will also be placed in the public domain. A prospective client will be able to see the compliance ratings of suppliers and take a decision as to whether to deal with a particular supplier or not. This will create healthy competition amongst taxable persons. **(Section 149 of CGST Act, 2017)**

9. POWER TO COLLECT STATISTICS & BAR ON DISCLOSURE OF INFORMATION [SECTIONS 151 & 152]

- 9.1 The provisions of Section 151 of CGST Act, 2017 lay down as under: **(Section 151 and 152 of CGST Act, 2017)**
- (i) If the Commissioner considers necessary to do so, he may direct that statistics be collected relating to any matter dealt with, by or in connection with the Act.
- (ii) The statistics can be collected only for the purpose of better administration of the Act.
- (iii) Upon such notification being issued, the Commissioner, or any person authorized by the Commissioner in this behalf may call upon all concerned persons to furnish such information or returns as may be specified therein relating to any matter in respect of which statistics is to be collected.
- 9.2 Bar on disclosure of information [Section 152]-
- (i) No information of any individual return with respect to any matter given for the purpose of sections 150 or 151 shall be published without the previous consent in writing of the concerned person or his authorised agent, to enable any particulars to be identified as referring to a particular person.
- (ii) No such information shall be used for the purpose of any proceedings under the Act.
- 9.3 Confidentiality - Except for the purposes of prosecution under the CGST Act, 2017, or any other Act, no person who is not engaged in the collection of statistics under the Act or of compilation or computerization thereof for the purposes of the Act, shall be permitted to see or have access to any information or any individual return referred to in section 151.
- 9.4 Exception reporting - No restriction shall apply to the publication of any information relating to a class of dealers or class of transactions, if in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

10. TAKING ASSISTANCE FROM AN EXPERT [SECTION 153]

- 10.1 Section 153 of the CGST Act, 2017 enables an officer, not below the rank of Assistant commissioner, to take assistance of any expert at any stage of scrutiny, inquiry, investigation or any other proceedings before him. **(Section 153 of CGST Act, 2017)**
- 10.2 Such decision shall be taken having regard to the nature and complexity of the case and the interest of revenue.
- 10.3 Example - An IT professional's assistance may be sought where the officer is of the view that information pertaining to a taxable person stored on a computer system does not reveal correct details.

11. POWER TO TAKE SAMPLES [SECTION 154]

Section 154 of the CGST Act, 2017 authorizes the Commissioner, or an officer authorized by him to take samples of goods from the possession of any taxable person, where he considers it necessary. Such officer shall provide a receipt for any samples so taken. **(Section 154 of CGST Act, 2017)**

12. BURDEN OF PROOF [SECTION 155]

'Burden of proof' normally refers to the obligation to prove one's assertion. Section 155 of the CGST Act, 2017 lays down that where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person. Thus, where a presumption is raised that a person is not eligible for input tax credit then the onus shall be on such person to rebut the same. **(Section 155 of CGST Act, 2017)**

13. PERSONS DEEMED TO BE PUBLIC SERVANTS [SECTION 156]

Section 156 of the CGST Act, 2017 deems all persons discharging functions under the Act as public servants within the meaning of Section 21 of the Indian Penal Code, 1860. This means that such persons shall qualify as public servants for the purpose of Indian Penal Code, wherever applicable. **(Section 156 of CGST Act, 2017)**

14. PROTECTION OF ACTION TAKEN UNDER THIS ACT [SECTION 157]

- 14.1 Section 157 of the CGST Act, 2017 grants immunity to the following persons against legal proceedings for anything done or intended to be done in good faith: **(Section 157 of CGST Act, 2017)**
- President of the Appellate Tribunal

- State President of the Appellate Tribunal
-
- Members of the Appellate Tribunal
-
- Officers or other employees of the Appellate Tribunal
-
- Any other person authorised by the Appellate Tribunal
-
- Any officer appointed or authorised under the Act

14.2 It provides immunity from personal liability for decisions, acts, or omissions that are made within the scope of their official duties, and not made in a wanton or reckless manner.

15. DISCLOSURE OF INFORMATION BY A PUBLIC SERVANT [SECTION 158]

15.1 Section 158 of the CGST Act, 2017 lays down the provisions for disclosure of information by a public servant as also maintaining the confidentiality of the same and related penal provisions in the event of contravention of the same. **(Section 158 of CGST Act, 2017)**

15.2 The following shall be treated as confidential:

- All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with the Act; or
- All particulars contained in any record of evidence given in the course of any proceedings under the Act (other than proceeding before a Criminal Court); or
- All particulars contained in any record of any proceedings under the Act.

15.3. Section 158(3) of the CGST Act, 2017 provides that the following information may be disclosed: **(Section 158(3) of CGST Act, 2017)**

- For prosecution: Any particulars in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, for the purpose of any prosecution under the Indian Penal Code or the Prevention of Corruption Act, 1988, or the Act, or any other law for the time being in force; or
- For carrying out the objects of the Act: Any particulars to the Central Government or the State Government or to any person acting in the implementation of the Act, for the purpose of carrying out the object of the Act; or
- For service of notice or recovery of demand: Any particulars when such disclosure is occasioned by the lawful exercise under the Act of any process for the service of any notice or the recovery of any demand; or
- For furnishing information to Court in a proceeding where Government is a party: Any particulars to a Civil Court in any suit or proceeding, to which the Government or any authority under the Act is a party, which relates to any matter arising out of any proceeding under the Act or under any other law for the time being in force authorising any such authority to exercise any powers thereunder; or
- For audit of tax receipts or refunds: Any particulars to any officer appointed for the purpose of audit of tax receipts or refunds of the tax imposed by the Act; or
- For inquiry into the conduct of GST officer: Any particulars where such particulars are relevant for the purposes of any inquiry into the conduct of any GST officer, to any person or persons appointed as an inquiry officer under any relevant law; or
- For enabling levy/realisation of any tax or duty: Any such particulars to an officer of the Central Government/ by a public servant/ statutory authority/ State Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty; or
- By lawful exercise of powers: Any particulars, when such disclosure is occasioned by the lawful exercise by a public servant or any other statutory authority, of his or its powers under any law for the time being in force; or
- For inquiry into a charge of misconduct by any professional: Any particulars relevant to any inquiry into a charge of misconduct in connection with any proceedings under the Act against a practising advocate, a tax practitioner,

a practising cost accountant, a practising chartered accountant, a practising company secretary to the authority empowered to take disciplinary action against the members practising the profession of a legal practitioner, a cost accountant, a chartered accountant or a company secretary, as the case may be; or

- (x) For data entry on automated system: Any particulars to any agency appointed for the purposes of data entry on any automated system or for the purpose of operating, upgrading or maintaining any automated system where such agency is contractually bound not to use or disclose such particulars except for the aforesaid purposes; or
- (xi) For any other law: Any particulars to an officer of the Government as may be necessary for the purposes of any other law in force in India; and
- (xii) In public interest: Any information relating to any class of taxpayers or class of transactions for publication, if, in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

15.4 Section 158(2) of the CGST Act, 2017 overrides the provisions contained in the Indian Evidence Act, 1872. It states that Court shall not require any GST officer to produce before it or to give evidence before it in respect of the particulars like statement made, return furnished or accounts or documents produced referred to in section 158(1). However, this restriction will not apply in respect of disclosures mentioned under sub-section (3). **(Section 158 of CGST Act, 2017)**

16. **PUBLICATION OF INFORMATION IN RESPECT OF PERSONS IN CERTAIN CASES [SECTION 159]**

Section 159 of the CGST Act, 2017 confers powers on the Commissioner for publishing names and other particulars of persons in certain cases. The details are as mentioned in the Table below- **(Section 159 of CGST Act, 2017)**

What type of information can be published?	The name of any person and any other particulars relating to any proceedings or prosecutions under the Act in respect of such person.
Who can publish such information?	Commissioner, or any other officer authorised by him in this behalf.
What is the manner of publication of information?	The information shall be published in such manner as the Commissioner/ authorised officer thinks fit.
When can the information be published?	Such information shall be published if Commissioner/any other officer authorised by him in this behalf is of the opinion that it is necessary/expedient in public interest to do so.
Is there any additional information which can be published?	In cases of firm, company or association of persons, names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be may also be published, if in the opinion of the Commissioner/authorised officer, circumstances of the case justify it.
What is the limitation on publication of information relating to penalty?	No publication under this section shall be made in relation to any penalty imposed under the Act: •until the time for presenting an appeal to the Appellate Authority under section 107 has expired (three months extendable to further one month) without an appeal having been presented; or •the appeal, if presented, has been disposed of.

17. **ASSESSMENT PROCEEDINGS, ETC. NOT TO BE INVALID ON CERTAIN GROUNDS [SECTION 160]**

- 17.1 Sometimes, proceedings are challenged for their validity merely for reasons of mistakes. This provision aims at saving the proceedings from such challenges.
- 17.2 The following proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any provisions of the Act are covered under the provisions of Section 160 of the CGST Act, 2017 and such proceedings shall not be held invalid for mere reason of mistake, defect or omission, if such proceedings are in substance and effect in conformity with or according to the intents,

purposes and requirements of the Act or any earlier law - **(Section 160 of CGST Act, 2017)**

- Assessment
- Re-assessment
- Adjudication
- Review
- Revision
- Appeal
- Rectification
- Notice
- Summons
- Other proceedings

17.3 The service of any Notice, Order or Communication shall not be called in question if the notice, order or communication has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earliest proceedings commenced, continued or finalised pursuant to such notice, communication or order.

18. RECTIFICATION OF ERRORS APPARENT ON THE FACE OF RECORD [SECTION 161]

18.1 Section 161 of the CGST Act, 2017 provides for rectification of mistakes/errors apparent on the face of record by any authority. This section overrides the entire Act, except for the provisions of section 160 discussed above. **(Section 160 of CGST Act, 2017)**

18.2 The documents covered under Section 161 are decision, order, any notice, Certificate or any other document.

18.3 Any authority who has passed or issued any decision or order or notice or certificate or any other document may rectify any error, which is apparent on the face of record in such documents. Rectification can only be of error apparent from record. A decision on a debatable point of law is not a mistake apparent from the record.

18.4 The authority may rectify the mistake/error suo moto, when such error or mistake is brought to its notice by a GST officer or when such error or mistake is brought to notice by the affected person **within a period of 3 months** from the date of issue of such decision or order or notice or certificate or any other document, as the case may be.

18.5 No rectification can be made **after a period of six months** from the date of issue of such decision/order/notice/certificate/any other document. However, such time limit does not apply in cases where the rectification is purely in the nature of correction of a clerical or arithmetical error or mistake, arising from any accidental slip or omission.

18.6 Principles of natural justice should be followed by the authority carrying out such rectification, if such rectification adversely affects any person.

19. BAR ON JURISDICTION OF CIVIL COURTS [SECTION 162]

19.1 Taxes are a civil liability. The basic rule is that every dispute which is civil in nature can be tried by the Civil Court. However, since tax laws generally provide a specific machinery for assessment, appeals and recovery etc., in terms of a special legislation, the jurisdiction of Civil Courts is barred in matters relating to tax laws.

19.2 Therefore, as per Section 162 of the CGST Act, 2017, no Civil Court shall have jurisdiction to deal with or decide any question arising from or relating to anything done or purported to be done under the Act. However, this bar does not apply in case of appeals to High Court and Supreme Court as provided under Sections 117 and 118 of

the CGST Act, 2017, respectively. **(Section 162, 117 and 118 of CGST Act, 2017)**

20. LEVY OF FEE [SECTION 163]

Section 163 of the CGST Act, 2017, provides that a copy of any order or document can be provided to any person on an application made by him for that purpose after paying a prescribed fee. (Section 163 of CGST Act, 2017
POWER OF GOVERNMENT TO MAKE RULES & REGULATIONS [SECTIONS 164 & 165] (Section 163 of CGST Act, 2017)

21. POWER OF GOVERNMENT TO MAKE RULES & REGULATIONS [SECTIONS 164 & 165]

21.1 Section 164 empowers the Government to make rules on the recommendations of the GST Council for carrying out the provisions of the Act. **(Section 164 and 165 of CGST Act, 2017)**

21.2 The following are noteworthy in this regard:

- The Government may make rules for all or any of the matters which by the Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.
- The rules may also be issued with retrospective effect but not from a date earlier than the date on which the provisions of the Act have come into force.
- The rules may provide for a penalty not exceeding Rs.10,000/- for committing breach of any rule.

21.3 Section 165 empowers the Board to make regulations consistent with the Act and the rules made thereunder to carry out the provisions of the Act.

21.4 Thus, while the rule making power lies with the Government, the regulation making power has been delegated to the CBIC (Board).

21.5 The Central Government and the Board have been vested with the similar powers of making rules and regulations respectively under sections 22 & 23 of the IGST Act, 2017 also.

22. LAYING OF RULES, REGULATIONS AND NOTIFICATIONS [SECTION 166]

22.1 Section 166 of the CGST Act, 2017 provides that the following delegated legislation under the Act shall be laid before each house of the Parliament, while it is in session, for a total **period of 30 days** which may be comprised in one session, or in two or more successive sessions: **(Section 166 of CGST Act, 2017)**

- every rule made by the Government;
- every regulation made by the Board;
- every notification issued by the Government.

22.2 If both the Houses agree that any modification be made in the rule/ regulation/ notification or rule or regulation or notification should not be made, then the rule or regulation or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be. However, any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification.

22.3 Similar provisions relating to laying of rules, regulations and notification etc. have also been prescribed under Section 24 of the IGST Act, 2017. **(Section 24 of IGST Act, 2017)**

23. DELEGATION OF POWERS [SECTION 167]

Section 167 of the CGST Act, 2017, prescribes that the powers conferred on any authority/officer can also be exercised by another authority/officer, if the Commissioner so directs by way of notification, subject to such conditions as may be specified in the notification. **(Section 167 of CGST Act, 2017)**

24. POWER TO ISSUE INSTRUCTIONS OR DIRECTIONS [SECTION 168]

24.1 Section 168 of the CGST Act, 2017, empowers the Board (CBIC) to issue orders, instructions or directions to the CGST officers for the purpose of uniformity in the implementation of the Act. **(Section 168 of CGST Act, 2017)**

- 24.2 All officers and all other persons employed in the implementation of the Act observe and follow such orders, instructions or directions.
- 24.3 The binding nature of such orders, instructions and directions has been a matter of debate and scrutiny. The general understanding that prevails now is that a circular is binding on the officers, but not on the taxpayer. However, in case such circular states something contrary to the law, the law shall prevail over the circular.
- 24.4 The meaning of Commissioner for the purposes of following provisions is Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in these said sections with the approval of the Board:

Section	Particulars
Section 2(91)	Meaning of 'proper officer'
Section 5(3)	Delegation of powers by Commissioner
Section 25(9)(b)	Notification of person or class of persons for grant of Unique Identity Number
Section 35(3)	Notification of class of taxable persons required to maintain additional accounts or documents
Section 35(4)	Notification of class of taxable persons permitted to maintain accounts in a pre-scribed manner where the Commissioner considers that such persons are not in a position to keep and maintain accounts in accordance with the general provisions
Section 37(1)	Details of outward supplies (extension of time limit)
Section 38(2)	Details of inward supplies (extension of time limit)
Section 39(6)	Return (extension of time limit)
Section 44(1)	Annual return (extension of time limit)
Sub-sections (4) and (5) of section 52	Statement for tax collection at source and Annual Statement by Electronic Commerce Operator (extension of time limit)
Section 143(1) except second proviso thereof	Job-work procedure (except extension of time limits of 1 year and 3 years)
Section 151(1)	Collection of statistics
Section 158(3)(l)	Exceptions to bar on disclosure of information by public servant
Section 167	Delegation of powers

25. **POWER OF GOVERNMENT TO EXTEND TIME LIMIT IN SPECIAL CIRCUMSTANCES [SECTION 168A]**

The Government is empowered to extend the time limits provided under the CGST Act, 2017 in respect of actions which cannot be completed or complied with due to force majeure. Here, force majeure means war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the implementations of provisions of the CGST Act, 2017. This power can also be exercised retrospectively. (**Section 168A of CGST Act, 2017**)

26. **MODES OF SERVICE OF NOTICE, DECISION, SUMMONS, ETC.**

- 26.1 Any notice, decision, order, summons, or any other communication under the Act and the related rules are to be served on the taxpayer or the concerned person, in accordance with the provisions of Section 169 of the CGST Act, 2017. (**Section 169 of CGST Act, 2017**)
- 26.2 Sub-section (1) of Section 169 of the CGST Act, 2017 prescribes the following modes of service for notice, decision, order, summons, or any other communication:
- By giving or tendering it directly or by a messenger, including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or
 - By registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

- By sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or
- By making it available on the common portal; or
- By publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or
- If none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.
- Every decision/order/summons/notice/communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner explained above.

26.4 When a decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

27. ROUNDING OFF OF TAX ETC. [SECTION 170]

- 27.1 The principle of rounding off laid out in Section 170 of the CGST Act, 2017 applies to tax, interest, penalty, fine, any other sum payable under the provisions of the Act, refund and any other sum due under the provisions of the Act. **(Section 170 of CGST Act, 2017)**
- 27.2 If the amount contains part of a rupee consisting of paise, and such part is fifty paise or more then increase to one rupee. Amount contains part of a rupee consisting of paise, and such part is less than fifty paise then such amount has to be ignored.

28. ANTI-PROFITEERING MEASURE [SECTION 171]

- 28.1 The burden of indirect taxation ultimately falls on the consumers. In GST regime there is an increased flow of input tax credit due to multiple stages involved in supplies. In such a scenario, the concern that benefit of such increased input tax credit may not be passed on by certain entities to the consumers is not justified.
- 28.2 Section 171 of CGST Act, 2017 makes it mandatory that any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices. **(Section 171 of CGST Act, 2017)**
- 28.3 National Anti-profiteering Authority has been constituted by the Central Government to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods and/or services supplied by him.
- 28.4 The duty of the National Anti-profiteering Authority shall be :
- to determine whether the reduction in tax rate or the benefit of input tax credit has been passed on by the seller to the buyer (hereinafter collectively referred to as 'benefit') by reducing the prices;
 - to identify the taxpayer who has not passed on the benefit;
 - to order-
 - reduction in prices;
 - return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest @ 18% from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Consumer Welfare Fund;
 - imposition of penalty;
 - cancellation of registration;

- to furnish a performance report to the GST Council every quarter.
- 28.5 All applications from interested parties on issues of local nature or those forwarded by Standing Committee shall first be examined by the State Level Screening Committee. On being satisfied that the supplier has not passed on the benefit, the Screening Committee **within 2 months** from the date of receipt of a written application, further extendable **up to one month** for reasons to be recorded in writing as may be allowed by the Authority, will forward the application with its recommendations to the Standing Committee on Anti-profiteering.
- 28.6 If the Standing Committee is satisfied that there is a prima facie evidence to show that the supplier has not passed on the benefit, it shall refer the matter to the Director General of Anti-Profiteering (DGAP) for a detailed investigation **within 2 months** from the date of receipt of a written application (further extendable **up to 1 month** for reasons to be recorded in writing as may be allowed by the Authority).
- 28.7 The Directorate General of Anti Profiteering (DGAP) shall conduct investigation and collect evidence necessary to determine undue profiteering and before initiation of the investigation, issue a notice to the interested parties and to such other persons as deemed fit for a fair enquiry into the matter.
- 28.8 The evidence or information presented to the DGAP by one interested party can be made available to the other interested parties, participating in the proceedings. The evidence provided will be kept confidential and the provisions of Section 11 of the Right to Information Act, 2005, shall apply mutatis mutandis to the disclosure of any information which is provided on a confidential basis.
- 28.9 The DGAP can seek opinion of any other agency or statutory authorities in the discharge of his duties. The Authority, DGAP, or an officer authorised by him will have the power to summon any person either to give evidence or to produce a document or any other thing. He will also have same powers as that of a Civil Court and every such inquiry will be deemed to be a judicial proceeding.
- 28.10 The DGAP will complete the investigation **within a period of 6 months** or within such extended period not exceeding a **further period of 3 months** for reasons to be recorded in writing as allowed by the Authority. Upon completion of the investigation, the DGAP will furnish to the Authority, a report of its findings along with the relevant records.
- 28.11 If the Authority finds that a registered person has not passed on the benefit, the Authority may order:
- reduction in prices;
 - return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest @ 18% from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be;
 - deposit an amount equivalent to 50% of the amount determined under the above clause along with interest @ 18% from the date of collection of the higher amount till the date of deposit of such amount in the Consumer Welfare Fund of Centre and the remaining 50% of the amount in the Consumer Welfare Fund of the concerned State, where the eligible person does not claim return of the amount or is not identifiable;
 - imposition of penalty as specified under the Act; and
 - cancellation of registration under the Act.
- 28.12 If the report of the DGAP recommends that there is contravention or even non-contravention of the provisions of Section 171 of the CGST Act, 2017 or these rules, but the Authority is of the opinion that further investigation or inquiry is called for in the matter, it may, for reasons to be recorded in writing, refer the matter to the DGAP to cause further investigation or inquiry in accordance with the provisions of the Act and these rules.
- 28.13 Upon receipt of the report of the DGAP, the Authority has reasons to believe that there has been contravention of the provisions of Section 171 of the CGST Act, 2017, in respect of goods and/or services other than those covered in the said report, it may, for reasons to be recorded in writing, **within a period of six months**, direct the DGAP to cause investigation or inquiry with regard to such other goods and/or services. Such investigation or

enquiry shall be deemed to be a new investigation or enquiry and all the provisions of Rule 129 of the CGST Rules, 2017, shall mutatis mutandis apply to such investigation or enquiry.

28.14 The following points are relevant in this regard:

- Any order passed by the Authority shall be immediately complied with by the registered person failing which action shall be initiated to recover the amount.
- The Authority will pass order **within 6 months** from the date of the receipt of the report from the DGAP.
- An opportunity of being heard will be given, if the interested parties request for it in writing.
- Authority can now seek a clarification from DGAP on the Investigation report submitted by it during the process of determining as to whether the benefit has been passed on to the recipient by way of commensurate reduction in prices.
- Period of interest will be calculated from the date of collection of higher amount till the date of return of such amount.
- If the eligible person (i.e. the buyer) does not claim the return of the amount or the person is unidentifiable then the amount must be deposited to the Consumer Welfare Fund along with applicable interest.
- A registered person who is found to have profiteered is liable to pay a penalty of 10% of such profiteered amount if the profiteered amount is not deposited **within 30 days** of the date of passing of the order by the Authority.

28.15 Central Government, vide [Notification No. 23/2022-CT dt. 23.11.2022](#) has empowered the Competition Commission of India (CCI) established under Section 7(1) of the Competition Act, 2002, to handle Anti-Profiteering cases and examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

29. REMOVAL OF DIFFICULTIES [SECTION 172]

- 29.1 Section 172 of the CGST Act, 2017 lays down the procedure to be followed by the Government in case of any difficulty in giving effect to any provision of the Act. In such cases, the Central Government may, on the recommendations of the GST Council, by general or special order published in the Gazette, make such provisions not inconsistent with the provisions of the Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty. **(Section 172 of CGST Act, 2017)**
- 29.2 The time limit for making such order shall be **5 years** from the date of commencement of the Act.
- 29.3 Every order so made shall be laid, as soon as may be, after it is made, before the Parliament.
- 29.4 Similar provisions relating to removal of difficulty have also been prescribed under section 25 of the IGST Act, 2017. **(Section 25 of IGST Act, 2017)**

30. OMISSION AND REPEAL OF EARLIER LAWS [SECTIONS 173 AND 174]

- 30.1 Amendment of Act 32 of 1994 [Section 173 of CGST Act, 2017] - Chapter V of the Finance Act, 1994 laid down the provisions for Service Tax. Since Service Tax has been subsumed in GST, such provisions are no more required and hence have been omitted and are not in force. **(Section 173 and 174 of CGST Act, 2017)**
- 30.2 Repeal and saving [Section 174 of the CGST Act, 2017] - The following legislations stand repealed from July 1, 2017, i.e. the date of commencement of the CGST Act, 2017:
- The Central Excise Act, 1944 (except in respect of goods included in Entry 84 of Union List – petroleum crude, high speed diesel, motor spirit, natural gas, aviation turbine fuel, tobacco and tobacco products)
 - The Medicinal and Toilet Preparations (Excise Duties) Act, 1955
 - The Additional Duties of Excise (Goods of Special Importance) Act, 1957
 - The Additional Duties of Excise (Textiles and Textile Articles) Act, 1978

- The Central Excise Tariff Act, 1985

30.3 The repeal under Section 174 of the CGST Act, 2017 or amendment under section 173 ibid shall not:

- revive anything not in force or existing at the time of such amendment or repeal - No new effect.
- affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder - No effect on previous position.
- affect any right, privilege, obligation, or liability acquired, accrued or incurred under the previous law - No effect on rights or liabilities under previous law. Any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day.
- affect any duty, tax surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the previous law - No effect on tax etc. due under previous law.
- affect any investigation inquiry, verification, adjudication and assessment proceedings, recovery proceedings, other legal proceedings or tax, penalty etc. and any such proceedings that may be instituted, continued or enforced and tax, penalty etc. that may be levied or imposed as if these Acts had not been so amended or repealed - No effect on legal proceedings and tax, penalty etc. under previous law.
- affect any proceedings, including that relating to an appeal, review or reference, instituted before, on or after the appointed day under the previous law - No effect on any appellate proceeding under previous law.
- The provisions of Section 6 of the General Clauses Act, 1897 with regard to the effect of repeal will apply for repeal provided under Section 174 of the CGST Act, 2017.

31. APPLICATION OF PROVISIONS OF CENTRAL GOODS AND SERVICES TAX ACT [SECTION 20 OF THE IGST ACT, 2017] (Section 20 of IGST Act, 2017)

31.1 The following provisions of CGST Act, 2017 apply to IGST Act, 2017 also:

- scope of supply
- composite supply and mixed supply
- time and value of supply
- input tax credit
- registration
- tax invoice, credit and debit notes
- accounts and records
- returns, other than late fee
- payment of tax
- tax deduction at source [TDS rate under IGST – 2%]
- collection of tax at source [TCS rate under IGST – not exceeding 2%]
- assessment
- refunds
- audit
- inspection, search, seizure and arrest

- demands and recovery
- liability to pay in certain cases
- advance ruling
- appeals and revision
- presumption as to documents
- offences and penalties
- job work
- electronic commerce
- transitional provisions
- miscellaneous provisions including the provisions relating to the imposition of interest and penalty

31.2 When the tax involved is IGST, the rate of TDS shall be 2% and the rate of TCS shall not exceed 2%. Presently, the notified rate for TCS in case of IGST is 1%.

31.3 Where the penalty is leviable under the CGST Act, 2017 and the SGST/UTGST Act, 2017, the penalty leviable under the IGST Act, 2017 shall be the sum total of the said penalties.

31.4 The words and expressions used and not defined in the IGST Act, 2017 but defined in the CGST Act, 2017 shall have the same meaning as assigned to them in the said Act. Similarly, the words and expressions used and not defined in the CGST Act, 2017 but defined in the IGST Act, 2017 shall have the same meaning as assigned to them in the said Act.

32. APPORTIONMENT OF TAX AND SETTLEMENT OF FUNDS [CHAPTER VIII OF THE IGST ACT, 2017]

32.1 Since Central Tax (CGST) and State Tax (SGST) are separate taxes levied concurrently on a transaction, the same are identifiable and can be transferred to the CGST account and SGST account of the concerned State Governments, respectively. However, this is not possible in case of Integrated tax (IGST). Therefore, it becomes necessary to apportion IGST into components that can be transferred to CGST account and SGST account of the State Governments concerned.

32.2 Section 17 of the IGST Act, 2017 prescribes the provisions for such apportionment of IGST and settlement of funds between the Central Government and the State Governments. **(Section 17 of IGST Act, 2017)**

32.3 Section 17(1) of IGST Act, 2017 lays down that in respect of the IGST paid on the following supplies of goods and/or services, the IGST shall be apportioned:

- inter-State supply to an unregistered person or to a registered person paying tax under composition scheme;
- inter-State supply where the registered person is not eligible for input tax credit;
- inter-State supply made in a financial year to a registered person, where he does not avail of the input tax credit within the specified period and thus the tax remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was made;
- import by an unregistered person or by a registered person paying tax under composition scheme;
- import where the registered person is not eligible for input tax credit;
- import made in a financial year by a registered person, where he does not avail of the said credit within the specified period and thus the tax remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was received.

- 32.4 The IGST paid on the supplies mentioned above shall be apportioned as under:
- The amount of tax calculated at the rate equivalent to the CGST on similar intra-State supply shall be apportioned to the Central Government.
 - The balance amount of IGST remaining in the integrated tax account shall be apportioned to the State where such supply takes place and to the Central Government if such supply takes place in a Union territory.
 - If the place of such supply made by any taxable person cannot be determined separately, the balance amount shall be apportioned to each of the States/Central Government (in relation to Union territories) in proportion to the total supplies made by such taxable person to each of such States/Union territories in a financial year.
 - If the taxable person making such supplies is not identifiable, the said balance amount shall be apportioned to all States and the Central Government in proportion to the amount collected as SGST/UTGST by the respective State/ the Central Government during the immediately preceding financial year.
- 32.5 In terms of Section 17(3) of the IGST Act, 2017, the interest, penalty and compounding amount realised in connection with the IGST shall also be apportioned in the similar manner.
- 32.6 Section 17(4) of the CGST Act, 2017, provides that the Central Government shall transfer the amount apportioned to it to the CGST account or UTGST account, as the case may be, and the amount apportioned to the State Government(s) to the SGST account of the respective States.
- 32.7 As per Section 17(2A) of the IGST Act, 2017, the amount of IGST in respect of B2B supplies wherein ITC is taken by the recipients may, for the time being, on the recommendations of the GST Council, be apportioned at the rate of 50% to the Central Government and 50% to the State Governments/Union territories on ad hoc basis. Such amount shall be adjusted against the amount apportioned under sub-sections (2) and (3). IGST apportioned to a State/Central Government on account of a Union territory, if subsequently found to be refundable to any person and refunded to such person, shall be reduced from the amount to be apportioned under this section, to such State/ Central Government on account of such Union territory.
- 32.8 Section 18 of the IGST Act, 2017 provides as under: **(Section 18 of IGST Act, 2017)**
- When IGST credit is utilised for payment of CGST, the amount collected as IGST shall stand reduced by the amount equal to such credit. The Central Government shall transfer an amount equal to the amount so reduced from the IGST account to the CGST account.
 - When IGST credit is utilised for payment of UTGST, the amount collected as IGST shall stand reduced by the amount equal to such credit. The Central Government shall transfer an amount equal to the amount so reduced from the IGST account to the UTGST account.
 - When IGST credit is utilised for payment of SGST, the amount collected as IGST shall stand reduced by the amount equal to such credit and shall be apportioned to the appropriate State Government. The Central Government shall transfer the amount so apportioned to the account of the appropriate State Government.
 - Appropriate State means the State or Union territory where a taxable person is registered or is liable to be registered under CGST Act, 2017.
- 32.9 Section 19 of the IGST Act, 2017, provides that a registered person who has paid IGST on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of IGST so paid. A registered person who has paid CGST and SGST/UTGST on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of IGST payable. **(Section 19 of IGST Act, 2017)**

13 ADVANCE RULING

1. INTRODUCTION: ADVANCE RULING MECHANISM IN GST

- 1.1 The Advance Ruling is issued by tax authorities to companies/firms who request for clarification of certain tax matters, specifically when the taxpayer is uncertain about certain provisions of the CGST Act, 2017 and CGST Rules, 2017.
- 1.2 The provisions of CGST Act, 2017 and CGST Rules, 2017 relevant to this Chapter, are as under –

Sr. No.	Section/Rules	Provisions pertaining to
1	Section 95	Definitions of Advance Ruling
2	Section 96	Authority for Advance Ruling
3	Section 97	Application for Advance Ruling
4	Section 98	Procedure on receipt of application
5	Section 99	Appellate Authority for Advance Ruling
6	Section 100	Appeal to Appellate Authority
7	Section 101	Orders of Appellate Authority
8	Section 102	Rectification of Advance Ruling
9	Section 103	Applicability of Advance Ruling
10	Section 104	Advance Ruling to be void in certain circumstances
11	Section 105	Powers of Authority and Appellate Authority
12	Rule 104	Form and manner of application to the Authority for Advance Ruling
13	Rule 106	Form and manner of appeal to the Appellate Authority for Advance Ruling

- 1.3 Seeking an advance ruling is inexpensive and the procedure is simple and expeditious. It thus provides certainty and transparency to a taxpayer with respect to an issue which may potentially cause a dispute with the tax administration. It is pertinent to note that the advance ruling decision will be applicable only to that applicant and that jurisdictional GST Authority.
- 1.4 A legally constituted body called Authority for Advance Ruling (AAR) can give abiding ruling to an applicant who is a registered taxable person or is liable to be registered.
- 1.5 If the taxpayer is aggrieved by the advance ruling given by the Authority for Advance Ruling then he can appeal before an Appellate Authority for Advance Ruling (AAAR).
- 1.6 Time lines have been prescribed under the law for passing an order by AAR and by AAAR.

2. WHAT IS AN ADVANCE RULING?

- 2.1 “Advance ruling” means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions, viz., classification of any goods and/or services, applicability of a notification, determination of time and value of supply of goods and/or services, admissibility of input tax credit of tax paid or deemed to have been paid, determination of the liability to pay tax on any goods and/or services, whether applicant is required to be registered or whether any particular thing done by the applicant with respect to any goods and/or services amounts to a supply. **(Section 95, 97, 100 of the CGST Act, 2017)**
- 2.2 The definition of Advance ruling given under the Act is a broad one and an improvement over the existing system of advance rulings under Customs and Central Excise Laws. Under GST, Advance ruling can be obtained for a proposed transaction as well as a transaction already undertaken by the appellant.
- 2.3 The broad objectives for setting up a mechanism of Advance Ruling are:
 - Provide certainty in tax liability in advance in relation to an activity proposed to be undertaken by the applicant.

- Reduce Litigation.
 - Pronounce ruling expeditiously in a transparent and inexpensive manner.
- 2.4 An advance ruling pronounced by AAR or AAAR shall be binding only on the applicant who has sought the advance ruling and on the concerned officer or the jurisdictional officer in respect of the applicant. This clearly means that an advance ruling is not applicable to similarly placed other taxable persons in the State. It is only limited to the person who has applied for an advance ruling.
- 2.5 The law provides that advance ruling shall be binding till the period when the law, facts or circumstances supporting the original advance ruling have not changed.
- 2.6 However, an advance ruling shall, by an order passed by the AAR/AAAR, be declared to be ab initio void if the AAR or AAAR finds that the advance ruling was obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts. In such a situation, action warranted as per the provisions of the CGST/SGST Act for recovery of tax short paid or not paid, if any, shall apply to the applicant. The period when advance ruling was given up to the period when this ruling was declared void has to be excluded while taking such action.
- 2.7 An order declaring advance ruling to be void can be passed only after providing an opportunity of hearing to the applicant.

3. LEGAL PROVISIONS

- 3.1 Section 95 of the CGST Act, 2017 defines 'Advance Ruling' as a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of Section 97 or sub-section (1) of Section 100 or Section 101C of the said Act, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. **(Section 95, 96 97, 100 of the CGST Act, 2017)**
- 3.2 Section 96 of the CGST Act, 2017 provides that the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act, shall be deemed to be the Authority for advance ruling in respect of that State or Union Territory.
- 3.3 Section 97 of the CGST Act, 2017 provides for making Application for advance ruling in the prescribed form and manner, stating the question on which the advance ruling is sought. The following are the question on which the advance ruling can be sought-
- (a) classification of any goods or services or both;
 - (b) applicability of a notification issued under the provisions of this Act;
 - (c) determination of time and value of supply of goods or services or both;
 - (d) admissibility of input tax credit of tax paid or deemed to have been paid;
 - (e) determination of the liability to pay tax on any goods or services or both;
 - (f) whether applicant is required to be registered;
 - (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
- 3.4 Section 98 of the CGST Act, 2017 stipulates the procedure to be adopted by the AAR on receipt of the application. The procedure in detail is explained in the later part of this Chapter. **(Section 98, 99, of the CGST Act, 2017)**
- 3.5 Section 99 of the CGST Act, 2017 states that for the purpose of CGST Act, the Appellate Authority for Advance Ruling (AAAR) constituted under the provisions of SGST Act or UTGST Act, shall be deemed to be the Appellate Authority in respect of that State or Union Territory.
- 3.6 Section 101B provides for filing an appeal by the distinct persons against conflicting advance ruling given by the Appellate Authorities of two or more States or Union Territories or both, before the National Appellate Authority.
- 3.7 Section 102 of the CGST Act, 2017 provides for amendment of any order passed by the AAR or the AAAR to rectify the error apparent on the face of the record, either noticed by such Authority or brought into the notice of the Authority. If such amendment order has the effect of enhancing the tax liability or reducing the admissible input tax credit then the applicant or the appellant has to be given an opportunity of being heard. **(Section 101, 102, of the CGST Act, 2017)**

- 3.8 Section 103 of the CGST Act, 2017 stipulates that the advance ruling ordered by the Authority or the Appellate Authority shall be binding only on the applicant and the concerned officer, unless the law, facts or circumstances supporting the original advance ruling have changed. **(Section 103, 104, 105, of the CGST Act, 2017)**
- 3.9 Section 104 of the CGST Act, 2017 provides that if the AAR or the AAAR finds that the advance ruling pronounced has been obtained by the applicant by fraud or suppression of facts or misrepresentation of facts, then by an order such ruling shall be declared void ab initio.
- 3.10 Section 105 of the CGST Act, 2017 provides powers of a Civil Court under the Code of Civil Procedure, 1908, to the Appellate Authority and National Appellate Authority for the purpose of exercising its power regarding discovery and inspection, enforcing the attendance of any person and examining him on oath and issuing commissions and compelling production of books of account and other records.
- 3.11 The procedure for filing application to the Advance Ruling Authority and the Appellate Authority for Advance Ruling is prescribed under Rule 104 and 106 of the CGST Rules, 2017, respectively. **(Rule 104 & 106 of the CGST Rules, 2017)**

4. PROCEDURE FOR OBTAINING ADVANCE RULING

- 4.1 The applicant desirous of obtaining advance ruling should make application to AAR in [FORM GST ARA-01](#) prescribed in Rule 104 of the CGST Rules, 2017. The application shall be accompanied by a fee of five thousand rupees, to be deposited by the applicant by internet banking or by using debit or credit cards or NEFT or RTGS and credited to the Electronic Cash Ledger. The amount of fees shall be debited from the Electronic Cash Ledger.
- 4.2 The application, the verification contained therein and all the relevant documents accompanying such application shall be digitally signed or should bear e-signature, as provided under Rule 26 of the CGST Act, 2017. **(Rule 26 of the CGST Act, 2017)**

5. PROCEDURE AT THE END OF ADVANCE RULING AUTHORITY

- 5.1 Upon receipt of an application, the AAR shall send a copy of application to the officer in whose jurisdiction the applicant falls and call for all relevant records.
- 5.2 The Authority shall examine the application and the said records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application. The records called for shall be returned to the said concerned officer after examining.
- 5.3 Application for advance ruling shall not be admitted in cases where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of CGST Act, 2017.
- 5.4 If the application is rejected, it should be only after an opportunity of being heard is provided to the applicant and by way of a speaking order giving the reasons for rejection and the copy of the order shall sent to the applicant as well as the concerned officer.
- 5.5 If the application is admitted, the AAR shall pronounce its advance ruling on the question specified in the application within ninety days of receipt of application. Before giving its ruling, the Authority shall examine the application and any further material furnished by the applicant or by the concerned departmental officer and hear the applicant or his authorized representative as well as the jurisdictional officers of CGST/SGST.
- 5.6 A copy of the advance ruling pronounced by the Authority duly signed by the members and certified in the prescribed manner, be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.
- 5.7 If there is difference of opinion between the two members of AAR, they shall refer the point or points on which they differ to the AAAR for hearing the issue. If the members of AAAR are also unable to come to a common conclusion in regard to the point(s) referred to them by AAR, then it shall be deemed that no advance ruling can be given in respect of the question on which difference persists at the level of AAAR.

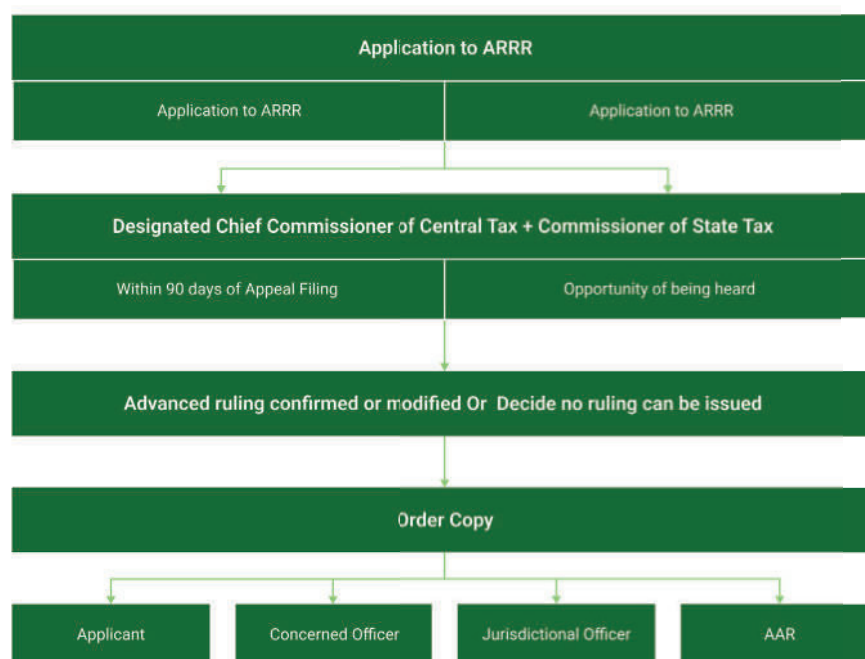
6. APPEAL AGAINST THE ORDER OF THE ADVANCE RULING AUTHORITY

- 6.1 The applicant, if aggrieved with the finding of the Advance Ruling Authority (AAR), can file an appeal with the Appellate Authority for Advance Ruling (AAAR).
- 6.2 An appeal against the advance ruling shall be made by an applicant on the common portal in [FORM GST ARA-02](#) and shall be accompanied by a fee of ten thousand rupees, to be deposited by the applicant by internet banking

or by using debit or credit cards or NEFT or RTGS and credited to the Electronic Cash Ledger. The amount of fees shall be debited from the Electronic Cash Ledger.

- 6.3 In order to make the payment of fee for filing an application for Advance Ruling on the common portal, the applicant has to fill his details using “Generate User ID for Advance Ruling” under “User Services”. On the basis of the ID generated, the applicant can make the payment of the fee of Rs. 5,000/- each under the CGST and the respective SGST Act and attach print of the challan and file the application with the Authority for Advance Ruling.
- 6.4 If the designated officer or the jurisdictional officer of CGST/SGST does not agree with the finding of AAR, he can also file an appeal with AAAR in [FORM GST ARA-03](#). No fee shall be payable by the said officer for filing the appeal.
- 6.6 The appeal by the applicant, the verification contained therein and all the relevant documents accompanying such appeal shall be signed in the manner specified in Rule 26 of the CGST Rules, i.e., Digital Signature /e-signature. In case of the appeal by the CGST/SGST department, the appeal will be signed by an officer authorised in writing by the concerned officer or jurisdictional officer. **(Rule 26 of the CGST Rules, 2017)**
- 6.7 The appeal is required to be filed within thirty days from the date on which the advance ruling is communicated to the concerned officer, the jurisdictional officer or the applicant.
- 6.8 The Appellate Authority must pass an order after hearing the parties to the appeal within a period of ninety days of filing of an appeal. If members of AAAR differ on any point referred to in appeal, it shall be deemed that no advance ruling is issued in respect of the question under appeal.

6.9 Graphical Representation -



7. **MANUAL FILING OF APPLICATIONS BEFORE AAR & AAAR**

- 7.1 As per Rule 104 and 106 of the CGST Rules, 2017, the application for obtaining an advance ruling and filing an appeal against an advance ruling has to be made by the applicant on the common portal. **(Rule 104 and 106 of the CGST Rules, 2017)**
- 7.2 However, due to the unavailability of the requisite forms on the common portal, a new rule 107A was inserted vide [Notification No. 55/2017-Central Tax, dated 15.11.2017](#), which allowed manual filing of the said application, intimation, reply, declaration, statement or issuance of the notice, order or certificate in such Forms as appended to the CGST Rules. **(Rule 107A of the CGST Rules, 2017)**
- 7.3 [Circular No. 25/25/2017-GST dated 21.12.2017](#) has been issued in this regard, prescribing the detailed procedure for manual filing of applications for Advance Ruling and appeals before Appellate Authority for Advance Ruling.

8. **RECTIFICATION OF ORDER BY AAR, AAAR OR NAAAR**

The Authority for Advance Ruling, Appellate Authority for Advance Ruling or National Appellate Authority for Advance Ruling can rectify its order within six months, if any error apparent from records is brought to its notice.

14 TRANSITIONAL PROVISIONS

1. INTRODUCTION

- 1.1 This Chapter deals with the transitional provisions contained in CGST Act, 2017, to facilitate the taxpayers to take Input Tax Credit (ITC) on the CENVAT credit balance or CENVAT credit on goods in stock, etc. at the time of migration from the erstwhile Central Excise and Service Tax regime to GST regime. Presently the relevance of these transitional provisions is only academic, so as to deal with litigation, if any in this regard. The provisions of CGST Act, 2017 and CGST Rules, 2017, relevant to this Chapter are as under –

Sr. No.	Section/Rules	Provisions pertaining to
1	Section 139	Migration of existing taxpayers
2	Section 140	Transitional arrangements for input tax credit
3	Section 141	Transitional provisions relating to job work
4	Section 142	Miscellaneous transitional provisions
5	Rule 117	Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day
6	Rule 118	Declaration to be made under clause (c) of sub-section (11) of section 142
7	Rule 119	Declaration of stock held by a principal and job worker
8	Rule 120	Details of goods sent on approval basis
9	Rule 120A	Revision of declaration in FORM GST TRAN-1
10	Rule 121	Recovery of credit wrongly availed

- 1.2 Prior to introduction of the Goods and Services Tax (GST), the Central Government, State Government and the Local Bodies like Municipal Corporations, etc. levied different types of indirect taxes, viz. Central Excise Duty, Service Tax, Sales Tax, Value Added Tax (VAT), Commercial Tax/Octroi, etc. The GST replaced multiple taxes levied and collected by the Centre and States by subsuming such different types of taxes into a single levy.
- 1.3 Availability of Input Tax Credit (ITC) of taxes paid on inputs, input services and capital goods for set off against the output tax liability is one of the key features of GST. This avoids cascading effect of taxes and ensures uninterrupted flow of credit from the seller to buyer. To ensure a seamless flow of input tax from the existing laws, viz. the Cenvat Credit Rules, 2004, Sales Tax/VAT law, into the GST regime, 'Transitional arrangements for input tax credit' were included in the CGST Act, 2017s to provide for the entitlement and manner of claiming input tax in respect of appropriate taxes or duties paid under the existing laws.
- 1.4 Transitional provisions are incorporated under GST to enable existing taxpayers to migrate to GST in a transparent and exact manner. It means that besides migrating from the Central Excise or Service Tax Registration to GST Registration, the amount of Cenvat Credit claimed on inputs, capital goods and input services carried forward in the last return filed for Central Excise and Service Tax immediately before the appointed day i.e. 01.07.2017, shall be transferred to the Electronic Credit Ledger of the taxpayer concerned, provided the amount of credit is admissible under the GST law. The transition provisions were more pertinent during the initial implementation of GST.
- 1.5 The concept of GST was completely new and many of the taxpayers were unaware of the provisions prevalent under GST for transition from old to new regime, which resulted in numerous litigation. A major concern for persons registered under GST is to make sure they don't lose out on the tax benefits and input credits of the old regime.
- 1.6 These taxes may have been paid while purchasing, inputs, raw materials, semi-finished goods, finished goods, or on materials sent to job worker. For most taxpayers, these taxes were available as input credit till 30th June 2017, and moving the balance taxes to GST regime was important to take benefit of them by utilizing such credit towards discharge of GST on the supplies made during the GST regime. To help businesses transition smoothly and carry forward their input tax credit, the CBIC had released transition forms namely **TRAN-1** and **TRAN-2**.

- 1.7 During the current scenario, transition provisions are significant only for the matters pending in litigation in different stages at Courts.

2. **CATEGORY OF TAXPAYERS**

The transitional provisions allow the following category of taxpayers to carry forward the Cenvat credit while migrating into the new regime.

Category of Taxpayers	Details to be provided	Amount of ITC available
Manufacturers and Service providers already registered under existing Central laws	Closing balance of Cenvat Credit	Closing balance of Cenvat Credit as per last return
Manufacturers and Service providers already registered under existing Central laws	Balance of un-availed Cenvat credit on capital goods	Amount of Cenvat credit on Capital Goods not availed earlier
Manufacturers and Service providers supplying Exempted Goods/Services under existing laws (not liable to be registered under existing Central laws)	Stock of inputs (held as inputs/semi-finished goods/finished goods) to be used for making taxable supplies where duty paid Invoices available	Amount of duty paid as per available duty paid invoice
Trader (Not Liable to be registered under existing Central laws)	Stock of inputs (held as inputs/semi-finished goods/finished goods) to be used for making taxable supplies where duty paid invoices available	Amount of duty paid as per invoice details submitted
Trader (Not Liable to be registered under existing Central laws)	Stock of inputs (held as inputs/semi-finished goods/finished goods) to be used for making taxable supplies where duty paid invoices not available	<u>In case of Intra-State supplies</u> • 60% of the Central tax paid (Incase rate of total tax is 18% or 28%) • 40% of the Central tax paid (in case rate of total tax is 5% or 12%) <u>In case of Inter-State supplies</u> • 30% of the integrated tax paid (in case rate of total tax is 18% or 28%) • 20% of the integrated tax paid (in case rate of total tax is 5% or 12%)

3. **TRANSITIONAL PROVISIONS FOR AVAILMENT OF INPUT TAX CREDIT**

- 3.1 **Closing balance of the credit in the last returns:** The closing balance of the CENVAT credit /VAT in the last returns filed for the period ending 30.06.2017 under the existing law can be taken as credit in Electronic Credit Ledger. Such credit would be available only when the returns for the previous **last six months** have been filed under the existing law. In order to claim this credit, declaration in **FORM GST TRAN-1** is required to be furnished on the common portal **within ninety days** from the appointed day i.e. 1st July, 2017 or within such extended time.
- 3.2 **Unavailed credit on capital goods:** The balance installment of unavailed Cenvat credit on capital goods can also be taken by filing the requisite declaration in the **GST TRAN-1**.

- 3.3 **Credit on duty paid stock:** A registered taxable person, other than manufacturer or service provider, may have duty paid goods in his stock on 1st July, 2017. GST would be payable on all supplies of goods or services made after the appointed day. The Government cannot collect tax twice on the same goods. Hence, in such cases, it has been provided that the credit of the duty/tax paid earlier would be admissible as credit. Such credit can be taken as under:
- (i) Credit shall be taken on the basis of invoice evidencing payment of duty of Central Excise or VAT.
 - (ii) Such invoices should be less than one-year old.
 - (iii) Declare the stock of duty paid goods within prescribed time on the common portal.
- 3.4 **Credit on duty paid stock when registered person does not possess the document evidencing payment of Central Excise duty/VAT:** For such traders who do not have Central Excise or VAT Invoice, there was a scheme to allow credit to them on the duty paid stock. The features of this scheme are as under:
- (i) The scheme was operative only for **six months** from 1st July, 2017. It was not available to manufacturer or supplier of service. It was available to traders only.
 - (ii) Credit @ 60% on such goods which attract Central Tax @ 9% or more and @ 40% for other goods of GST paid on such stock cleared after 1st July, 2017 was allowed. However, such goods should not be unconditionally exempted goods or taxed at 'Nil' rate under the GST law. It has also been provided that where Integrated Tax is paid on such goods, the amount of credit shall be allowed at @ 30% and 20%, respectively of the said tax.
 - (iii) Credit would be allowed after the GST is paid on such goods subject to the condition that the benefit of such credit is passed on to the customer by way of reduced prices.
 - (iv) A statement of supply of such goods in each of such tax period has to be submitted.
 - (v) Stocks stored should be easily identifiable.
- 3.5 **Credit relating to exempted goods under the existing law but now taxable:** Input Tax Credit of CENVAT / VAT in respect of input, semi-finished and finished goods in stock attributable to such exempted goods or services, which are now taxable can also be taken in the same manner.
- 3.6 **Input/input services in transit:** There might be a scenario where input or input services are received on or after the appointed day but the duty or tax on the same was paid by the supplier under the existing law. Registered person may take credit of eligible duties and taxes, provided the invoice has been recorded in the books **within 30 days** from 1st July, 2017. The period can be extended by the Commissioner of GST **by another 30 days**. A statement of such invoices have to be furnished. Input Service Distributor can also distribute such credit.
- 3.7 **Tax paid under existing law under composition scheme:** The taxpayers paying tax under the normal scheme of the earlier law has opted to pay tax under the Composition Scheme of the CGST Act, 2017, then the amount of CENVAT credit carried forward in a return will not be allowed to be carried forward if the person is paying tax under Composition Scheme. Even the unavailed amount of CENVAT credit on capital goods shall not be allowed to be carried forward under the CGST Act, 2017. In case, the taxpayer is switching over from the Composition Scheme to the normal scheme under the CGST Act, 2017, then he can take credit of eligible duties and taxes in respect of inputs held in stock, inputs held in semi-finished or finished goods, subject to the following conditions:-
- (i) Such Input stock is used for taxable supply under this Act.
 - (ii) Registered person is not covered under Section 10 (Composition Scheme) of this Act. **(Section 10 of CGST Act, 2017)**
 - (iii) Registered person is eligible for ITC under this Act.
 - (iv) Registered person is in possession of such Invoice or other duty payment documents.
 - (v) Such Invoices are not **more than twelve months** old on appointed day.
- 3.8 **ITC in case of Centralized Registration under Service Tax:** Person holding centralized registration can take credit of the amount of CENVAT credit carry forwarded in return furnished under the existing law, if the original / revised return under the existing law has been filed **within three months**. Such credit may be transferred to any

of the registered persons having the same PAN for which the centralized registration was obtained.

- 3.9 **Reclaim the reversed Input Service credit:** CENVAT credit reversed on account of non-payment of consideration **within a period of three months** can be reclaimed if payment is made to the supplier of service **within three months** from 1st July, 2017.
- 3.10 **Capital goods belonging to the principal lying at the premises of the agent:** This provision is specific to SGST law. In such cases, agent shall be entitled to take credit subject to the following conditions:
- (i) the agent is a registered taxable person
 - (ii) both the principal and the agent declare the details of stock
 - (iii) the invoices are not earlier **than twelve months**
 - (iv) the principal has either reversed or not availed of the input tax credit.

4. TRANSITIONAL PROVISIONS RELATING TO JOB WORK, GOODS RETURNED/SENT FOR APPROVAL ETC.:

- 4.1 **Job work:-** Inputs, semi-finished goods or finished goods were sent to the job worker or any other premises without payment of duty/VAT under the existing law. No GST is payable by the job worker when such goods are returned by him **within six months** from 1st July, 2017. The period, on sufficient cause being shown, can be extended by the Commissioner, GST **for a further period not exceeding two months**. If not returned within the prescribed period, then ITC shall be liable to be recovered from the principal according to section 142 (8) (a) as per second proviso to section 141(1) of the CGST Act, 2017. In addition, the job worker will have to pay the GST on such supplies. In case of semi-finished goods, the manufacturer may transfer the goods to premises of a registered person without payment of tax within the prescribed period. In case of finished goods, the manufacturer may transfer the goods on payment of tax or clear for export within the prescribed period. **(Section 141(1) of CGST Act 2017)**
- 4.2 **Goods removed before 6 months of the appointed day i.e. 1st July, 2017 but returned within 6 months from 1st July, 2017:** If such goods are returned by an unregistered person, then refund of the duty/VAT paid under existing law can be claimed. If returned by a registered person, then return of goods shall be treated as supply of goods. ITC can be claimed.
- 4.3 **Goods sent on approval basis before 6 months of the appointed day i.e. 1st July, 2017 but returned within 6 months from 1st July, 2017:** No tax is payable by the person returning the goods. Commissioner may extend for a further period not exceeding two months. If returned after that, tax is payable if the supply is taxable under GST by the recipient. If not returned, tax is payable by the person who sent the goods on approval basis.
- 4.4 **TDS deducted in VAT:** A supplier had made sale of goods and tax was required to be deducted under VAT Act and Invoice was issued before the appointed day, however, the payment was made on or after appointed day. In such cases no TDS under GST is to be deducted.
- 4.5 **Price revision in respect of existing contracts:** In case of upward price revision, a registered person will issue a supplementary invoice or debit notes **within 30 days** from the date of revision and such revision shall be treated as supply under GST and tax is payable under this Act. In case of downward revision, registered person may issue credit note **within 30 days** from such revision and credit note shall be deemed to have been issued in respect of outward supply made under this Act. A registered person will reduce his tax liability for such credit note subject to reversal of credit by the recipient.
- 4.6 **Proceedings under the existing laws:** GST law has become operational w.e.f. 1st July, 2017 and existing laws have been repealed. Elaborate provisions have been made to save the pending as well future claims relating to existing law made before, on or after the appointed day i.e. 1st July, 2017. Such proceedings may pertain to refund claims of CENVAT credit/VAT or export related rebate or service tax, such proceedings may either result in recovery of tax or refund. All such cases would be disposed of under the existing law. If any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse. Refund of CENVAT credit shall be paid in cash. There will be no refund of CENVAT credit if already carry forwarded. If any amount becomes recoverable, the same shall be recovered as arrear of tax under CGST Act, 2017.

5. STATUTORY PROVISIONS

The Statutory provisions relating to transition are contained in Chapter XX from Section 139 to 142 of the CGST Act, 2017, and Rule 117 to 121 of the CGST Rules, 2017.

SECTION 139	Migration of existing taxpayers
SECTION 140	Transitional arrangements for input tax credit
SECTION 141	Transitional provisions relating to job work
SECTION 142	Miscellaneous transitional provisions

- 5.1 Section 139 of CGST Act, 2017 provides for migration of existing taxpayers. **(Section 139, 140 of CGST Act, 2017)**
- 5.2 Section 140 of the CGST Act, 2017 contains provisions for transitional arrangements for input tax credit.
- 5.3 Section 140(1) of the CGST Act, 2017 provides that a registered person can avail CENVAT credit of eligible duties carried forward in the return under the existing law relating to the period ending with the day immediately preceding the appointed day, provided such credit is admissible as ITC under the CGST Act, 2017, the credit does not relate to goods cleared under notified exemption notifications and all returns for the **last 6 months** under the existing law are filed immediately preceding the appointed date.
- 5.4 Section 140(2) of the CGST Act, 2017 stipulates that a registered person can avail the unavailed CENVAT credit of capital goods not carried forward in the return under the existing law relating to the period before 01.07.2017, if such credit is admissible as ITC under the CGST Act, 2017.
- 5.5 Section 140(3) of the CGST Act, 2017 states that a registered person can take credit of eligible duties in respect of inputs held in stock & inputs contained in semi-finished or finished goods held in stock on appointed day, if he was not liable to be registered under the existing law, manufactures or provides exempted supply, provides works contract service & was availing benefit of **Notification No. 26/2012-ST** and is a first or second stage dealer or a registered importer or a depot of a manufacturer, subject to following conditions:
- The inputs or goods are used for making taxable supplies under this Act;
 - The registered person is eligible for ITC on such inputs under this Act;
 - Invoices evidencing payment of duty under existing law is in possession;
 - Such invoices were issued **not earlier than 12 months** before the appointed day;
 - The supplier of services is not eligible for any abatement under this Act.
- 5.6 Section 140(4) of the CGST Act, 2017 provides that Input tax Credit can be taken under Section 140(1) & (3) for supply taxable under this act & previously assessable under the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994. **(Section 140 (1, 3, 4, 5) of CGST Act 2017)**
- 5.7 Section 140(5) of the CGST Act, 2017 states that Input tax Credit of eligible duties (except service tax) can be taken for supplies received on or after the appointed day if the invoice was recorded in the books of accounts **within 30 days** from the appointed day & statement is furnished.

- 5.8 Section 140(6) of the CGST Act, 2017 states that a registered person paying tax at a fixed rate or composition levy can take credit of eligible duties in respect of inputs held in stock & inputs contained in semi-finished or finished goods held in stock on appointed day provided, the inputs or goods are used for making taxable supplies under this Act, the registered person is eligible for ITC on such inputs under this Act, invoices evidencing payment of duty under existing law are in possession and such invoices were issued **not earlier than 12 months** before the appointed day. **(Section 140(6) of CGST Act 2017)**
- 5.9 Section 140(7) of the CGST Act, 2017 provides that Input tax Credit on services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution even if the invoices relating to such services are received on or after the appointed day. **(Section 140(7) of CGST Act 2017)**
- 5.10 Section 140(8) of the CGST Act, 2017 states that a registered person having centralized registration under existing law can avail CENVAT credit carried forwarded in the return under the existing law relating to the period before the appointed day, provided that such credit is admissible as ITC under this Act and all returns for the **last 3 months** under the existing law are filed before the appointed date. **(Section 140(8) of CGST Act 2017)**
- 5.11 Section 140(9) of the CGST Act, 2017 provides that if CENVAT credit for input services provided under the existing law has been reversed due to non-payment of consideration within 3 months, credit can be reclaimed if payment is made **within 3 months** from the appointed day. **(Section 140(9) of CGST Act 2017)**
- 5.12 **Section 141 of the CGST Act, 2017 Transitional provisions relating to job work:** **(Section 141 of CGST Act 2017)**
- If any inputs or semi-finished goods or excisable goods are sent to a job worker without payment of tax under existing law prior to the appointed day & such inputs or goods are returned **within 6 months** from the appointed day, no tax is payable, if manufacturer & job-worker declare the details of the inputs or goods held in stock by the job-worker on the appointed day. If said inputs or goods are not returned within the specified period, ITC shall be recovered under Section 142(8)(a) of the CGST Act, 2017. The manufacturer may transfer the said goods to the premises of any registered person for supplying there from, on payment of tax in India or without payment of tax for exports within specified period. **(Section 142(8) (a) of CGST Act, 2017)**
- 5.13 **Section 142 - Miscellaneous transitional provisions:**
- (i) Section 142(1) of the CGST Act, 2017 provides that if goods on which duty had been paid under the existing law at the time of removal (**less than 6 months** prior to the appointed day) are returned by an unregistered person **within 6 months** from the appointed day, then the person shall be eligible for refund. **(Section 142(8) (a) of CGST Act, 2017)**
 - (ii) Section 142(2) of the CGST Act, 2017 provides that if in pursuance of a contract entered into prior to the appointed day, the price of supply is revised on or after the appointed day, supplementary invoice or debit or credit note shall be issued **within 30 days** of such revision & such issue shall be deemed to be outward supply made under this Act. If recipient has not reduced ITC relating to credit note, supplier cannot reduce his tax liability relating to credit note. **(Section 142(2) of CGST Act 2017)**
 - (iii) Section 142(3) of the CGST Act, 2017 provides for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law and will be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash. **(Section 142(3) of CGST Act 2017)**
 - (iv) Section 142(4) of the CGST Act, 2017 provides for refund filed after the appointed day for refund of any duty or tax paid under existing law in respect of the goods or services exported before or after the appointed day and shall be disposed of in accordance with the provisions of the existing law. **(Section 142(4) of CGST Act 2017)**
 - (v) Section 142(5) of the CGST Act, 2017 provides for refund of tax paid after the appointed day under the existing law in respect of services not provided and shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash. **(Section 142(5) of CGST Act 2017)**
 - (vi) Section 142(6) of the CGST Act, 2017 provides that every proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash. **(Section 142(6) of CGST Act, 2017)**

- (vii) Section 142(7) of the CGST Act, 2017 states that every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and if any amount becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of duty or tax under this Act and in case any amount found to be admissible to the claimant shall be refunded to him in cash. **(Section 142(6) of CGST Act, 2017)**
- (viii) Section 142(8) of the CGST Act, 2017 states that where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and if found refundable to the taxable person, the same shall be refunded to him in cash under the said law. **(Section 142(8) of CGST Act, 2017)**
- (ix) Section 142(9) of the CGST Act, 2017 states that where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of CENVAT credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and if found to be refundable or CENVAT credit is found to be admissible to any taxable person, the same shall be refunded to him in cash under the existing law. **(Section 142(9) of CGST Act 2017)**
- (x) Section 142(10) of the CGST Act, 2017 stipulates that the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act. **(Section 142(10) of CGST Act 2017)**
- (xi) Section 142(11) of the CGST Act, 2017 provides that no tax is payable to the extent the tax was leviable under the VAT Act of the State or Chapter V of the Finance Act, 1994 & if tax is already paid then credit can be taken for supplies after the appointed day. **(Section 142(11) of CGST Act 2017)**
- (xii) Section 142(12) of the CGST Act, 2017 provides that if goods are sent on approval not **less than 6 months** before the appointed day are rejected or returned **within 6 months** after the appointed day, no tax is payable. **(Section 142(12) of CGST Act 2017)**
- (xiii) As per Section 142(13) of the CGST Act, 2017 if invoice is issued before appointed day but payment is made on or after the appointed day, TDS is not deducted under Section 51 even if required to be deducted under any State or Union territory law relating to VAT. **(Section 142(13) of CGST Act 2017)**

Rule 117	Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day
Rule 118	Declaration to be made under clause (c) of sub-section (11) of section 142
Rule 119	Declaration of stock held by a principal and job-worker
Rule 120	Details of goods sent on approval basis
Rule 120A	Revision of declaration in FORM GST TRAN-1
Rule 121	Recovery of credit wrongly availed

6. CGST RULES, 2017 UNDER THE TRANSITIONAL PROVISIONS

- 6.1 Rule 117 of the CGST Rules, 2017 stipulates that every registered person entitled to take credit of input tax under Section 140 of CGST Act, 2017 shall submit a declaration electronically in [FORM GST TRAN-1](#), **within ninety days** of the appointed day. The amount of credit specified in the application in [FORM GST TRAN-1](#) shall be credited to the Electronic Credit Ledger of the applicant maintained in [FORM GST PMT-2](#) on the common portal. [Form GST TRAN-2](#) is available for dealers and traders who have registered for GST after being previously unregistered. If a dealer does not possess a VAT or excise invoice for the stocks they held on 30.06.2017, they may use TRAN-2 to claim a tax credit on those stocks. (Rule 117 of CGST Rule 2017) **(Section 140 of CGST Act 2017)**
- 6.2 Rule 118 of the CGST Rules, 2017 states that every person to whom the provision of clause (c) of sub-section (11) of section 142 applies, shall within the period specified in rule 117 shall submit a declaration electronically in [FORM GST TRAN-1](#) furnishing the proportion of supply on which Value Added Tax or Service Tax has been paid before the appointed day but the supply is made after the appointed day, and the Input Tax Credit admissible thereon. **(Rule 118 of CGST Rules 2017)**
- 6.3 As per Rule 119 of the CGST Rules, 2017, every person to whom the provisions of Section 141 apply within the period specified in rule 117 shall submit a declaration electronically in [FORM GST TRAN-1](#), specifying therein, the stock of the inputs, semi-finished goods or finished goods, as applicable, held by him on the appointed day. **(Rule 119 of CGST Rules 2017 Section 141 of CGST Act, 2017)**
- 6.4 Rule 120 of the CGST Rules, 2017 states that every person having sent goods on approval under the existing law and to whom sub-section (12) of section 142 applies within the period specified in rule 117 shall submit details of such goods sent on approval in [FORM GST TRAN-1](#). **(Rule 120 of CGST Rule 2017 Section 142(12) of CGST Act, 2017)**
- 6.5 Rule 120A of the CGST Rules, 2017 states that every registered person who has submitted a declaration electronically in [FORM GST TRAN-1](#) within the time period specified in rule 117, rule 118, rule 119 and rule 120 may revise such declaration once and submit the revised declaration in [FORM GST TRAN-1](#) electronically on the common portal within the time period specified in the said rules. **(Rule 117, 118, 119, 120, 120A of CGST Rules, 2017)**
- 6.6 Rule 121 of the CGST Rules, 2017 provides for recovery of credit wrongly availed under section 73 or 74 of the CGST Act, 2017. **(Rule 121 of CGST Rules, 2017 Section 73, 74 of CGST Act, 2017)**

7. CIRCULARS ISSUED BY CBIC

- [Circular No. 87/06/2019-GST dated 02.01.2019](#) -Clarification regarding section 140(1) of the CGST Act, 2017.
- [Circular No. 42/16/2018-GST dated 13.04.2018](#) -Clarification regarding procedure for recovery of arrears under the existing law and reversal of inadmissible input tax credit.
- [Circular No.180/12/2022-GST dated 09.09.2022](#) - Guidelines for filing/revising TRAN-1/TRAN-2 in terms of order dated 22.07.2022 & 02.09.2022 of Hon'ble Supreme Court in the case of Union of India vs. Filco Trade Centre Pvt. Ltd.
- [Circular No. 182/14/2022-GST](#) - Guidelines for verifying the Transitional Credit in light of the order of the Hon'ble Supreme Court in the Union of India vs. Filco Trade Centre Pvt. Ltd., SLP(C) No. 32709- 32710/2018, order dated 22.07.2022 & 02.09.2022.

NOTES



Compiled By

DIRECTORATE GENERAL OF GOODS & SERVICES TAX
CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS