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INDIRECT TAXES

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SHRESHTA

1. GST IN INDIA – AN INTRODUCTION

A. WHAT IS A TAX?

1. A tax may be defined as a "pecuniary burden laid upon individuals or property owners to support the Government"; a payment exacted by legislative authority.
2. A tax "is not a voluntary payment or donation, but an enforced contribution, exacted pursuant to legislative authority".
3. In simple words, tax is nothing but money that people have to pay to the Government, which is used to provide public services.

B. TYPES OF TAXES: Taxes are broadly classified into direct and indirect taxes.

1. Direct Taxes:

- a. A direct tax is a kind of charge, which is imposed directly on the taxpayer and paid directly to the Government by the persons (juristic or natural) on whom it is imposed.
- b. A direct tax is one that cannot be shifted by the taxpayer to someone else.
- c. A significant direct tax imposed in India is income tax.

2. Indirect Taxes:

- a. If the taxpayer is just a conduit(channel) and at every stage the tax incidence is passed on till it finally reaches the consumer, who really bears the brunt of it, such tax is indirect tax.
- b. An indirect tax is one that can be shifted by the taxpayer to someone else.
- c. Its incidence is borne by the consumers who ultimately consume the product or the service, while the immediate liability to pay the tax may fall upon another person such as a manufacturer or provider of service or seller of goods.
- d. Also called consumption taxes, they are regressive in nature because they are not based on the principle of ability to pay.
- e. All the consumers, including the economically challenged bear the brunt of the indirect taxes equally.
- f. Indirect taxes are levied on consumption, expenditure, privilege, or right but not on income or property.

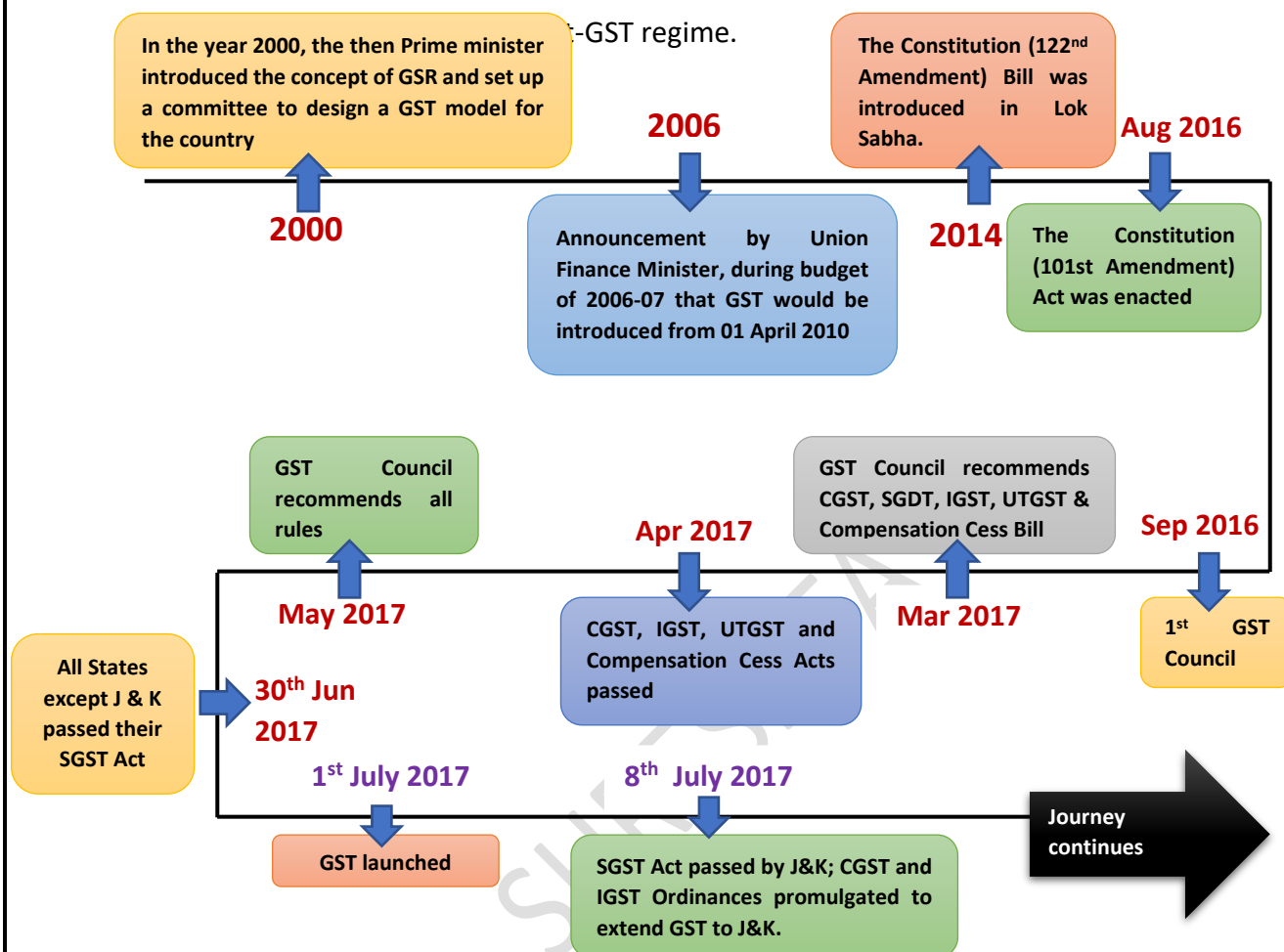
C. GOODS AND SERVICES TAX :Goods and services tax means

- a. any tax on supply of goods, or services or both
- b. except taxes on the supply of the alcoholic liquor for human consumption.

D. GENESIS OF GST IN INDIA:

1. Earlier, a number of indirect taxes were levied in India, namely, excise duty, customs duty, service tax, central sales tax (CST), value added tax (VAT), entry tax, purchase tax, entertainment tax, tax on lottery, betting and gambling, luxury tax, tax on advertisements, etc.

- However, indirect taxation in India witnessed a paradigm shift on July 01, 2017, into a unified indirect tax regime wherein a large number of Central and State indirect taxes were amalgamated into a single tax – Goods and Services Tax (GST).
- The introduction of GST has been a very significant step in the field of indirect tax reforms in India.



E. FEATURES OF INDIRECT TAXES

- An important source of revenue:** Indirect taxes are a major source of tax revenues for Governments worldwide and continue to grow as more countries move to consumption-oriented tax regimes. In India, indirect taxes contribute more than 50% of the total tax revenues of Central and State Governments.
- Tax on commodities and services:** It is levied on commodities at the time of supply or manufacture or purchase or sale or import/export thereof. Hence, it is also known as commodity taxation. It is also levied on supply of services.
- Shifting of burden:** There is a clear shifting of tax burden in respect of indirect taxes. For example, GST paid by the supplier of the goods is recovered from the buyer by including the tax in the cost of the commodity.
- No perception of direct pinch:** Since value of indirect taxes is generally inbuilt in the price of the commodity, most of the time the tax payer/consumer pays the same without actually knowing that he is paying tax to the Government. Thus, tax payer does not perceive a direct pinch while paying indirect taxes.

- e. **Inflationary:** Tax imposed on commodities and services causes an all-round price spiral. In other words, indirect taxation directly affects the prices of commodities and services and leads to inflationary trend.
- f. **Wider tax base:** Unlike direct taxes, the indirect taxes have a wide tax base. Majority of the products or services are subject to indirect taxes with low thresholds.
- g. **Promotes social welfare:** Higher taxes are imposed on the consumption of harmful products (also known as 'sin goods') such as alcoholic products, tobacco products etc. This not only checks their consumption but also enables the State to collect substantial revenue.
- h. **Regressive in nature:** Generally, the indirect taxes are regressive in nature. The rich and the poor have to pay the same rate of indirect taxes on certain commodities of mass consumption. This may further increase the income disparities between the rich and the poor.

F. CONCEPT OF GST:

1. **Value Added Tax:** GST is a value added tax levied on supply i.e., manufacture or sale of goods and provision of services.
2. **Continuous chain of tax credits:** GST offers comprehensive and continuous chain of tax credits from the producer's point/service provider's point up to the retailer's level/consumer's level thereby taxing only the value added at each stage of supply chain.
3. **Burden borne by final consumer:**
 - a. The supplier at each stage is permitted to avail credit of GST paid on the purchase of goods and/or services and can set off this credit against the GST payable on the supply of goods and services to be made by him.
 - b. Thus, only the final consumer bears the GST charged by the last supplier in the supply chain, with set-off benefits at all the previous stages.
4. **No Cascading of Taxes:** Since, only the value added at each stage is taxed under GST, there is no tax on tax or cascading of taxes under GST system. The same can be understood better with the help of the following example:

MANUFACTURER (₹)	DISTRIBUTOR (₹)	RETAILER (₹)	CONSUMER (₹)
Cost: 1,00,000 GST @ 18%= 18,000	Cost: 1,00,000 Profit: 11,200 Sale Price: 1,11,200 GST @ 18% 20,016	Cost: 1,11,200 Profit: 24,640 Sale Price: 1,35,840 GST@ 18% 24,451.20	Cost: 1,60,291.2 (1,35,840+24,451.20)
Input Tax Credit= NIL	Input Tax Credit= 18,000	Input Tax Credit = Rs. 20,016	Input Tax Credit= NIL
Paid to Government GST = 18,000	Paid to Government GST = 2,016 (Output tax - Input tax)	Paid to Government GST= 4,435.20 (Output tax - Input tax)	Tax Borne by the Consumer 18,000+2,016+4,435.20 = 24,451.20

Value Addition = 1,00,000 GST @ 18% = 18,000	Value Addition= 11,200 GST @ 18%= 2,016	Value Addition= 24,640 GST @ 18%= 4,435.20	Value Addition= NIL
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G. DUAL GST:

1. India has adopted a Dual GST model in view of the federal structure of the country.
2. Consequently, Centre and States simultaneously levy GST on taxable supply of goods or services or both, which takes place within a State or Union Territory.
3. Thus, tax is imposed concurrently by the Centre and States, i.e. Centre and States simultaneously tax goods and services.
4. Now, the Centre also has the power to tax intra-State sales & States are also empowered to tax services.
5. GST extends to whole of India including the State of Jammu and Kashmir.
6. GST is a destination-based consumption tax.
7. **GST in case of Intra State Supply:** s a general rule, where the location of the supplier and the place of supply of goods or services are in the same State/Union territory, it is treated as intra-State supply of goods or services respectively
 - a. Central Goods and Services Tax (CGST) - levied and collected by Central Government,
 - b. State Goods and Services Tax (SGST) - levied and collected by State Governments/Union Territories with Legislatures and
 - c. Union Territory Goods and Services Tax (UTGST) - levied and collected by Union Territories without Legislatures.
8. **GST in case of Inter State Supply:**
 - a. Where the location of the supplier and the place of supply of goods or services are in
 - i. two different States or
 - ii. two different Union Territories or
 - iii. a State and a Union territory,
 it is treated as inter-State supply of goods or services.
 - b. Inter-State supplies of taxable goods and/or services are subject to Integrated Goods and Services Tax (IGST). IGST is the sum total of CGST and SGST/UTGST and is levied by Centre on all inter-State supplies.

H. NEED FOR GST IN INDIA: The deficiencies in the existing indirect taxation system led to the introduction of the GST in India.

Deficiencies in existing indirect taxation:

1. Under the earlier indirect tax regime, despite the introduction of the principle of taxation of value added in India – at the Central level in the form of CENVAT (Central Excise) and at the State level in the form of State VAT - its application always remained piecemeal and fragmented on account of the following reasons:

- a. **Double Taxation:** Certain transactions were subject to double taxation and were taxed as both goods and services, since under the earlier regime, distinction between goods and services was often blurred.

Example: Under earlier tax regime, software was subject to both service tax and VAT. This was so because both sale of goods and provision of service were involved and therefore taxable event under both the Statutes i.e., respective VAT law and service tax law got triggered. This aspect has been taken care of under GST law.

- b. **Cascading of taxes:** CENVAT did not include chain of value addition in the distributive trade after the stage of production. Similarly, in the State-level VAT, CENVAT load on the goods was not removed. This led to the cascading of taxes.

Example: Under earlier tax regime, if goods were manufactured for ₹ 1000/- and excise duty was payable @ 12.5% and VAT was payable @ 14.30%, the billing was being done as under:

Assessable value of goods under excise law	₹ 1,000
Excise duty @ 12.5%	₹ 125
Taxable value for VAT	₹ 1,125
VAT @ 14.30%	₹ 160.88
Total invoice value	₹ 1,285.88

c.

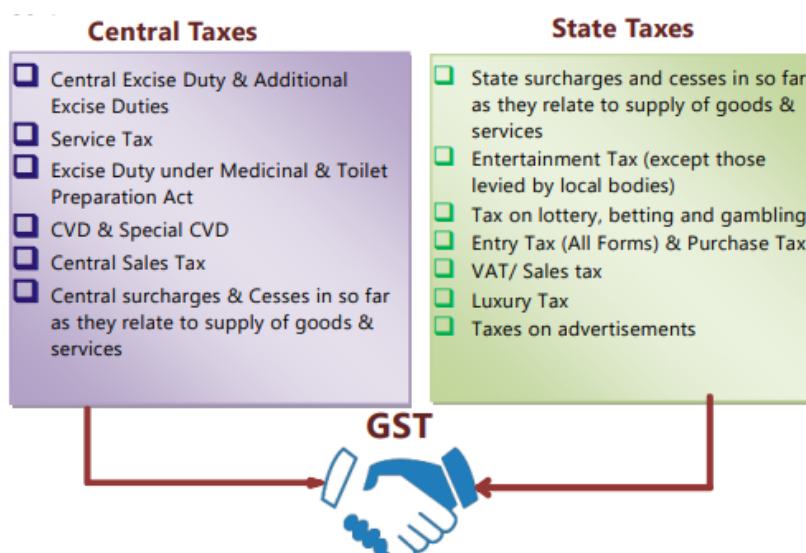
- d. **No Set off:** Though CENVAT and State-Level VAT were essentially value added taxes, set off of one against the credit of another was not possible as CENVAT was a central levy and State-Level VAT was a State levy.
- e. **Multiple taxes:** There were several taxes in the States, such as, Luxury Tax, Entertainment Tax, etc. which were not subsumed in the VAT. Hence for a single transaction, multiple taxes in multiple forms were required to be paid.
- f. **Reduction of tax base for State Governments:** With service sector being the fastest growing sector in the economy, the exclusion of services from the tax base of the States potentially eroded their tax- buoyancy.
- g. **Cascading effect of CST:** CST was another source of distortion in terms of its cascading nature since it was non-VATABLE.

Example: Under earlier tax regime, if a dealer in Delhi purchases goods from a manufacturer in Punjab for ₹ 1000 + ₹ 20 (2% CST) = ₹ 1020/- and sells such goods within Delhi for ₹ 1200/-. The tax rate on sales is 12.5% and hence output tax liability is ₹ 150/-. Credit of ₹ 20/- is not allowed while making payment of ₹ 150/- and hence the dealer has to pay ₹ 150 as VAT.

- I. **TAXES SUBSUMED IN GST:** The various central, State and local levies were examined to identify their possibility of being subsumed under GST. While identifying, the following principles were kept in mind:

1. Taxes or levies to be subsumed should be primarily in the nature of indirect taxes, either on the supply of goods or on the supply of services.

2. Taxes or levies to be subsumed should be part of the transaction chain which commences with import/ manufacture/ production of goods or provision of services at one end and the consumption of goods and services at the other.
3. The subsuming of taxes should result in free flow of tax credit in intra and inter-State levels. The taxes, levies and fees that were not specifically related to supply of goods & services would not be subsumed under GST.
4. Revenue fairness for both the Union and the States individually would need to be attempted.
5. Taking the above principles into account, following taxes were subsumed in the GST:



J. SPECIAL TREATMENT FOR CERTAIN PRODUCTS: GST is levied on all goods and services, except alcoholic liquor for human consumption and petroleum crude, diesel, petrol, ATF and natural gas.

1. **Alcoholic liquor for human consumption:** It is outside the realm of GST. The manufacture/production of alcoholic liquor continues to be subjected to State excise duty and inter-State/intra-State sale of the same is subject to CST/VAT respectively.
2. **Petroleum crude, diesel, petrol, ATF and natural gas:** As regards petroleum crude, diesel, petrol, ATF and natural gas are concerned, they are not presently leviable to GST. GST will be levied on these products from a date to be notified on the recommendations of the GST Council.

Till such date, central excise duty continues to be levied on manufacture/production of petroleum crude, diesel, petrol, ATF and natural gas and inter-State/intra-State sale of the same is subject to CST/ VAT respectively.

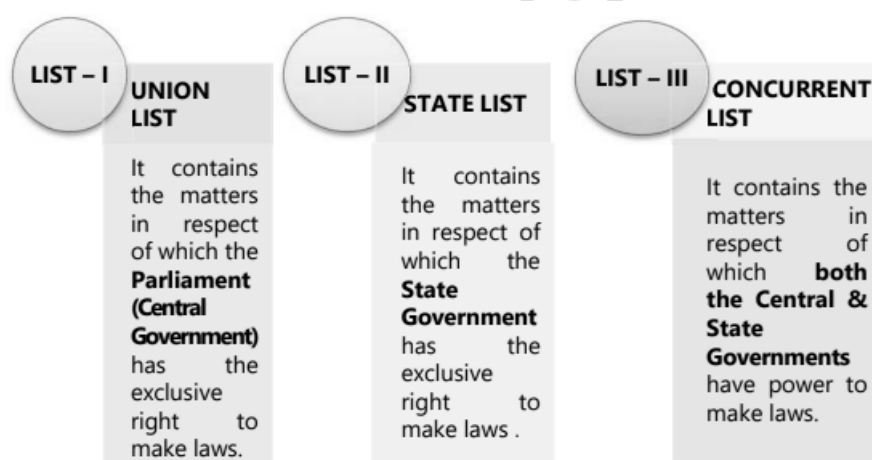
3. **Tobacco:** Tobacco is within the purview of GST, i.e. GST is leviable on tobacco. However, Union Government has also retained the power to levy excise duties on tobacco and tobacco products manufactured in India. Resultantly, tobacco is subject to GST as well as central excise duty.
4. **Opium, Indian hemp and other narcotic drugs and narcotics:** Opium, Indian hemp and other narcotic drugs and narcotics are within the purview of GST, i.e. GST is leviable on them. However, State Governments have also retained the power to levy excise duties on such

products manufactured in India. Resultantly, Opium, Indian hemp and other narcotic drugs and narcotics are subject to GST as well as State excise duties.

K. CONSTITUTIONAL PROVISIONS REGARDING TAXATION:

The significant provisions of the Constitution relating to taxation are:

1. **Article 265:** Article 265 of the Constitution of India prohibits arbitrary collection of tax. It states that “no tax shall be levied or collected except by authority of law.” The term “authority of law” means that tax proposed to be levied must be within the legislative competence of the Legislature imposing the tax.
2. **Article 245:** Part XI of the Constitution deals with relationship between the Union and States. The power for enacting the laws is conferred on the Parliament and on the Legislature of a State by Article 245 of the Constitution. The said Article provides as under:
 - a. Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the legislature of a State may make laws for the whole or any part of the State.
 - b. No law made by the Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.
3. **Article 246:** It gives the respective authority to Union and State Governments for levying tax.
4. **Seventh Schedule to Article 246:** It contains three lists which enumerate the matters under which the Union and the State Governments have the authority to make laws.



L. SIGNIFICANT PROVISIONS OF CONSTITUTION (101ST AMENDMENT) ACT, 2016 FOR LEVY AND COLLECTION OF GST:

1. **Article 246A: Power to make laws with respect to Goods and Services Tax**

Newly inserted Article 246A

- a. Notwithstanding anything contained in Articles 246 and 254, Parliament, and the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.
- b. Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

2. **Article 269A: Levy and collection of GST on inter-State supply:**

- a. Article 269A stipulates that GST on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.
- b. In addition to above, import of goods or services or both into India will also be deemed to be supply of goods and/ or services in the course of Inter-State trade or Commerce.
- c. This will give power to Central Government to levy IGST on the import transactions which were earlier subject to Countervailing duty under the Customs Tariff Act, 1975.

3. **Article 279A - GST Council:**

- a. Article 279A of the Constitution empowers the President to constitute a joint forum of the Centre and States namely, Goods & Services Tax Council (GST Council).
- b. The provisions relating to GST Council came into force on 12th September, 2016. President constituted the GST Council on 15th September, 2016.
- c. The Union Finance Minister is the Chairman of this Council and Ministers in charge of Finance/Taxation or any other Minister nominated by each of the States & UTs with Legislatures are its members. Besides, the Union Minister of State in charge of Revenue or Finance is also its member.
- d. The function of the Council is to make recommendations to the Union and the States on important issues like tax rates, exemptions, threshold limits, dispute resolution etc.
- e. It shall recommend the special provisions with respect to the Special Category States. There are 11 Special Category States, namely, States of **Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand**. Special threshold limits for registration, composition, exemptions, etc. have been recommended for some or all of these States.
- f. GST Council shall also recommend the date on which GST be levied on petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel.
- g. Every decision of the GST Council is taken by a majority of not less than three-fourths of the weighted votes of the members present and voting. Vote of the Centre has a weightage of one-third of total votes cast and votes of all the State Governments taken together has a weightage of two-thirds of the total votes cast, in that meeting.

M. EXTENT & COMMENCEMENT OF GST LAW:

1. **Central Goods and Services Tax Act, 2017:** CGST Act, 2017 extends to the whole of India.

India means:

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

2. **State GST law** of the respective State/Union Territory with Legislature [Delhi, Puducherry and Jammu & Kashmir] extends to whole of that State/Union Territory.

3. **Integrated Goods and Services Tax Act, 2017** extends to the whole of India.
4. **Union Territory Goods and Services Tax Act, 2017** extends to the Union territories (without legislature) of the
 - a. Andaman and Nicobar Islands,
 - b. Lakshadweep,
 - c. Dadra and Nagar Haveli and Daman and Diu,
 - d. Ladakh,
 - e. Chandigarh and
 - f. other territory.

N. GST COMMON PORTAL:

1. GST being a destination-based tax, the inter-State trade of goods and services (IGST) needed a robust settlement mechanism amongst the States and the Centre.
2. A Common Portal was needed which could act as a clearing house and verify the claims and inform the respective Governments to transfer the funds. This was possible only with the help of a strong IT Infrastructure.
3. Resultantly, Common GST Electronic Portal – **www.gst.gov.in** – a website managed by Goods and Services Network (GSTN) [a company incorporated under the provisions of section 8 of the Companies Act, 2013] is set by the Government to establish a uniform interface for the tax payer and a common and shared IT infrastructure between the Centre and States.
4. The functions of the GSTN include
 - a. facilitating registration;
 - b. forwarding the returns to Central and State authorities;
 - c. computation and settlement of IGST;
 - d. matching of tax payment details with banking network;
 - e. providing various MIS reports to the Central and the State Governments based on the taxpayer return information;
 - f. providing analysis of taxpayers' profile.

O. COMPENSATION CESS:

- a. A GST Compensation Cess at specified rate has been imposed under the Goods and Services Tax (Compensation to States) Cess Act, 2017 on the specified luxury items or demerit goods, like pan masala, tobacco, aerated waters, motor cars etc., computed on value of taxable supply.
- b. Compensation cess is leviable on intra-State supplies and inter-State supplies with a view to provide for compensation to the States for the loss of revenue arising on account of implementation of the GST.
- c. Compensation is to be provided to a State for a period of 5 years from the date on which the State brings its SGST Act into force.
- d. Initially, GST compensation cess was levied for a period of 5 years upto 30th June, 2022. However, its levy and collection has been extended till 31st March, 2026. [Notification No. 1/2022 Compensation Cess dated 24.07.2022]

P. GSPs/ASPs:

- a. GSTN has selected certain IT, ITeS and financial technology companies, to be called GSPs.
- b. GSPs develop applications to be used by taxpayers for interacting with the GSTN.
- c. They facilitate the tax payers in uploading invoices as well as filing of returns and act as a single stop shop for GST related services.
- d. They customize products that address the needs of different segment of users.
- e. GSPs may take the help of ASPs who act as a link between taxpayers and GSPs.
- f. Hence, we can say that GSPs will act as link between taxpayer and GSTN portal, and ASP will act as link between taxpayer and GSPs.

Q. BENEFITS OF GST: GST is a win-win situation for the entire country. It brings benefits to all the stakeholders of industry, Government and the consumer. The significant benefits of GST are discussed hereunder:

1. BENEFITS TO ECONOMY:

- a. **Creation of unified national market:** GST aims to make India a common market with common tax rates and procedures and remove the economic barriers thus paving the way for an integrated economy at the national level.
- b. **Boost to 'Make in India' initiative:** GST gives a major boost to the 'Make in India' initiative of the Government of India by making goods and services produced in India competitive in the national as well as international market. This will create India as a manufacturing hub.
- c. **Enhanced investment and employment:** The subsuming of major Central and State taxes in GST, complete and comprehensive set-off of input tax on goods and services and phasing out of Central Sales Tax (CST) reduces the cost of locally manufactured goods and services and increases the competitiveness of Indian goods and services in the international market and thus, gives boost to investments and Indian exports. With a boost in exports and manufacturing activity, more employment will be generated and GDP will increase.

2. SIMPLIFIED TAX STRUCTURE:

- a. **Ease of doing business:** Simpler tax regime with fewer exemptions along with reduction in multiplicity of taxes under GST has led to simplification and uniformity in tax structure. The uniformity in laws, procedures and tax rates across the country makes doing business easier.
- b. **Certainty in tax administration:** Common system of classification of goods and services across the country ensures certainty in tax administration across India.

3. EASY TAX COMPLIANCE:

- a. **Automated procedures with greater use of IT:** There are simplified and automated procedures for various processes such as registration, returns, refunds, tax payments. All interaction is primarily through the common GSTN portal, therefore, less public interface between the taxpayer and the tax administration.
- b. **Reduction in compliance costs:** The compliance cost is lesser under GST as multiple record-keeping for a variety of taxes is not needed, therefore, there is lesser investment of resources and manpower in maintaining records. The uniformity in laws, procedures and tax rates across the country goes a long way in reducing the compliance cost.

4. ADVANTAGES FOR TRADE AND INDUSTRY:

- a. **Benefits to industry:** GST has given more relief to industry, trade and agriculture through a more comprehensive and wider coverage of input tax set-off and service tax set off, subsuming of several Central and State taxes in the GST and phasing out of CST. The transparent and complete chain of set-offs which results in widening of tax base and better tax compliance also leads to lowering of tax burden on an average dealer in trade and industry.
- b. **Mitigation of ill effects of cascading:** By subsuming most of the Central and State taxes into a single tax and by allowing a set-off of prior-stage taxes for the transactions across the entire value chain, it helps in mitigating the ill effects of cascading, improving competitiveness and improving liquidity of the businesses.
- c. **Benefits to small traders and entrepreneurs:** GST has increased the threshold for GST registration for small businesses. Further, single registration is needed in one State. Small businesses have also been provided the additional benefit of composition scheme. With the creation of a seamless national market across the country, small enterprises have an opportunity to expand their national footprint with minimal investment.

QUESTIONS:

1. Differentiate between direct and indirect taxes.

Answer: Refer point B

2. Enumerate major direct and indirect taxes.

Answer: Major indirect taxes are goods and services tax and customs duty and direct tax is income tax.

3. Explain the salient features of indirect taxes.

Answer: Refer Point E

4. Write a short note on various Lists provided under Seventh Schedule to the Constitution of India.

Answer: Refer Point K(4)

5. Discuss the deficiencies in the existing indirect taxes which led to the need for ushering into GST regime.

Answer: Refer Point H

6. Discuss the dual GST model as introduced in India.

Answer: Refer Point G

7. List the Central and State levies which have been subsumed in GST in India.

Answer: Refer Point I

8. Discuss the functions of the common GST portal.

Answer: Refer Point N

9. Briefly explain the leviability of GST or otherwise on petroleum crude, diesel, petrol, Aviation Turbine Fuel (ATF) and natural gas.

Answer:

Petroleum crude, diesel, petrol, ATF and natural gas are presently not leviable to GST. GST will be levied on these products from a date to be notified on the recommendations of the GST Council. Till such date, central excise duty continues to be levied on manufacture/production of petroleum crude, diesel, petrol, ATF and natural gas and inter-State/intra-State sale of the same is subject to CST/ VAT respectively.

10. Elaborate the principles that were borne in mind while subsuming various central, State and local levies, under GST.

Answer: Refer Point I

11. GST is a simplified tax structure. Justify the statement.

Answer:

GST is a simplified tax structure. The statement is justified. Simpler tax regime with fewer exemptions along with reduction in multiplicity of taxes under GST has led to simplification and uniformity in tax structure. The uniformity in laws, procedures and tax rates across the country makes doing business

easier. Common system of classification of goods and services across the country ensures certainty in tax administration across India

12. List the advantages that GST accrues to the trade and industry.

Answer: Refer Point Q(4)

13. List the special category States as prescribed in Article 279A of the Constitution of India.

Answer:

GST is a simplified tax structure. The statement is justified. Simpler tax regime with fewer exemptions along with reduction in multiplicity of taxes under GST has led to simplification and uniformity in tax structure. The uniformity in laws, procedures and tax rates across the country makes doing business easier. Common system of classification of goods and services across the country ensures certainty in tax administration across India

14. Discuss the leviability of GST or otherwise on tobacco.

Answer:

Tobacco is within the purview of GST, i.e. GST is leviable on tobacco. However, Union Government has also retained the power to levy excise duties on tobacco and tobacco products manufactured in India. Resultantly, tobacco is subject to GST as well as central excise duty.

2.SUPPLY UNDER GST

A. **CONCEPT OF SUPPLY UNDER GST:**

Relevant sections of the act relating to concept of supply:

1. **Section 7** - Meaning and scope of supply
2. **Section 8** - Taxability of composite and mixed supplies
3. **Schedule I** - Activities to be treated as supply even if made without consideration
4. **Schedule II** - Activities or transactions to be treated as supply of goods or as supply of services
5. **Schedule III** - Activities or transactions which shall be treated neither as supply of goods nor as supply of services

B. **SECTION 7 - MEANING AND SCOPE OF SUPPLY:**

Subsection	Provision
(1)	<p>(a) <u>all forms of supply</u> of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be <u>made for a consideration</u> by a person in the <u>course or furtherance of business</u>.</p> <p>(aa) the activities or transactions, by a person, <u>other than an individual</u>, to its <u>members or constituents</u> or vice-versa, for cash, deferred payment or other valuable consideration.</p> <p>Explanation: For the purposes of this clause, it is hereby clarified that, <u>notwithstanding anything contained</u> in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the <u>person and its members or constituents shall be deemed to be two separate persons</u> and the supply of activities or transactions inter se shall be deemed to take place from one such person to another.</p> <p>(b) <u>importation of services</u>, for a consideration <u>whether or not in the course or furtherance of business</u>, and</p> <p>(c) the activities specified in Schedule I, made or agreed to be made <u>without a consideration</u>,</p>
(1A)	where certain activities or transactions, constitute a supply in accordance with the provisions of sub-section (1), they shall be treated <u>either as supply of goods or supply of services as referred to in Schedule II.</u>
(2)	<p>Notwithstanding anything contained in sub-section (1),</p> <p>(a) activities or transactions specified in Schedule III; or</p> <p>(b) such activities or transactions <u>undertaken by the Central Government, a State Government or any local authority</u> in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council</p> <p>shall be treated <u>neither as a supply of goods nor a supply of services.</u></p>

(3)	<p>Subject to sub-sections (1), (1A) & (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as —</p> <p>(a) a supply of goods and not as a supply of services; or</p> <p>(b) a supply of services and not as a supply of goods.</p>
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C. DETAILED ANALYSIS OF SECTION 7:

1. SUPPLY SHOULD BE OF GOODS OR SERVICES OR BOTH.

- a. **Meaning of Goods [Section 2(52)]:** Goods means every kind of movable property
 - i. other than money and securities
 - ii. but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.
- b. **Meaning of Actionable claim:** Actionable claim means a
 - iii. claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or
 - iv. claim to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.
- c. **Meaning of Money:** Money means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value [Section 2(75)].
- d. **Meaning of services:** Services means anything other than goods, money and securities but
 - i. includes activities relating to the use of money or
 - ii. includes activities related to conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Note: Supply of anything other than goods or services like money, securities etc. does not attract GST.

2. SUPPLY INCLUDES SPECIFIED FORMS OF SUPPLY:

Various forms of supply contemplated in section 7(1)(a) are sale, transfer, barter, exchange, licence, rental, lease or disposal. However, none of these terms have been defined under the Act. Their dictionary meaning or otherwise are as follows:

a. Sale and Transfer:

- i. The dictionary meaning of term 'sale' is the act of selling, specifically, the transfer of ownership of and title to property from one person to another for a price
- ii. As per the Sale of Goods Act, 1930, a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.
- iii. Further, the term 'transfer' has been defined in the Black's Law dictionary as to
 - convey or remove from one place, person, etc., to another
 - pass or hand over from one to anotherspecifically, to make over the possession or control of.

Examples:

1. *A shopkeeper sells a pen for ₹ 100 to the buyer. After the sale, the pen belongs to the buyer and shopkeeper does not have any right on the pen. This is a transaction of sale.*
2. *A company transfers goods from its factory to the depot for sale purposes. This is 'transfer' of goods where the sale has not yet taken place.*

Note: Person includes:

- a. An individual
- b. A HUF
- c. A company
- d. A firm
- e. A Limited Liability Partnership
- f. An association of persons or a body of individuals, whether incorporated or not, in India or outside India
- g. Any corporation established by/under any Central, State or Provincial Act or Government company as defined in section 2(45) of Companies Act, 2013
- h. Any body corporate incorporated by or under the laws of a country outside India
- i. A co-operative society registered under any law relating to cooperative societies
- j. A local authority
- k. Central Government/ State Government
- l. Society as defined under the Societies Registration Act, 1860
- m. Trust
- n. Every artificial juridical person, not falling above

b. Barter and Exchange:

- i. The dictionary meaning of term 'barter' is to exchange goods or services for other goods or services instead of using money
- ii. Black's Law dictionary defines the term 'exchange' as an act of giving or taking one thing for another.

- iii. While barter deals with a transaction which only includes an exchange of goods/services, exchange may cover a situation where the goods are paid for partly in goods and partly in money.
- iv. When there is a barter of goods or services, same activity constitutes supply as well as consideration.

Examples:

1. When a new car worth ₹ 5,00,000 is purchased in exchange of an old car along with the monetary consideration of ₹ 4,00,000 paid for the said purchase.
2. A doctor got his hair cut from a barber and provides him medical consultancy in return. In this transaction, the doctor provided the medical consultancy services to the barber for which consideration was in the form of hair cutting services provided by the barber. Similarly, the barber provided hair cutting services to the doctor for which consideration was in the form of medical consultancy services provided by the doctor.

c. Licence, lease, rental and disposal:

- i. The dictionary meaning of the term 'licence' is a permission granted by competent authority to engage in a business or occupation or in an activity otherwise unlawful
- ii. Black's law dictionary defines 'disposal' as the sale, pledge, giving away, use, consumption or any other disposition of a thing.
- iii. The dictionary meaning of 'rental' is an arrangement to rent something, or the amount of money that you pay to rent something.
- iv. The meaning of 'lease' is to make a legal agreement by which money is paid in order to use land, a building, a vehicle, or a piece of equipment for an agreed period of time.

Under GST, such licenses, leases and rentals of goods with or without transfer of right to use are covered under the supply of service because there is no transfer of title in such supplies. Such transactions are specifically treated as supply of service in Schedule II of CGST Act.

3. SUPPLY SHOULD BE FOR CONSIDERATION:

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

However, a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply. [Section 2(31)].

- b. **Meaning of Recipient:** Recipient of supply of goods and/or services means-
- where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration,
 - where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available, and
 - where no consideration is payable for the supply of a service, the person to whom the service is rendered.

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

- c. **Meaning of Supplier:** Supplier in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied.
- d. **Donations received by charitable institutions from individual donors, without quid pro quo – No Consideration for Supply:**
- An important feature of consideration is quid pro quo [something for something].
 - Donations received by the charitable organisations are treated as consideration only if there exists, quid pro quo, i.e., there is an obligation on part of recipient of the donation or gift to do anything (supply a service).
 - Generally charitable institutions, in order to express gratitude towards such help/donation, place a name plate or similar such acknowledgement in their premises.
 - Such expression of gratitude, which is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration.
 - Therefore, there is no GST liability on such consideration.
 - Thus, GST is not leviable where all the following three conditions are satisfied namely:
 - Gift or donation is made to a charitable organization
 - Payment has the character of gift or donation
 - Purpose is philanthropic (i.e., it leads to no commercial gain) and not advertisement

Example: Some examples of cases where there would be no taxable supply are as follows:-

- a. *Bhushan donated a blackboard to Yoganisht Sansthan - a charitable yoga institution. Yoganisht Sansthan printed underneath the blackboard so donated - "Good wishes from Mr. Bhushan".*
 - b. *Smt. Durga Devi donated some money to a temple in the memory of her late father. The Temple Trust constructed a room in the temple complex from such donation and wrote "Donated by Smt. Durga Devi in the memory of her father" on the door floor of the room.*
- e. **Art works sent by artists to galleries for exhibition is not a supply as no consideration flows from the gallery to the artists:**
- i. Artists give their work of art to galleries where it is exhibited for supply.
 - ii. However, no consideration flows from the gallery to the artist when the art works are sent to the gallery for exhibition and therefore, the same is not a supply.
 - iii. It is only when a buyer selects a particular art work displayed at the gallery, that the actual supply takes place and applicable GST would be payable at the time of such supply.

4. SUPPLY SHOULD BE IN COURSE OF FURTHERANCE OF BUSINESS:

- a. **Meaning of Business:** Business includes –
- i. any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
 - ii. any activity or transaction in connection with or incidental or ancillary to (a) above;
 - iii. any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;
 - iv. supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;
 - v. provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members, as the case may be;
 - vi. admission, for a consideration, of persons to any premises; and
 - vii. services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
 - viii. activities of a race club including by way of totalisator or a license to book maker or activities licensed book maker in maker in such club such club
 - ix. any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

Example:

Let us try to answer whether the following activities fall/ do not fall under business:

Activity	Supply/Not
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1. Rishabh buys a car for his personal use and after a year sells it to a car dealer.	Not supply
2. Manikarnika sold her old gold bangles and earrings to 'Aabhushan Jewellers'.	Not supply
3. Sundaram Acharya, a famous actor, paints some paintings and sells them. The consideration from such sale is to be donated to a Charitable Trust – 'Kind Human'.	Supply
4. A Resident Welfare Association provides the service of depositing the electricity bills of the residents in lieu of some nominal charges.	Supply
5. Services by way of admission to circus, cinema halls, amusement parks including theme parks, water parks, etc.	Supply
6. Royal Turf Race Club is engaged in facilitating the wagering (betting) transactions on horses placed through totalisator. For providing the service of facilitating wagering transactions, Royal Turf Race Club gets commission which is deducted and retained by the club from the total bet value.	Supply

- b. **Exception - Importation of services, for a consideration whether or not in the course or furtherance of business [Sec 7(1)(b)]:** The importation of services for a consideration whether or not in the course or furtherance of business. This is the only exception to the condition of supply being made in course or furtherance of business.

Example: Ramaiyaa, a proprietor, has received the architect services for his house from an architect located in New York at an agreed consideration of \$ 5,000. The import of services by Ramaiyaa is supply under section 7(1)(b) though it is not in course or furtherance of business.

5. **SECTION 7(1)(aa):** Activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Further, an explanation has also been inserted to section 7(1)(aa), to clarify that for the purpose of this clause, the person and its members/ constituents shall be deemed to be two separate persons and the supply of activities/ transactions inter se shall be deemed to take place from one person to another. The clarification provides for a non-obstante clause as it shall have an overriding effect over anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority. This explanation prevents the use of doctrine of mutuality by such person(s) to avoid GST liability.

- D. **SCHEDULE-I - ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION [SEC 7(1)(C)]:**

The following activities will be treated as supply, even if made without consideration:

Para No	Particulars
1	Permanent transfer or disposal of business assets where input tax credit has been availed on such asset.
2	Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business. Provided that gifts not exceeding 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.

I. PERMANENT TRANSFER/DISPOSAL OF BUSINESS ASSETS [PARA 1 OF SCHEDULE I]:

a. In order to qualify as supply under this para, following conditions need to be satisfied:

- i. There must be a disposal or transfer of business assets.
- ii. Transfer/disposal must be permanent.
- iii. ITC must have been availed on such business assets.

Example:

- Dhruv gives old laptops being used in his business to his friend free of cost. This will qualify as supply provided input tax credit has been availed by Dhruv on such laptops
- X Ltd has transferred a plant and machinery to its subsidiary company Y Ltd, without consideration. This will qualify as supply provided input tax credit has been availed by X Ltd on such plant and machinery

b. In view of the last condition stated above, permanent transfer/disposal of following business assets, without consideration, will not be covered within this para and thus will not be deemed as supply:

- i. Business assets on which ITC is blocked/not available under GST.
- ii. Business assets though eligible for ITC, ITC has not been availed by the registered person.

Example: A dealer of air-conditioners permanently transfers the motor vehicle free of cost. ITC on said motor vehicle is blocked. The transaction will not constitute a supply as the condition of availment of ITC on the business asset transferred is not fulfilled.

II. SUPPLY BETWEEN 'RELATED PERSON' OR 'DISTINCT PERSONS' [PARA 2 OF SCHEDULE I]:

- a. **Related Persons:** The persons will be deemed as related if:
- Such persons are officers/directors of one another's business
 - Such persons are legally recognised partners
 - Such persons are employer & employee
 - A third person controls/ owns/ holds (directly/ indirectly) $\geq 25\%$ voting stock/shares of both of them
 - One of them controls (directly/indirectly) the other
 - A third person control (directly/indirectly) both of them
 - Such persons together control (directly/indirectly) a third person
 - Such persons are members of the same family
 - One of them is the sole agent/sole distributor/sole concessionaire of the other

Example: Q Ltd. has a deciding role in corporate policy, operations management and quality control of R Ltd. It can be said that Q Ltd. controls R Ltd. Thus, Q Ltd. and R Ltd. are related.

Note: Family means:

- the spouse and children of the person, and
- the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person [Section 2(49)].

b. **Distinct Persons:**

- i. The establishments of a person with separate registrations whether within the same State/UT or in different States/UTs are considered as distinct persons.

Example: Mohan, a Chartered Accountant, has a registered head office in Delhi. He has also obtained registration in the State of West Bengal in respect of his newly opened branch office. Mohan shall be treated as distinct persons in respect of registrations in West Bengal and Delhi.

- ii. Where a person having one registered establishment in a State/UT has another establishment in a different State/UT [not necessarily registered], these establishments are considered as establishments of distinct persons.

Example: Rishabh Enterprises, a registered supplier, owns an air-conditioned restaurant in Virar, Maharashtra. It has opened a liquor shop in Raipur, Uttarakhand for trading of alcoholic liquor for human consumption. Since supply of alcoholic liquor for human consumption in Uttarakhand is a non-taxable supply, Rishabh Enterprises is not required to obtain registration with respect to the same in Uttarakhand. In this case, air-conditioned restaurant in Maharashtra and liquor shop [though unregistered] in Uttarakhand shall be treated as establishments of distinct persons. Supply by Maharashtra restaurant to Uttarakhand shop, in course or furtherance of business, even without consideration will qualify as supply.

c. **Stock transfers or branch transfers qualify as supply:**

- i. It is common practice in business that:
 - one branch supplies services to another branch of same entity without consideration
 - goods are transferred among different units of same entity free of cost, for instance, distribution of samples manufactured in a factory to different branches or transfer of goods from factory to depot/showroom for sale therefrom
 - one warehouse to another warehouse without consideration.
- ii. These transactions are termed as self-supplies.
- iii. Under GST, these transactions undertaken, without consideration, will also qualify as supply, provided the transfer of goods or services is between:
 - different locations (with separate GST registrations) of same legal entity as these are transactions between distinct persons, or
 - establishments of distinct persons.

Note: However, transfer between two units of a legal entity under single registration (apparently within same State) will not be considered as supply. This can be understood with the help of the following example:

d. **Supply of goods or services or both between an employer and employee:**

- i. **Gifts by employer to employee:** Proviso to Para 2 of Schedule I provides that gifts up to ₹ 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both. However, gifts of value more than ₹ 50,000 made without consideration are supply and are subject to GST, when made in the course or furtherance of business.

Note:

- i. Services provided by an employee to the employer in the course of or in relation to his employment are not treated as supply.
- ii. Payment made by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST.

Therefore, if services such as free housing, membership of a club, health and fitness centre etc. are provided free of charge to all the employees by the employer, the same will not be subjected to GST, when the same is provided in terms of the contract between the employer and employee.

e. **Clarification on Sales promotion schemes:**

- i. **Free samples and gifts:** Samples which are supplied free of cost, without any consideration, do not qualify as “supply” under GST, except where the activity falls within the ambit of Schedule I (i.e., when free samples are supplied between related/distinct persons, even without consideration, it will be considered as Supply under GST)

ii. **Buy one get one free offer:**

- It may appear at first glance that in case of offers like “Buy One, Get One Free”, one item is being “supplied free of cost” without any consideration.
- In fact, it is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply.
- It can at best be treated as supplying two goods for the price of one.
- Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined accordingly (will be discussed later in this chapter).

Example:

Let us try to answer the below scenarios:

Scenario	Supply/Not
1. Raghubir Fabrics transfers 1000 shirts from his factory located in Lucknow to his retail showroom in Delhi so that the same can be sold from there. The factory and retail showroom of Raghubir Fabrics are registered in the States where they are located.	Supply
2. Raghubir Fabrics transfers 1000 shirts from his factory located in Lucknow to his retail showroom in Kanpur so that the same can be sold from there. It has taken one registration in the State of Uttar Pradesh declaring Lucknow factory as its principal place of business and Kanpur showroom as its additional place of business. Does it constitute Supply?	Not a supply

III. PRINCIPAL – AGENT [PARA 3 OF SCHEDULE I]:

- a. **Meaning of Principal:** means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both
- b. Supply of goods by a principal to his agent, without consideration, where the agent undertakes to supply such goods on behalf of the principal is considered as supply. However, these activities will be considered as supply, where the invoice for further supply is being issued by the agent in his name (i.e. agent is having authority to transfer the title of goods).

Note: Where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Para 3 above.

- c. Similarly, supply of goods by an agent to his principal, without consideration, where the agent undertakes to receive such goods on behalf of the principal is considered as supply. However, these activities will be considered as supply, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent.

Let us try to understand some examples:

1. Anmol appoints Bholu to procure certain goods from the market. Bholu identifies various suppliers who can provide the goods as desired by Anmol and asks the supplier (Golu) to send the goods and to issue the invoice directly to Anmol.	In this scenario, Bholu is only acting as the procurement agent, and has in no way involved himself in the supply or receipt of the goods. Hence, in accordance with the provisions of this Act, Bholu is not an agent of Anmol for supply of goods in terms of Para 3 of Schedule I.
2. Manimani Bank, a banking company, appoints Mandaar (auctioneer) to auction certain goods. The auctioneer arranges for the auction and identifies the potential bidders. The highest bid is accepted and the goods are sold to the highest bidder by Manimani Bank. The invoice for the supply of the goods is issued by Manimani Bank to the successful bidder.	In this scenario, the auctioneer is merely providing the auctioneering services with no role played in the supply of the goods. Even in this scenario, Mandaar is not an agent of Manimani Bank for the supply of goods in terms of Para 3 of Schedule I.
3. Gautam, an artist, appoints Gambhir (auctioneer) to auction his painting. Gambhir arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder. The invoice for the supply of the painting is issued by Gambhir on the behalf of Gautam but in his own name and the painting is delivered to the successful bidder.	In this scenario, Gambhir is not merely providing auctioneering services, but is also supplying the painting on behalf of Gautam to the bidder, and has the authority to transfer the title of the painting on behalf of Gautam. This scenario is covered under Para 3 of Schedule I.
4. A C&F agent or commission agent takes possession of the goods from the principal and issues the invoice in his own name.	In such cases, the C&F commission agent is an agent of the principal for the supply of goods in terms of Para 3 of Schedule I.
5. Ravi sells agricultural produce by utilizing the services of Kavi who is a commission agent as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State. Kavi identifies the buyers and sells the agricultural produce on behalf of Ravi for which he charges a commission from Ravi.	In cases where the invoice is issued by Kavi to the buyer, the former is an agent covered under Para 3 of Schedule I. However, in cases where the invoice is issued directly by Ravi to the buyer, the commission agent (Kavi) does not fall under the category of agent covered under Para 3.

d. Clarification of issues pertaining to Del-credere agent (DCA):

i. Meaning of DCA:

- In commercial trade parlance, a DCA is a selling agent who is engaged by a principal to assist in supply of goods or services by contacting potential buyers on behalf of the principal.
- The factor that differentiates a DCA from other agents is that the DCA guarantees the payment to the supplier.
- In such scenarios where the buyer fails to make payment to the principal by the due date, DCA makes the payment to the principal on behalf of the buyer, and for this reason the commission paid to the DCA may be relatively higher than that paid to a normal agent.
- In order to guarantee timely payment to the supplier, the DCA can resort to various methods including extending short-term transaction-based loans to the buyer or paying the supplier himself and recovering the amount from the buyer with some interest at a later date.

Whether DCA will fall under ambit of Para 3 of Schedule I [Circular No. 73/47/2018 GST dated 05.11.2018]:

1. Whether a DCA falls under the ambit of agent under Para 3 of Schedule I?	<p>Whether or not the DCA will fall under the ambit of agent under Para 3 of Schedule I depends on the following possible scenarios:</p> <ul style="list-style-type: none"> • In case where the <u>invoice for supply of goods is issued by the supplier to the customer</u>, either himself or through DCA, the DCA <u>does not fall under the ambit of agent</u>. • In case where the <u>invoice for supply of goods is issued by the DCA in his own name</u>, the DCA would <u>fall under the ambit of agent</u>.
2. Whether the temporary short-term transaction-based loan extended by the DCA to the recipient (buyer), for which interest is charged by the DCA, is to be included in the value of goods being supplied by the supplier (principal) where DCA is not an agent under Para 3 of Schedule I?	<p>In such a scenario, following activities are taking place:</p> <ol style="list-style-type: none"> 1. Supply of goods from supplier (principal) to recipient; 2. Supply of agency services from DCA to the supplier or the recipient or both; 3. Supply of extension of loan services by the DCA to the recipient. <p>It is clarified that in cases where the DCA is not an agent under Para 3 of Schedule I, the <u>temporary short-term transaction-based loan being provided by DCA to the buyer is a supply of service by the DCA</u> to the recipient on Principal to Principal basis and is an independent supply.</p> <p>Therefore, the <u>interest being charged by the DCA would not form part</u> of the value of supply of goods supplied (to the buyer) by the supplier.</p>
3. Where DCA is an agent under Para 3 of	<p>In such a scenario following activities are taking place:</p> <ol style="list-style-type: none"> 1. Supply of goods by the supplier (principal) to the DCA;

<p>Schedule I and makes payment to the principal on behalf of the buyer and charges interest to the buyer for delayed payment along with the value of goods being supplied, whether the interest will form a part of the value of supply of goods also or not?</p>	<ol style="list-style-type: none"> 2. Further supply of goods by the DCA to the recipient; 3. Supply of agency services by the DCA to the supplier or the recipient or both; 4. Extension of credit by the DCA to the recipient. <p>It is clarified that in cases <u>where the DCA is an agent</u> under Para 3 of Schedule I, <u>the temporary short-term transaction-based credit</u> being provided by DCA to the <u>buyer no longer retains its character of an independent supply</u> and is subsumed in the supply of the goods by the DCA to the recipient. It is emphasised that the activity of extension of credit by the DCA to the recipient <u>would not be considered as a separate supply</u> as it is in the context of the supply of goods made by the DCA to the recipient.</p> <p>It is further clarified that the <u>value of the interest charged for such credit would be required to be included in the value of supply</u> of goods by DCA to the recipient as per section 15(2)(d)</p>
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IV. IMPORTATION OF SERVICES [PARA 4 OF SCHEDULE I]:

Import of services by a person from a

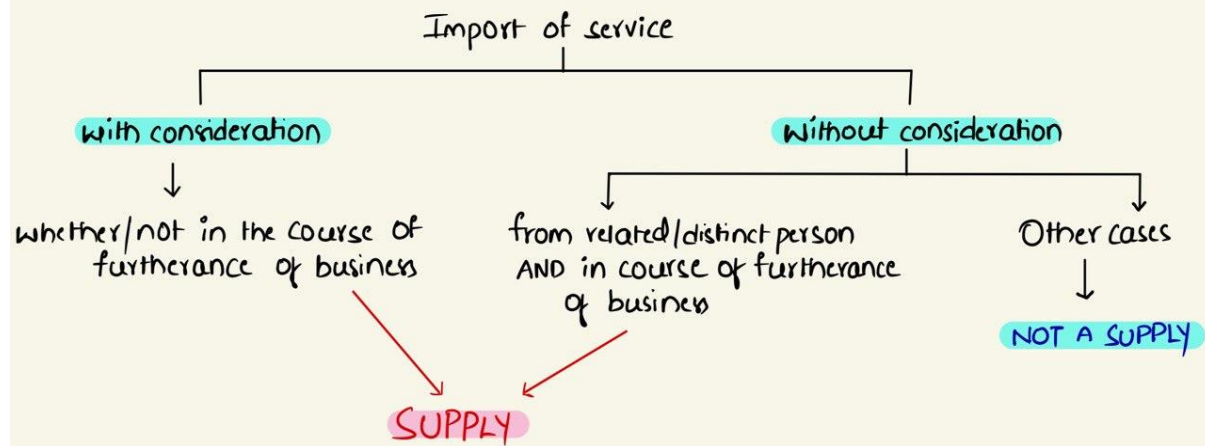
- a. related person or
- b. from his establishments located outside India,

without consideration, in the course or furtherance of business shall be treated as “supply”.

Example:

1. *Jhumroo Associates received legal consultancy services from its head office located in Malaysia. The head office has rendered such services free of cost to its branch office. Since Jhumroo Associates and the head office are related persons, services received by Jhumroo Associates will qualify as supply even though the head office has not charged anything from it.*
2. *Chakmak, a proprietor registered in Delhi, has sought architect services from his son located in US, with respect to his newly constructed house in Delhi. Although services have been received by Chakmak without consideration from his son - a related person, yet it will not qualify as supply since the same has not been received in course or furtherance of business.*

THE COMBINED READING OF SEC 7(1)(b) & SEC 7(1)(c) [PARA IV OF SCHEDULE I]



E. SCHEDULE-II : ACTIVITIES TO BE TREATED AS ACTIVITIES OR TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR AS SUPPLY OF SERVICES

Section 7(1A) classifies certain activities/ transactions constituting supply, either as supply of goods or supply of services. Schedule II to the CGST Act contains the list of activities or transactions which have been classified either as supply of goods or supply of service.

Activity/ Transaction	Type	Nature of Supply
1. Transfer	a. Any transfer of title in goods	Supply of Goods
	b. Any transfer of right in goods/ undivided share in goods without transfer of title thereof.	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.	Supply of Goods

Example

Let us try to answer the following scenarios:

Scenario	Supply of Goods / Service
1. Shivaji sells readymade garments to its customers	Goods
2. Genius Equipment's Ltd. gives a machinery on rent to Suhaasi Manufacturers.	Services
3. Dhruva Capitals supplied goods on hire purchase basis to customers.	Goods
4. Optima Manufacturers supplies toys to retailers on 'sale or return basis.'	Goods

Activity/ Transaction	Type	Nature of Supply
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2. Land and Building	a. Any lease, tenancy, easement, licence to occupy land	Supply of Services
	b. Any lease or letting out of building including a commercial, industrial or residential complex for business or commerce, wholly or partly.	Supply of Services

Activity/ Transaction	Type	Nature of Supply
3. Treatment or Process	Any treatment or process which is applied to another person's goods <i>Example: Damani Dying House dyes the clothes given by Shubham Textiles Ltd. on job work basis.</i>	Supply of Services

Activity/ Transaction	Type	Nature of Supply
4. Transfer of Business Assets	a. Goods forming part of business assets are transferred or disposed off by/under directions of person carrying on the business so as no longer to form part of those assets.	Supply of Goods
	b. Goods held/used for business are put to private use or are made available to any person for use for any purpose other than business, by/ under directions of person carrying on the business.	Supply of Services
	c. Goods forming part of assets of any business carried on by a person who ceases to be a taxable person, 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. <i>Example: Arun, a trader, is winding up his business. Any goods left in stock shall be deemed to be supplied by him.</i> Exceptions: <ul style="list-style-type: none"> • Business is transferred as a going concern to another person • Business is carried on by a personal representative who is deemed to be a taxable person. 	Supply of Goods

Sl. No	Type	Nature of Supply
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5.	a. Renting of immovable property	Supply of Services
	b. Construction of complex, building, civil structure, etc. <ol style="list-style-type: none"> 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, <u>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.</u> Note: <ol style="list-style-type: none"> Construction includes additions, alterations, replacements, or remodelling of any existing civil structure. Competent authority means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely: <ul style="list-style-type: none"> an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or a chartered engineer registered with the Institution of Engineers (India); or a licensed surveyor of the respective local body of the city or town or village or development or planning authority. 	Supply of Services
	c. Temporary transfer or permitting use or enjoyment of any intellectual property right	Supply of Services
	d. Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software.	Supply of Services
	e. Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act	Supply of Services
	f. Transfer of right to use any goods for any purpose (whether or not for specified period) for cash, deferred payment or other valuable consideration.	Supply of Services

Example

Let us try to answer the following scenarios:

Scenario	Supply of Goods / Service
1. Renting of a commercial complex.	
2. Renting of property to an educational institution.	
3. Permitting use of immoveable property for placing vending/dispensing machines.	

4. Rath Builders has constructed individual residential units for agreed consideration of ₹ 1.2 crore per unit. ₹ 90 lakh per unit were received before issuance of completion certificate by the competent authority and balance after completion.	
5. Rath Builders has constructed individual residential units for agreed consideration of ₹ 1.2 crore per unit. Entire consideration will be received after issuance of completion certificate by the competent authority.	
6. Temporary transfer of patent.	
7. Suvidha Solutions develops an accounting software for a business firm.	
8. Cable operator - Sakham has entered into an agreement with Cable operator - Aatmaram that Sakham will not provide cable connections in the specified areas where Aatmaram is providing the connections.	
9. Late delivery charges recovered from supplier for non-fulfilment of contract within stipulated time.	
10. Notice pay recovered from employee for leaving the job before agreed period of notice for leaving a job.	
11. Machinery given on hire.	
12. Goods forming part of business assets are transferred or disposed of by/under directions of person carrying on the business.	
13. Transfer of right in goods without transfer of title in goods.	
14. Transfer of title in goods under an agreement which stipulates that property shall pass at a future date.	

Sl. No	Type	Nature of Supply
6.	<p>Following composite supplies:-</p> <p>a. Works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract [Section 2(119)].</p> <p>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.</p>	Supply of Services

F. NON-SUPPLIES UNDER GST: There are specifies transactions/ activities which shall be neither treated as supply of goods nor as supply of services. These activities will be known “Negative list” for the purposes of taxation in GST. These activities are specified by 3 ways;

I. Non-supplies listed in Schedule III

II. Non-supplies notified vide notification

III. Non-supplies clarified by way of clarification

1. NON-SUPPLIES LISTED IN SCHEDULE III:

Para No.	Activities or transactions which shall be treated neither as a supply of goods nor a supply of services
1.	<p>a. Services by an employee to the employer in the course of or in relation to his employment. <i>Examples:</i></p> <ul style="list-style-type: none"> i. Amounts received by an employee from the employer on premature termination of contract of employment are treatable as amounts paid in relation to services provided by the employee to the employer in the course of employment. ii. Services provided by casual worker to employer who gives wages on daily basis to the worker are services provided by the worker in the course of employment. iii. Casual workers employed by a construction contractor for execution of a building contract for him are services in the course of employment. Similarly, casual workers employed by a security services agency for provision of security services to a client are also services in the course of employment. <p>b. Only services that are provided by the employee to the employer in the course of employment are outside the realm of supply. However, services provided outside the ambit of employment for a consideration would qualify as supply. <i>Examples:</i></p> <ul style="list-style-type: none"> i. Services provided on contract basis by a person to another i.e. principal-to-principal basis are not services provided in the course of employment. ii. Any amount paid by employer to employee for not joining a competing business is paid for providing the service of forbearance to act and cannot be considered for providing services in the course of employment.
2.	<p>Services by any court or Tribunal established under any law for the time being in force. Explanation – The term "Court" includes District Court, High Court and Supreme Court.</p>
3.	<p>a. Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities.</p> <p>b. Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity. <i>Example: Duties performed by President of India, Vice President of India, Prime Minister of India, Chief Justice of India, Speaker of the Lok Sabha, Chief Election</i></p>

	<p><i>Commissioner, Comptroller and Auditor General of India, Chairman of Union Public Service Commission, Attorney General of India, in that capacity.</i></p> <p>c. 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.</p>
4.	Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5.	Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building.
6.	<p>Actionable claims, other than lottery, betting and gambling (only lottery, betting and gambling are treated as supply. All other actionable claims are outside the ambit of definition of supply).</p> <p><i>Examples of Actionable claims other than lottery, betting and gambling: Right to recover insurance money, claim for arrears of rent, claims for future rents (if these can be assigned), unsecured loans, unsecured debentures, bills of exchange, promissory notes, bank guarantee, Fixed Deposit Receipt, right to the benefit of a contract, etc</i></p>

➤ **Circular No. 172/04/2022 GST dated 06.07.2022**

Clarification regarding issue as to whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST.

Clarification:

- Schedule III to the CGST Act provides that “services by employee to the employer in the course of or in relation to his employment” will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.
- Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment.
- It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee will not be subjected to GST.

➤ **Clarification regarding applicability of GST on sale of land after levelling, laying down of drainage lines etc. [Circular No. 177/09/2022 GST dated 03.08.2022]**

- The circular clarifies applicability of GST on sale of land after levelling, laying down of drainage lines etc.
- As per Para 5 of Schedule III of the CGST Act, 2017, ‘sale of land’ is neither a supply of goods nor a supply of services. Therefore, the sale of land does not attract GST.
- Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc.

- It is clarified that sale of such developed land is also sale of land and is covered by Para 5 of Schedule III and accordingly, does not attract GST.
- However, it may be noted that any service provided for development of land, like levelling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services.

2. NON-SUPPLIES NOTIFIED VIDE NOTIFICATION: Government is empowered to notify the activities/ transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities as the activities/transactions which shall be treated neither as supply of goods nor as supply of services. Till now, following activities/transactions have been notified under said clause:

- Activity in relation to Panchayat/Municipality functions:** Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution or to a Municipality under article 243W of the Constitution are treated neither as a supply of goods nor as a supply of service.
- Grant of alcoholic liquor licence:**
 - Services by way of grant of alcoholic liquor licence by the State Governments are treated neither as a supply of goods nor as a supply of service.
 - The above exception is applicable only for grant of alcoholic liquor license. Hence, this is not applicable/has no precedence value in relation to grant of other licenses and privileges for a fee in other situations, where GST is payable.
 - It may be noted that services provided by the Government to business entities including by way of grant of privileges, licences, mining rights, natural resources such as spectrum etc. against payment of consideration in the form of fee, royalty etc. are taxable under GST.

3. NON-SUPPLIES CLARIFIED BY WAY OF CLARIFICATION: CBIC has clarified that following activities / transactions are non-supplies:

- Inter-State movement of various modes of conveyance**
 - Inter-State movement of various modes of conveyance, between distinct persons including-

• Trains,	• Trailers,
• Buses,	• Vessels,
• Trucks,	• Containers,
• Tankers,	• Aircrafts,
 - Carrying goods or passengers or both; or for repairs and maintenance,
 - Except in cases where such movement is for further supply of the same conveyance
 - Shall be treated 'neither as a supply of goods or supply of service' and therefore not be leviable to IGST.

Note: However, applicable CGST/SGST/IGST, as the case may be, shall be leviable on repairs and maintenance done for such conveyance.

- Inter-State movement of rigs, tools and spares, and all goods on wheels [like cranes]:**

- a. Inter-State movement of rigs, tools and spares, and all goods on wheels [like cranes],
- b. except in cases where movement of such goods is for further supply of the same goods,
- c. such inter-State movement shall be treated 'neither as a supply of goods or supply of service,' and consequently no IGST would be applicable on such movements.

Note: In this context, it is also reiterated that applicable CGST/SGST/IGST, as the case maybe, is leviable on repairs and maintenance done for such goods.

G. SUPPLIES LEVIABLE TO GST: For a supply to attract GST, primarily two additional conditions need to be satisfied. These are –

1. Supply must be made by a taxable person:

- a. A supply to attract GST should be made by a taxable person. Hence, a supply between two non-taxable persons does not constitute taxable supply under GST.
- b. The restriction of being a taxable person is only on the supplier whereas the recipient can be either taxable or non-taxable.

Note: A “taxable person” is a person who is registered or liable to be registered under section 22 or section 24.

2. Supply must be a taxable supply:

- a. For a supply to attract GST, the supply must be taxable.
- b. Taxable supply has been broadly defined and means any supply of goods or services or both which, is leviable to tax under the GST Law.
- c. Exemptions may be provided to the specified goods or services or to a specified category of persons/ entities making supply.

H. COMPOSITE AND MIXED SUPPLIES [SECTION 8]

1. COMPOSITE SUPPLY

- a. **Meaning:** Composite supply means a supply made by a taxable person to a recipient and:
 - i. Comprises two or more taxable supplies of goods or services or both, or any combination thereof.
 - ii. Are naturally bundled and supplied in conjunction with each other, in the ordinary course of business
 - iii. One of which is a principal supply [Section 2(30)].
- b. **Principal Supply:** Principal supply means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary [Section 2(90)].
Examples: Works contract and restaurant services are classic examples of composite supplies.
- c. **How to determine whether the services are bundled in the ordinary course of business?**
 Whether services are naturally bundled or not, could be ascertained from several indicators, some of which are listed below:

- i. **The perception of the consumer or the service recipient** - If large number of service recipient of such bundle of services reasonably expect such services to be provided as a package, then such a package could be treated as naturally bundled in the ordinary course of business.

Example: Mobile phone is always sold with battery.

- ii. **Majority of service providers in a particular area of business provide similar bundle of services.**

Example: Bundle of services of catering on board and services of transport by air is a bundle offered by a majority of airlines.

- iii. **Nature of the various services in a bundle of services:** If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service.

Example: Service of stay in a hotel is often combined with provision of breakfast and dinner provided free of cost during the stay. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.

- iv. **Other illustrative indicators:** These are not determinative but indicative of bundling of services in the ordinary course of business are:

- The elements are normally advertised as a package.
- The different elements are not available separately.
- The different elements are integral to one overall supply. If one or more is removed, the nature of the supply would be affected.

d. How to determine the tax liability on composite supplies?

- i. A composite supply comprising of two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply.
- ii. Accordingly, the entire value of composite supply [i.e., main supply + ancillary supply(ies)] shall be classified under the category of main supply and shall be taxed at the GST rate applicable to the main supply.

e. CBIC clarification regarding certain composite supplies:

Activity/Transaction	Principal supply
Supply of printed books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc., printed with design, logo, name, address or other contents supplied by the	In the case of <u>printing of books, pamphlets, brochures, annual reports, and the like</u> , where <u>only content is supplied by the publisher</u> or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, <u>supply of printing [of the content supplied by the recipient of supply] is the principal supply</u> and therefore such supplies would constitute <u>supply of service.</u>
	In case of supply of <u>printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc.</u> by the printer using its physical inputs including paper to print the design, logo etc. supplied by the recipient

recipient of such printed goods	of goods, <u>predominant supply is supply of goods</u> and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore such supplies would constitute <u>supply of goods</u> .
Activity of bus body building	The principal supply may be determined on the basis of <u>facts and circumstances of each case</u> .
Retreading of tyres	a. Pre-dominant element is <u>process of retreading</u> which is a <u>supply of service</u> . Rubber used for retreading is an ancillary supply. b. Supply of retreaded tyres, where the <u>old tyres belong to the supplier</u> of retreaded tyres, is a <u>supply of goods</u> .

Example

Find out the principal supplies from below services:

1. Poshak Manufacturers entered into a contract with Cheeku Ltd. for supply of readymade shirts packed in designer boxes at Cheeku Ltd.'s outlet. Further, Poshak Manufacturers would also get them insured during transit.	
2. When a consumer buys a television set and he also gets mandatory warranty and a maintenance contract with the TV, this supply is a composite supply	
3. A travel ticket from Mumbai to Delhi may include service of food being served on board, free insurance, and the use of airport lounge.	

2. MIXED SUPPLY:

a. Meaning:

- two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person
- for a single price where such supply does not constitute a composite supply [Section 2(74)].
- The individual supplies are independent of each other and are not naturally bundled.

Examples:

- A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.
- A shopkeeper selling storage water bottles along with refrigerator. Bottles and the refrigerator can easily be priced and sold independently and are not naturally bundled. So, such supplies are mixed supplies.

- *A house is given on rent through a single rent deed - one floor of which is to be used as residence and the other for housing a printing press, at a lump sum rent amount. Such renting for two different purposes is not naturally bundled in the ordinary course of business. Said supplies are mixed supply.*

b. How to determine the tax liability on mixed supplies?

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

c. More than one supply made together and taxed at the individual rates:

- There can be a case where an activity/transaction involves more than one supply of goods or services or both, but neither they are composite supplies nor can be categorised as mixed supplies, that is, all supplies carry independent significance.
- In such a case, if separate consideration is indicated against each supply, each such supply shall be charged at the respective rate applicable to that particular supply.

Example: In case of servicing of cars involving supply of both goods (spare parts) and services (labour) where the value of goods and services are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately

➤ **Circular No. 178/10/2022 GST dated 03.08.2022**

Clarifies issues with respect to GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law.

- Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act” has been specifically declared to be a supply of service in para 5(e) of Schedule II to the CGST Act, 2017 if the same constitutes a “supply” within the meaning of the CGST Act.
- Expression “Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act” has three limbs:

i. Agreeing to the obligation to refrain from an act:

Examples:

- *Non-compete agreements, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party.*
- *Builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighbouring housing project, which wants to protect its sunlight.*

- *An industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.*

ii. Agreeing to the obligation to tolerate an act or a situation

Examples:

- *Shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker,*
- *An RWA tolerating the use of loud speakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.*

iii. Agreeing to the obligation to do an act:

This would include the case where an industrial unit agrees to install equipment for zero emission/discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the individual unit to do so.

c. Conditions to be fulfilled to get covered under para 5(e) of Schedule II:

i. There must be an expressed or implied agreement or contract must exist:

- Above three activities must be under an “agreement” or a “contract”.
- In other words, one of the parties to such agreement/contract (the first party) must be under a contractual obligation to either (a) refrain or (b) tolerate or (c) do.
- Such arrangement/agreement can take the form of an independent stand- alone contract or may form part of another contract.
- Such a contract cannot be imagined or presumed to exist just because there is a flow of money from one party to another.
- There must be an expressed or implied promise by the recipient of money to agree to do or abstain from doing something in return for the money paid to him.

ii. Consideration must flow in return to this contract/agreement: Some “consideration” must flow in return from the other party to this contract/agreement (the second party) to the first party for such (a) refraining or (b) tolerating or (c) doing.

d. The taxability of some of these transactions are clarified in the following paragraphs:

I. LIQUIDATED DAMAGES:

- It is common for the parties entering into a contract, to specify in the contract itself, the compensation that would be payable in the event of the breach of the contract.
- Liquidated damages cannot be said to be a consideration received for tolerating the breach or non-performance of contract. They are rather payments for not tolerating the breach of contract.
- Payment of liquidated damages is stipulated in a contract to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance.

- iv. Liquidated damages are a measure of loss and damage that the parties agree would arise due to breach of contract. They do not act as a remedy for the breach of contract. They do not restate the aggrieved person.
- v. A contract is entered into for execution and not for its breach. The liquidated damages or penalty are not the desired outcome of the contract. By accepting the liquidated damages, the party aggrieved by breach of contract cannot be said to have permitted or tolerated the deviation or non-fulfilment of the promise by the other party.
- vi. **Liquidated damages' is an amount paid only to compensate for injury, loss or damage:**
- Where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract
 - and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages,
 - in such cases liquidated damages are merely a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach.
 - Such payments do not constitute consideration for a supply and are not taxable.
- Examples of such cases are:*
1. *damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright,*
 2. *penalty stipulated in a contract for delayed construction of houses,*
 3. *forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or by Government or local authority in the event of a successful bidder failing to act after winning the bid, for allotment of natural resources.*
- vii. The key in such cases is to consider whether the impugned payments constitute consideration for another independent contract envisaging tolerating an act or situation or refraining from doing any act or situation or simply doing an act. If the answer is yes, then it constitutes a 'supply' irrespective of by what name it is called, otherwise it is not a "supply".

II. CHEQUE DISHONOR FINE/ PENALTY:

- i. The supplier wants payment to be received on time and does not want cheque to be dishonoured.
- ii. There is never an implied or express offer or willingness on part of the supplier that he would tolerate deposit of an invalid, fake or unworthy instrument of payment against consideration in the form of cheque dishonour fine or penalty.
- iii. The fine or penalty that the supplier or a banker imposes, for dishonour of a cheque, is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation.

- iv. Therefore, cheque dishonor fine or penalty is not a consideration for any service and not taxable.

III. PENALTY IMPOSED FOR VIOLATION OF LAWS:

- i. Penalty imposed for violation of laws such as traffic violations, or for violation of pollution norms or other laws are also not consideration for any supply received and are not taxable.
- ii. Same is the case with fines, penalties imposed by the mining Department of a Central or State Government or a local authority on discovering mining of excess mineral beyond the permissible limit or of mining activities in violation of the mining permit.
- iii. Laws are not framed for tolerating their violation.
- iv. They stipulate penalty not for tolerating violation but for not tolerating, penalizing and deterring such violations.
- v. There is no agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty.
- vi. There cannot be such an agreement as violation of law is never a lawful object or consideration.
- vii. In short, fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to tax.

IV. FORFEITURE OF SALARY OR PAYMENT OF BOND AMOUNT IN THE EVENT OF THE EMPLOYEE LEAVING THE EMPLOYMENT BEFORE THE MINIMUM AGREED PERIOD

- i. The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract to discourage non-serious candidates from taking up employment.
- ii. The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation.
- iii. Further, the employee does not get anything in return from the employer against payment of such amounts.
- iv. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.

V. LATE PAYMENT SURCHARGE OR FEE:

- i. The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply.
- ii. It is not uncommon or unnatural for customers to sometimes miss the last date of payment of electricity, water, telecommunication services etc.
- iii. Almost all service providers across the world provide the facility of accepting late payments with late fine or penalty.

- iv. Even if this service is described as a service of tolerating the act of late payment, it is an ancillary supply naturally bundled and supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply.
- v. Since it is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc. it should be assessed at the same rate as the principal supply.
- vi. However, the same cannot be said of cheque dishonor fine or penalty as discussed earlier.

VI. FIXED CHARGES FOR POWER:

- i. The price charged for electricity by the power generating companies from the State Electricity Boards (SEBs)/DISCOMS or by SEBs/DISCOMs from individual customers has two components, namely, a minimum fixed charge (or capacity charge) and variable per unit charge.
- ii. The fact that the minimum fixed charges remain the same whether electricity is consumed or not or it is scheduled/consumed below the contracted or available capacity or a minimum threshold, does not mean that minimum fixed charge or part of it is a charge for tolerating the act of not scheduling or consuming the minimum the contracted or available capacity or a minimum threshold.
- iii. Both the components of the price, the minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are thus not taxable as electricity is exempt from GST.

VII. CANCELLATION CHARGES:

- i. It is a common business practice for suppliers of services such as hotel accommodation, tour and travel, transportation etc. to provide the facility of cancellation of the intended supplies within a certain time period on payment of cancellation fee.
- ii. Cancellation fee can be considered as the charges for the costs involved in making arrangements for the intended supply and the costs involved in cancellation of the supply, such as in cancellation of reserved tickets by the Indian Railways.
- iii. Services such as transportation, travel and tour constitute a bundle of services. The transportation service, for instance, starts with booking of the ticket for travel and lasts at least till exit of the passenger from the destination terminal.
- iv. All services such as making available an online portal or convenient booking counters with basic facilities at the transportation terminal or in the city, to reserve the seats and issue tickets for reserved seats much in advance of the travel, giving preferred seats with or without extra cost, lounge and waiting room facilities at airports, railway stations and bus terminals, provision of basic necessities such as soap and other toiletries in the wash rooms, clean drinking water in the waiting area etc. form part

and parcel of the transportation service; they constitute the various elements of passenger transportation service, a composite supply.

- v. The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle.
- vi. It is invariably supplied by all suppliers of passenger transportation service as naturally bundled and in conjunction with the principal supply of transportation in the ordinary course of business.
- vii. Therefore, facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases should be assessed as the principal supply.
- viii. For example, cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel (i.e., 5% GST on first class or air-conditioned coach ticket and nil for other classes such as second sleeper class). Same is the case for air travel.
- ix. Accordingly, the amount forfeited in the case of non-refundable ticket for air travel or security deposit or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services.
- x. However, as discussed earlier, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. They are not taxable

QUESTIONS

1. Meghraj & Co. wishes to commence the business of supplying ready-made garments within Punjab and in the neighbouring States of Delhi and Haryana. Kindly state as to what is the taxable event under GST and leviability of CGST, SGST/UTGST and IGST on the same?

Answer:

Taxable event under GST is supply of goods or services or both. CGST and SGST/ UTGST will be levied on intra-State supplies. IGST will be levied on inter-State supplies.

2. Damodar Private Ltd., registered in Delhi, has transferred some goods to its branch, registered in West Bengal, so that the goods can be sold from the branch. The goods have been transferred without any consideration. The company believes that the transaction undertaken by it does not qualify as supply as no consideration is involved. Ascertain whether the transfer of goods by Damodar Private Ltd. to its branch office qualifies as supply.

Answer:

As per Schedule I, supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business, is deemed as supply even if made without consideration. In the given case, since the Damodar Private Ltd. and its branch located in another State are distinct persons, supply of goods between them qualifies as supply.

3. Prithvi Associates is engaged in supply of taxable goods. It enquires from its tax advisor as to whether any activity can be treated as supply even if made without consideration in accordance with the provisions. You are required to enumerate such activities, if any.

Answer

Section 7 stipulates that the supply should be for a consideration and should be in the course or furtherance of business.

However, Schedule I enumerates the cases where an activity is treated as supply, even if the same is without consideration. These are as follows:

- A. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
- B. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business. However, 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.
- C. 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.
- D. 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.

- 4. Composite supply is treated as supply of that particular goods or services which attracts the highest rate of tax. Examine the validity of the statement.**

Answer

The statement is not correct. Composite supply is treated as supply of the principal supply. It is the mixed supply that is treated as supply of that particular goods or services which attracts the highest rate of tax.

- 5. Transfer of title and/or possession is necessary for a transaction to constitute supply of goods. Examine.**

Answer:

Title as well as possession both have to be transferred for a transaction to be considered as a supply of goods. In case title is not transferred, the transaction would be treated as supply of service in terms of Schedule II(1)(b). In some cases, possession may be transferred immediately, but title may be transferred at a future date like in case of sale on approval basis or hire purchase arrangement. Such transactions will also be termed as supply of goods

- 6. Examine whether the following activities would amount to supply under section 7 read with Schedule I**

- (1) Sulekha Manufacturers have a factory in Delhi and a depot in Mumbai. Both these establishments are registered in respective States. Finished goods are sent from factory in Delhi to the Mumbai depot without consideration so that the same can be sold.**
- (2) Raman is an architect in Chennai. His brother who is settled in London is a well-known lawyer. Raman has taken legal advice from him free of cost with regard to his family dispute.**
- (3) Would your answer be different if in the above case, Raman has taken advice in respect of his business unit in Chennai?**

Answer

1. Schedule I, inter alia, stipulates that supply of goods or services or both between related persons or between distinct persons as specified in section 25, is supply even without consideration provided it is made in the course or furtherance of business. Further, a person who has obtained more than one registration, whether in one State/Union territory or more than one State/Union territory shall, in respect of each such registration, be treated as distinct persons [Section 25(4)].

In view of the same, factory and depot of Sulekha Manufacturers are distinct persons. Therefore, supply of goods from Delhi factory of Sulekha Manufacturers to Mumbai Depot without consideration, but in course/furtherance of business, is supply under section 7 read with Schedule I.

2. Schedule I, inter alia, stipulates that import of services by a taxable person from a related person located outside India, without consideration is treated as supply if it is provided in the course or

furtherance of business. Explanation to section 15, inter alia, provides that persons shall be deemed to be “related persons” if they are members of the same family. Further, as per section 2(49), family means, —

- (i) the spouse and children of the person, and
- (ii) the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person.

In the given case, Raman has received free of cost legal services from his brother. However, in view of section 2(49)(ii) above, Raman and his brother cannot be considered to be related as Raman’s brother is a well-known lawyer and is not wholly/mainly dependent on Raman. Further, Raman has taken legal advice from him in personal matter and not in course or furtherance of business. Consequently, services provided by Raman’s brother to him would not be treated as supply under section 7 read with Schedule I.

3. In the above case, if Raman has taken advice with regard to his business unit, services provided by Raman’s brother to him would still not be treated as supply under section 7 read with Schedule I as although the same are provided in course or furtherance of business, such services have not been received from a related person.

7. State whether the following supplies would be treated as supply of goods or supply of services as per Schedule II:

- (1) Renting of immovable property.**
- (2) Goods forming part of business assets are transferred or disposed of by/under directions of person carrying on the business.**
- (3) Transfer of right in goods without transfer of title in goods.**
- (4) Transfer of title in goods under an agreement which stipulates that property shall pass at a future date.**

Answer:

- (a) Supply of services
- (b) Supply of goods
- (c) Supply of services
- (d) Supply of goods

8. Determine whether the following supplies would be treated as supply of goods or supply of services as per Schedule II:

- (a) Temporary transfer or permitting use or enjoyment of any intellectual property right.**
- (b) Any treatment or process which is applied to another person’s goods.**
- (c) Transfer of title in goods.**

Answer:

- (a) Supply of services
- (b) Supply of services
- (d) Supply of goods

9. The goods supplied on hire purchase basis will be treated as supply of services. Examine the validity of the statement.

Answer:

The statement is not correct. Supply of goods on hire purchase shall be treated as supply of goods as there is transfer of title, albeit at a future date.

10. Examine whether the activity of import of service in the following independent cases would amount to supply under section 7:

- A. Miss Shriniti Kaushik received interior decoration services for her residence located at Bandra, Mumbai from Mr. Racheal of Sydney (Australia). The amount paid for the said service is 5,000 Australian dollar.**
- B. Miss Shriniti Kaushik received interior decoration services for her residence located at Bandra, Mumbai from her brother, Mr. Varun residing in Sydney (Australia) [wholly dependent on Miss Shriniti]. Further, Miss Shriniti did not pay any consideration for the said service.**
- C. Will your answer change if in the above case, if Miss Shriniti has taken interior decoration services with regard to her business premises and not her residence?**

Answer

- (i)** Supply, under section 7, inter alia, includes import of services for a consideration even if it is not in the course or furtherance of business. Thus, although the import of service for consideration by Miss. Shriniti Kaushik is not in course or furtherance of business [as the interior decoration services have been availed in respect of residence], it would amount to supply.
- (ii)** Schedule I, inter alia, stipulates that import of services by a taxable person from a related person located outside India, without consideration is treated as supply if it is provided in the course or furtherance of business. Explanation to section 15, inter alia, provides that persons shall be deemed to be “related persons” if they are members of the same family. Further, as per section 2(49), family means, —
 - (i) the spouse and children of the person, and
 - (ii) the parents, grand-parents, brothers and sisters of the person Uif they are wholly or mainly dependent on the said person.In the given case, Miss Shriniti Kaushik has received interior decoration services from her brother. In view of section 2(49)(ii) above, Miss Shriniti and her brother shall be considered to be related as Miss Shriniti’s brother is wholly dependent on her.
However, Miss Shrinti has taken interior decoration services for her residence and not in course or furtherance of business. Consequently, services provided by Miss Shrinti’s brother to her would not be treated as supply under section 7 read with Schedule I.
- (iii)** In the above case, if Miss Shriniti has taken interior decoration services with regard to her business premises, services provided by Miss Shriniti’s brother to her would be treated as supply under section 7 read with Schedule I.

11. Determine whether the following supplies amount to composite supplies:

(a) A hotel provides 4 days-3 nights package wherein the facility of breakfast and dinner is provided alongwith the room accommodation.

(b) A toothpaste company has offered the scheme of free soap alongwith the toothpaste.

Answer:

Under composite supply, two or more taxable supplies of goods or services or both, or any combination thereof, are naturally bundled and supplied in conjunction with each other, in the ordinary course of business, one of which is a principal supply [Section 2(30)]. In view of the same, (a) since supply of breakfast and dinner with the accommodation in the hotel are naturally bundled, said supplies qualify as 'composite supply'.

(b) since supply of soap alongwith the toothpaste are not naturally bundled, said supplies do not qualify as 'composite supply'.

12. Dumdum Electronics has sold the following electronic items to Akbar Retail Store.

- A. Refrigerator (500 litres) taxable @ 18%**
- B. Stabilizer for refrigerator taxable @ 12%**
- C. LED television (42 inches) taxable @ 12%**
- D. Split air conditioner (2 Tons) taxable @ 28%**
- E. Stabilizer for air conditioner taxable @12%**

Dumdum Electronics has issued a single invoice, indicating price of each of the above items separately in the same. Akbar Retail Store has given a single cheque of ` 1,00,000/- for all the items as a composite discounted price. State the type of supply and the tax rate applicable in this case.

Answer:

In the given case, the items supplied by Dumdum Electronics are not naturally bundled in the ordinary course of business. Therefore, such supply is not a composite supply. Further, although Akbar Retail Store has paid a composite discounted price for these goods, Dumdum Electronics has not charged a single price for the said supply. Therefore, said supply is also not a mixed supply. Supply of these goods is, therefore, supply of individual items which are taxable at the respective rates applicable to them.

13. Manikaran, a registered supplier of Delhi, has supplied 20,000 packages at ₹ 30 each to Mukhija Gift Shop in Punjab. Each package consists of 2 chocolates, 2 fruit juice bottles and a packet of toy balloons. Determine the rate(s) of GST applicable in the given case assuming the rates of GST to be as under:

Chocolates	18%
Fruit juice bottles	12%
Toy balloons	5%

Answer:

As per section 2(74), mixed supply means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Supply of a package containing chocolates, fruit juice bottles and a packet of toy balloons is a mixed supply as each of these items can be supplied separately and is not dependent on any other. Further, as per section 8(b), the mixed supply is treated as a supply of that particular supply which attracts the highest rate of tax. Thus, in the given case, supply of packages is treated as supply of chocolates [since it attracts the highest rate of tax] and the rate of GST applicable on the package of ₹ 6,00,000 ($20,000 \times ₹ 30$) is 18%

14. Gagan Engineering Pvt. Ltd., registered in Haryana, is engaged in providing maintenance and repair services for heavy steel machinery. For carrying out the repair work, Gagan Engineering Pvt. Ltd. sends its container trucks equipped with items like repair equipments, consumables, tools, parts etc. from Haryana workshop to its own repairing centres (registered under GST law) located in other States across India where the clients' machinery are being brought and are being repaired. Discuss the levability of GST on the inter-State movement of trucks from the workshop of Gagan Engineering Pvt. Ltd. in Haryana to its own repairing centres located in other States across India.

Answer:

As per section 25(4)27, a person who has obtained more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as 'distinct persons'.

Schedule I to the CGST Act specifies situations where activities are to be treated as supply even if made without consideration. Supply of goods and/or services between 'distinct persons' as specified in section 25, when made in the course or furtherance of business is one such activity included in Schedule I under para 2.

However, as per CBIC circular, the inter-State movement of various modes of conveyance including, inter alia, trucks, carrying goods or passengers or both or for repairs and maintenance, between 'distinct persons' as specified in section 25(4), not involving further supply of such conveyance, may be treated 'neither as a supply of goods nor supply of service' and therefore, will not be leviable to IGST. Applicable CGST/SGST/IGST, however, shall be leviable on repairs and maintenance done for such conveyance [Circular No. 1/1/2017 IGST dated 07.07.2017].

Thus, in the given case, inter-State movement of trucks from the workshop of Gagan Engineering Pvt. Ltd. located in Haryana to its repair centres located in other States is 'neither a supply of goods nor supply of service'.

15. PTL Pvt. Ltd. is a retail store of merchandise located in 25 States/UTs in the country. For the purpose of clearance of stock of merchandise and to attract consumers, PTL Pvt. Ltd. launched scheme of "Buy One Get One Free" for the same type of merchandise, for instance, one shirt to be given free with purchase of one shirt. Determine how the taxability of the goods supplied under "Buy One Get One Free" scheme is determined.

Answer:

As per section 7(1)(a), the goods or services which are supplied free of cost (without any consideration) are not treated as “supply” except in case of activities mentioned in Schedule I. Under “Buy One Get One Free” scheme, it may appear at first glance that in case of offers like “Buy One, Get One Free”, one item is being “supplied free of cost” without any consideration. However, it is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.

Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined accordingly

16. Sarvanna & Sons wishes to start supplying alcoholic liquor in the State of Tamil Nadu. Therefore, it applies for license to the Tamil Nadu Government for selling liquor for which the State Government has charged specified fee from it. Examine whether the grant of alcoholic liquor license by the Tamil Nadu Government to Sarvanna & Sons qualifies as supply.

Answer:

Services by way of grant of alcoholic liquor license by the State Governments have been notified to be treated neither as a supply of goods nor as a supply of service. Such licence is granted against consideration in the form of licence fee or application fee or by whatever name it is called.

This special dispensation is applicable only to supply of service by way of grant of liquor licenses by the State Governments as an agreement between the Centre and States and is not applicable/has no precedence value in relation to grant of other licenses and privileges for a fee in other situations, where GST is payable.

Thus, in the given case, the grant of alcoholic liquor license by the Tamil Nadu Government to Sarvanna & Sons is neither a supply of goods nor a supply of service.

3.CHARGE OF GST

LEVY & COLLECTION OF CGST & IGST [SECTION 9 OF THE CGST ACT & SECTION 5 OF THE IGST ACT]

Section 9 of the CGST Act	LEVY AND COLLECTION
Sub Section	Particulars
(1)	Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.
(2)	The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.
(3)	The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.
(4)	The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.
(5)	The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intraState supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services. Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax: Provided further that where an electronic commerce operator does not have

	a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.
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B. DETAILED ANALYSIS OF SUB SECTION (1) and (2) of Sec 9 of CGST ACT:

- a. Central Goods and Services Tax (CGST) shall be levied on all **intra-State supplies** of goods or services or both.
- b. The tax shall be collected in such manner as may be prescribed and shall be paid by the taxable person. However, intra-State supply of alcoholic liquor for human consumption is outside the purview of CGST.
- c. **Value for levy:** Transaction value under section 15 of the CGST Act (will be discussed in further chapters).
- d. **Rates of CGST:** Rates for CGST are rates as may be notified by the Government on the recommendations of the GST Council. Maximum rate of CGST can be 20%. An equivalent rate of SGST also will be levied.
- e. **Inter State Supply:**
 - i. However, On inter-State supplies of goods and/or services, Integrated Goods and Services Tax (IGST) is levied on the transaction value under section 15 of the CGST Act.
 - ii. Since alcoholic liquor for human consumption is outside the purview of GST law, IGST is also not leviable on the same.
 - iii. IGST is the sum total of CGST and SGST/UTGST. Maximum rate of IGST can be 40%.
- f. However, CGST/IGST on supply of the following items has not yet been levied. It shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council:
 - i. petroleum crude
 - ii. high speed diesel
 - iii. motor spirit (commonly known as petrol)
 - iv. natural gas and
 - v. aviation turbine fuel

C. DETAILED ANALYSIS OF SUB SECTION (3) and (4) of Sec 9 of CGST ACT – REVERSE CHARGE MECHANISM (RCM):

- a. **Reverse Charge:**
 - i. Reverse charge means the liability to pay tax is on the recipient of supply of goods or services instead of the supplier of such goods or services in respect of notified categories of supply.
 - ii. Generally, the supplier of goods or services is liable to pay GST. However, under the reverse charge mechanism, the liability to pay GST is cast on the recipient of the goods or services.

- iii. Under normal circumstances, the statutory liability to deposit GST and undertake compliances [i.e., to obtain registration under GST, deposit the tax with the Government, filing returns, etc.] is on the supplier while he may recover the same from its recipient.
- iv. However, under reverse charge mechanism, the statutory liability to deposit GST and undertaking compliance requirements, [i.e., to obtain registration under GST, deposit the tax with the Government, filing returns, etc.] shifts from supplier to recipient.
- v. There are two types of reverse charge scenarios provided in law.
 - First scenario occurs in case of supply of specified categories of goods or services, covered by section 9(3) of the CGST/ SGST (UTGST) Act. Similar provisions are contained under section 5(3) of the IGST Act.
 - Second scenario occurs in case of supply of specified categories of goods or services made by an unregistered supplier to specified class of registered recipients, covered by section 9(4) of the CGST Act. Similar provisions are contained under section 5(4) of the IGST Act.

D. GOODS NOTIFIED UNDER REVERSE CHARGE MECHANISM UNDER SECTION 9(3) OF THE CGST ACT/ SECTION 5(3) OF THE IGST ACT ARE AS FOLLOWS:

Supplies of goods taxable under reverse charge, i.e. supply of the goods where tax is payable by the recipient:

- a. Goods like cashewnuts [not shelled/peeled], bidi wrapper leaves, tobacco leaves and raw cotton (when supplied by an agriculturist to any registered person),
- b. Supply of lottery (when supplied by State Government, Union Territory or any local authority to lottery distributor or selling agent),
- c. Silk yarn (when supplied by manufacturer of silk yarn to any registered person),
- d. Used vehicles, seized and confiscated goods, old and used goods, waste and scrap (when supplied by Central Government, State Government, Union Territory or any local authority to any registered person), etc.

are taxable under reverse charge.

E. SUPPLY OF SERVICES TAXABLE UNDER REVERSE CHARGE UNDER SECTION 9(3) OF THE CGST ACT, I.E. THE SERVICES WHERE TAX IS PAYABLE BY THE RECIPIENT:

1. Supply of service by a Goods Transport Agency (GTA) in respect of transportation of goods by road:

- a. Supply of services by a Goods Transport Agency (GTA) in respect of transportation of goods by road to specified recipients will attract reverse charge.
- b. **Who are Specified recipients?**
 - i. Any factory registered under or governed by the Factories Act, 1948; or
 - ii. Any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or
 - iii. Any co-operative society established by or under any law; or
 - iv. Any person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act; or

- v. Anybody corporate established, by or under any law; or
- vi. Any partnership firm whether registered or not under any law including association of persons; or
- vii. Any casual taxable person.

- c. **Non applicability of reverse charge if GTA services provided to:** However, reverse charge mechanism (RCM) shall not apply to services provided by a GTA, by way of transport of goods in a goods carriage by road to-
 - a Department/ establishment of the Central Government/ State Government/ Union territory; or
 - local authority; or
 - Governmental agencies, which has taken registration under the CGST Act only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.
- d. **Reverse charge not applicable if GTA opts for forward charge:** Further, nothing contained in this entry shall apply where, -
 - the supplier has taken registration under the CGST Act, 2017 and exercised the option to pay tax on the services of GTA in relation to transport of goods supplied by him under forward charge; and
 - the supplier has issued a tax invoice to the recipient charging CGST at the applicable rates and has made the prescribed declaration on such invoice issued by him.
- e. **Recipient of GTA service:** Recipient of GTA service is the person who pays/is liable to pay freight for transportation of goods by road in goods carriage, located in the taxable territory.

2. Services provided by an individual advocate including a senior advocate or firm of advocates:

- a. Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly,
- b. To any business entity located in the taxable territory,
- c. The liability to deposit tax falls on service recipient (i.e., business entity)

Note: “Legal service” means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.

3. Services supplied by an arbitral tribunal to a business entity.

4. Services provided by way of Sponsorship to any Body corporate or Partnership firm

5. Services supplied by the Central Government, State Government, Union territory or local authority to a business entity:

- a. Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, the following services, will attract reverse charge.
- Renting of immovable property, and
 - services specified below-
 - 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;
 - Transport of goods or passengers.

5A. Services supplied by Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under CGST Act, 2017.

5B. Services supplied by any person by way of Transfer of development rights (TDR) or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.

5C. Long term lease of land (30 years or more) by any person against consideration in 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.

5AA Service by way of renting of residential dwelling to a registered person.

6. Services supplied by a director of a company/ body corporate to the said company/ body corporate located in taxable territory:

In order to determine the levability of tax on the remuneration paid to the directors, we first need to ascertain whether the director is an employee of the company or not. Following two situations are possible:

a. If directors are not employees:

- Services provided by the independent directors/those directors (by whatever name called) who are not employees of the said company to such company, in lieu of remuneration as the consideration for the said services, are clearly outside the scope of Schedule III of the CGST Act (Negative List) and are therefore taxable.
- such remuneration paid to the directors is taxable in hands of the company, on reverse charge basis.

b. If directors are employees:

- In case where it is ascertained that a director, irrespective of name and designation, is an employee, next step would be to examine whether all the activities performed by the director are in the course of employer-employee relation (i.e. a “contract of service”) or is there any element of “contract for service”.

- ii. The part of director's remuneration which are declared as Salaries in the books of a company and subjected to TDS under section 192 of the Income-tax Act (IT Act), are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III.
- iii. Further, the part of employee director's remuneration which is declared separately other than salaries in the company's accounts and subjected to TDS under section 194J of the IT Act as fees for professional or technical services are treated as consideration for providing services which are outside the scope of Schedule III and is therefore, taxable. Besides, as already discussed, the recipient of the said services i.e. the company, is liable to discharge the applicable GST on it on reverse charge basis.

- 7. **Services supplied by an insurance agent to any person carrying on insurance business located in the taxable territory.**
- 8. **Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company located in a taxable territory.**
- 9. **Supply of services by a music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original dramatic, musical or artistic works to a music company, producer or the like, located in a taxable territory.**

9A. Supply of services by an author:

- a. Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original literary works to a publisher located in taxable territory are covered under reverse charge (i.e., publisher is liable to deposit tax).
- b. However, an author can choose to pay tax under forward charge if-
 - i. He has taken registration under the CGST Act and filed a declaration, in the prescribed form,
 - that he exercises the option to pay CGST on the said service under forward charge in accordance with section 9(1) and
 - to comply with all the provisions as they apply to a person liable for paying the tax in relation to the supply of any goods and/or services and
 - that he shall not withdraw the said option within a period of 1 year from the date of exercising such option;
 - ii. he makes a declaration on the invoice issued by him in prescribed form to the publisher.

- 10. **Supply of services by the members of Overseeing Committee to Reserve Bank of India (RBI).**

11. Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership (LLP) firm to bank or nonbanking financial company (NBFCs), located in a taxable territory.

12. Services provided by business facilitator to a banking company located in a taxable territory.

13. Services provided by an agent of business correspondent to business correspondent located in taxable territory.

14. Supply of Security services:

- a. Security services (services provided by way of supply of security personnel) provided by person other than a body corporate to a registered person, located in the taxable territory, will be covered under reverse charge.
- b. However, nothing contained in this entry shall apply to:
 - i. a Department or Establishment of the Central Government or State Government or Union territory; or
 - ii. local authority; or
 - iii. Governmental agencies; which has taken registration under the CGST Act, 2017 only for the purpose of deducting tax under section 51 of the said Act and not for making a taxable supply of goods or services; or
 - iv. a registered person paying tax under composition scheme.

15. Services provided by way of renting of any motor vehicle designed to carry passengers:

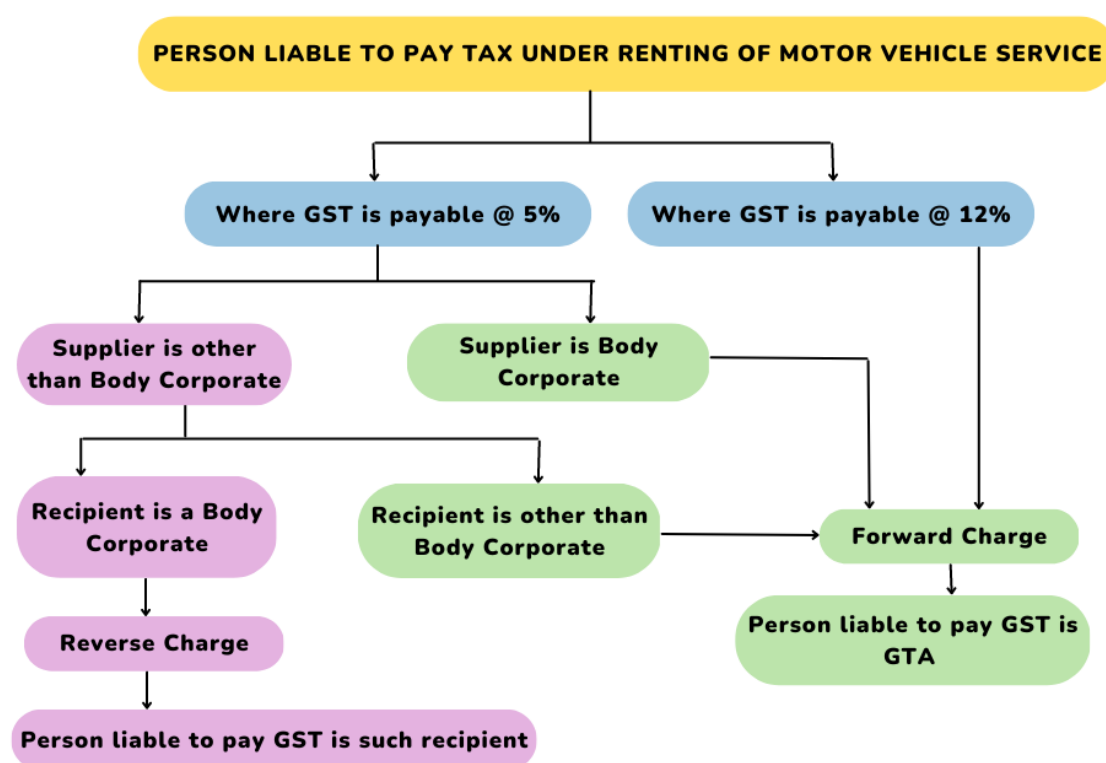
a. Applicability of RCM:

- i. Services provided by way of renting of any motor vehicle designed to carry passengers by any person other than body corporate, where the cost of fuel is included in the consideration charged from the service recipient,
- ii. To any Body Corporate located in a Taxable territory (refer note for meaning of body corporate), and
- iii. Service provider does not issue an invoice charging CGST @6% to service recipient,
- iv. Will be covered under reverse charge.

b. Taxability of renting of motor vehicle designed to carry passengers:

- i. Service 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 are taxable at the following two rates:
 - **@ 5% (2.5% CGST+2.5% SGST/UTGST or 5% IGST)** provided supplier of services has taken only the limited ITC (of input services in the same line of business) or
 - **@ 12% (6% CGST+6% SGST/UTGST or 12% IGST)** where supplier of services opts to pay GST at said rate. In this case, there is no restriction on availing ITC on goods or services used in supplying renting of motor vehicles service by the supplier of service.

- c. The following chart explains, who is required to pay GST in case of renting of motor vehicle Service:



16. Services of lending of securities under Securities Lending Scheme, 19977 (“Scheme”) of Securities and Exchange Board of India:

- Service Provider:** Lender i.e., a person who deposits securities registered in his name/in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under Scheme of SEBI.
- Service Recipient:** Borrower i.e., a person who borrows the securities under the Scheme through an approved intermediary of SEBI.
- The above transactions are covered under reverse charge mechanism.

17. In addition to them, following service is also notified by said notification under reverse charge for IGST purposes – Importation of Services:

- Any service supplied by any person who is located in a non-taxable territory
- To any person other than non-taxable online recipient located in taxable territory
- Tax is payable by the person importing such service.

Note:

Meaning of Body Corporate: As per section 2(11) of the Companies Act, 2013, body corporate or corporation includes a company incorporated outside India, but does not include—

- a co-operative society registered under any law relating to cooperative societies; and
- any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf.

F. TAX PAYABLE BY ELECTRONIC COMMERCE OPERATOR – SEC 9(5) OF CGST ACT:

1. Electronic Commerce Operator (ECO) is any person who owns/operates/manages an electronic platform for supply of goods or services or both.
2. Sometimes, ECO itself supplies the goods or services displayed on its electronic portal.
3. However, many a times, the products/services displayed on the electronic portal are actually supplied by some other person to the consumer.
4. When a consumer places an order for a particular product/ service on this electronic portal, the actual supplier supplies the selected product/ service to the consumer.
5. The price/ consideration for the product/ service is collected by the ECO from the consumer and passed on to the actual supplier after the deduction of commission by the ECO.
6. The Government may, on the recommendations of the GST Council, notify specific categories of services the tax [CGST/SGST/IGST] on supplies of which shall be paid by the electronic commerce operator (ECO) if such services are supplied through it.
7. Few services have been so notified. For instance, service by way of transportation of passengers by a radio-taxi, motorcar, maxi cab and motor cycle, etc.

G. CLASSIFICATION UNDER GST: In order to determine the rate applicable on a particular supply of goods or services, one needs to first determine the classification of such goods or services.

1. CLASSIFICATION OF GOODS:

- a. Classification of goods means identification of the
 - i. chapter,
 - ii. heading,
 - iii. sub-heading and
 - iv. tariff item in which a particular product will be classified.
- b. Chapter, heading, sub-heading and tariff item are referred in the Schedules of rate notification for goods under GST are the Chapter, heading, sub-heading and tariff item of the First Schedule to the Customs Tariff Act, 1975.
- c. Indian Customs Tariff is based on HSN. HSN stands for Harmonized System of Nomenclature.
- d. It is a multipurpose international product nomenclature developed by the World Customs Organization (WCO) for the purpose of classifying goods across the World in a systematic manner.
- e. It comprises of about 5,000 commodity groups; each identified by a 6 digit code [code can be extended], arranged in a legal and logical structure and is supported by well-defined rules to achieve uniform classification.
- f. India has extended the HSN codes up to 8-digits.

2. CLASSIFICATION OF SERVICES:

- a. A new Scheme of Classification of Services has been devised under GST. It is a modified version of the United Nations Central Product Classification.
- b. Under this scheme, the services of various descriptions have been classified under various sections, headings and groups.

- c. Chapter 99 has been assigned for services. This chapter has following sections:
- i. **Section 5:** Construction Services
 - ii. **Section 6:** Distributive Trade Services; Accommodation, Food and Beverage Service; Transport Services; Gas and Electricity Distribution Services
 - iii. **Section 7:** Financial and related services; real estate services; and rental and leasing services
 - iv. **Section 8:** Business and Production Services
 - v. **Section 9:** Community, social and personal services and other miscellaneous services
- Each section is divided into various headings which is further divided into Groups. Its further division is made in the form of 'Tariff item'/ Service Codes.

H. **GST RATES:**

1. **GST RATES PRESCRIBED FOR VARIOUS GOODS:**

- a. Broadly, six rates of CGST have been notified in six Schedules of rate notification for goods, viz., 0.125%, 1.5%, 2.5%, 6%, 9% and 14%. SGST/ UTGST at the equivalent rate is also leviable.
- b. With regard to IGST, broadly six rates have been notified in six Schedules of rate notification for goods, viz., 0.25%, 3%, 5%, 12%, 18% and 28%.

2. **GST RATES PRESCRIBED FOR VARIOUS SERVICES:**

- a. Broadly, six rates of CGST have been notified for services, viz., 0.75%, 2.5%, 3.75%, 6%, 9% and 14%. Equivalent rate of SGST/ UTGST will also be levied.
- b. For IGST, six rates have been notified for services, viz., 1.5%, 5%, 7.5%, 12%, 18% and 28%.
- c. For certain specified services, nil rate of tax has been notified.
- d. Services of gambling, services by way of admission to entertainment events/access to amusement facilities including casinos, race club, any sporting event such as IPL and the like, services provided by a race club by way of totalisator or a license to bookmaker in such club, attract the highest rate of 28% (CGST @ 14% and SGST @ 14% or IGST @ 28%).
- e. A number of services are subject to a lower rate of 5% (CGST @ 2.5% and SGST @ 2.5% or IGST @ 5%). For instance, GTA service is taxed @ 5% subject to the condition that credit of input tax charged on goods/services used in supplying said service has not been taken.
- f. Similarly, tax rate for restaurant service is 5% without any input tax credit.
- g. Services not covered under any specific heading are taxed at the rate of 18% (CGST @ 9% and SGST @ 9% or IGST @ 18%).

QUESTIONS

1. **State the person liable to pay GST in the following independent cases provided recipient is located in the taxable territory:**
 - (1) **Services provided by an arbitral tribunal to any business entity.**
 - (2) **Sponsorship services provided by a company to an individual.**
 - (3) **Renting of immovable property service provided by the Central Government to a registered business entity.**

Answer:

1. Since GST on services provided or agreed to be provided by an arbitral tribunal to any business entity located in the taxable territory is payable under reverse charge, in the given case, GST is payable by the recipient - business entity.
2. GST on sponsorship services provided by any person to any body corporate or partnership firm located in the taxable territory is payable under reverse charge. Since in the given case, services have been provided to an individual, reverse charge provisions will not be attracted. GST is payable under forward charge by the supplier – company.
3. GST on services supplied by Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under CGST Act, 2017 is payable under reverse charge. Therefore, in the given case, GST is payable under reverse charge by the recipient – registered business entity.

2. **Vivek Goyal, an independent director of A2Z Pvt. Ltd., has received sitting fee amounting to ₹ 1 lakh from A2Z Pvt. Ltd for attending the Board meetings. Who is the person liable to pay tax in this case?**

Answer:

GST on supply of services by director of a company to the said company located in the taxable territory is payable on reverse charge basis. Therefore, in the given case, person liable to pay GST is the recipient of services, i.e., A2Z Pvt. Ltd.

3. **Raghu Associates provided sponsorship services to WE-WIN Cricket Academy, an LLP. Determine the person liable to pay tax in this case.**

Answer:

In case of services provided by any person by way of sponsorship to any body corporate or partnership firm, GST is liable to be paid under reverse charge by such body corporate or partnership firm located in the taxable territory. Further, for the reverse charge purposes, Limited Liability Partnership formed and registered under the provisions of the Limited Liability Partnership Act, 2008 is also be considered as a partnership firm. Therefore, in the given case, WE-WIN Cricket Academy is liable to pay GST under reverse charge.

- 4. Safe Trans', a Goods Transport Agency, transported goods of Kapil & Co., a partnership firm, which is not registered under GST. Determine the person liable to pay tax in this case.**

Answer:

In case of services provided by Goods Transport Agency (GTA) in respect of transportation of goods by road to, inter alia, any partnership firm whether registered or not under any law; GST is liable to be paid by such partnership firm. Therefore, in the given case, Kapil & Co. is liable to pay GST under reverse charge.

- 5. Legal Fees is received by Sushrut, an advocate, from M/s. Tatva Trading Company having turnover of ₹ 50 lakh in preceding financial year Who is the person liable to pay tax in this case?**

Answer:

GST on legal services supplied by an advocate [Mr. Sushrut] to any business entity [M/s. Tatva Trading Company] located in the taxable territory is payable on reverse charge basis. Therefore, in the given case, person liable to pay GST is the recipient of services, i.e., M/s. Tatva Trading Company.

- 6. State the person liable to pay GST in the following independent cases provided recipient is located in the taxable territory:**

- a. Services supplied by an insurance agent to an insurance company.
- b. Services supplied by a recovery agent to a car dealer.
- c. Security services (services provided by way of supply of security personnel) provided to a registered person.

Answer:

- (1)** GST on services supplied by an insurance agent to any person carrying on insurance business located in the taxable territory is payable under reverse charge. Therefore, in the given case, GST is payable under reverse charge by the recipient – Insurance Company.
- (2)** GST on services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company located in the taxable territory is payable under reverse charge. However, since, in the given case, services are being supplied by a recovery agent to a car dealer, GST is payable under forward charge by the service provider - recovery agent.
- (3)** GST on security services (services provided by way of supply of security personnel) provided to a registered person, located in the taxable territory is payable under reverse charge. Therefore, in the given case, GST is payable under reverse charge by the recipient – registered person receiving the services.

4. EXEMPTIONS FROM GST

EXEMPT SUPPLY [Section 2(47)]: Exempt supply has been defined as supply of any goods or services or both which:

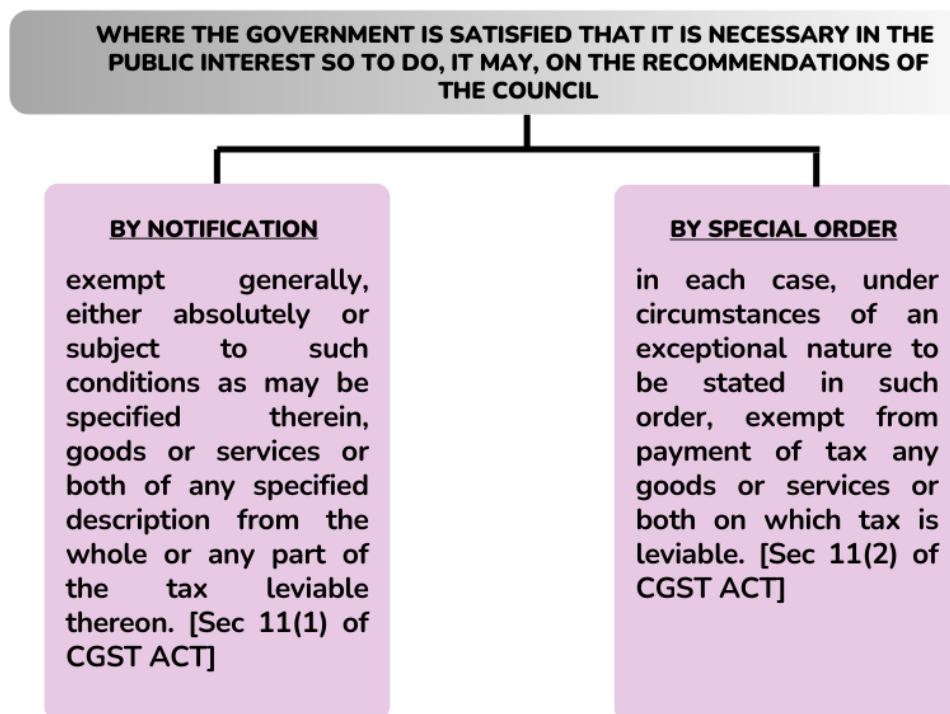
- a. attracts nil rate of tax or
- b. which may be wholly exempt from tax and
- c. includes non-taxable supply.

NON-TAXABLE SUPPLY [Section 2(78)]: Non-taxable supply means a supply of goods or services or both which is not leviable to tax under CGST Act or under the IGST Act.

Examples of supply not leviable to tax are:

- a. *Alcoholic liquor for human consumption,*
- b. *Specified petroleum products namely Petroleum Crude, High Speed Diesel, Motor spirit (commonly known Petrol), Natural Gas and Aviation Turbine Fuel.*

A. **POWER TO GRANT EXEMPTION FROM TAX [SECTION 11 OF THE CGST ACT/SECTION 6 OF THE IGST ACT]**

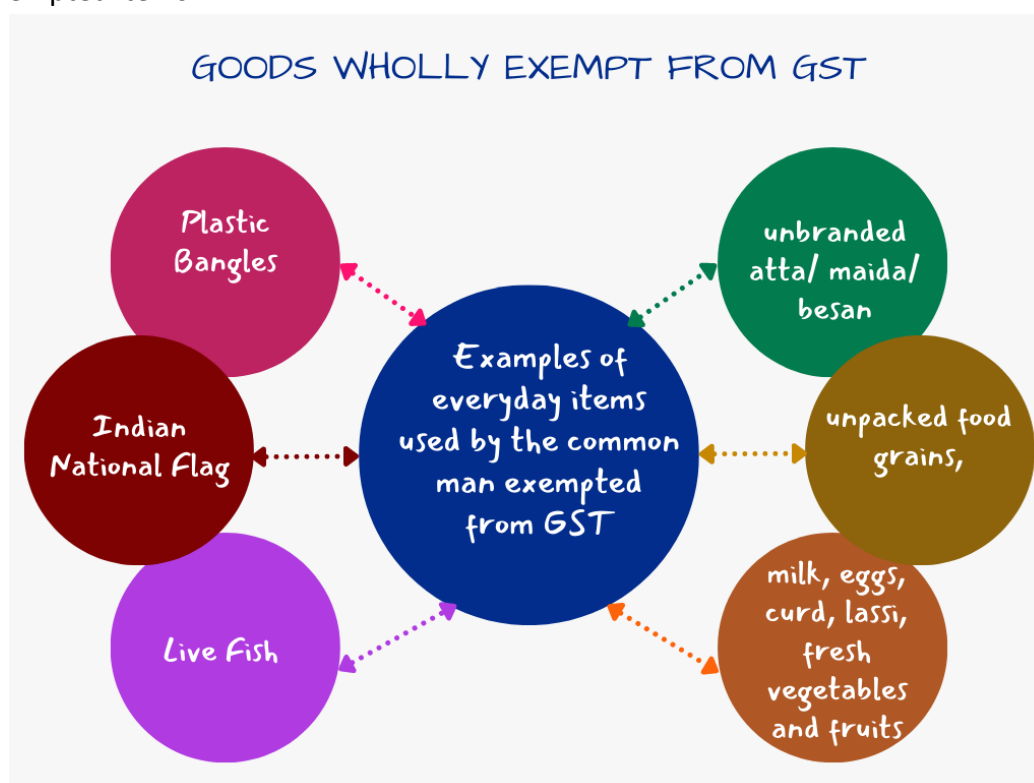


1. **Exemption from payment of tax:** GST law empowers the Central Government or State Government, as the case may be, to grant exemption from tax. The exemption is granted on recommendation of the GST Council. Exemption can be from whole of the tax or part of the tax. It should be granted in public interest.
2. **Absolute / Unconditional Exemption:**
 - a. The absolute/ unconditional exemption is mandatory in nature.

- b. Where the supply of the goods or services or both are unconditionally exempted from whole of the tax, the registered person doesn't have option to collect and pay tax on such supply of goods or services or both.
 - c. Where the supply of the goods or services or both are unconditionally exempted from part of the tax, the registered person doesn't have option to collect and pay the tax, in excess of the effective rate, on such supply of goods or services or both.
3. **Conditional Exemption:** However, where the exemption is conditional, it is at the option of the registered person whether to avail the same or not.

B. GOODS WHOLLY EXEMPTED FROM TAX U/S 11(1) OF CGST ACT OR 6(1) OF IGST ACT:

1. Under GST, everyday items used by the common man have been included in the list of exempted items.



C. LIST OF SERVICES EXEMPTED FROM GST [NOTIFICATION NO. 12/2017 CENTRAL TAX (RATE) DATED 28.06.2017]:

I. SERVICES RELATED TO CHARITABLE AND RELIGIOUS ACTIVITIES:

1. **Entry No. 1 - Services by an entity registered under section 12AA of the Income-tax Act, 1961 by way of charitable activities:**

In order to claim exemption under Entry 1 of the Notification, following two conditions must be satisfied:-

- i. The entity should be registered under section 12AA of the Income-tax Act, 1961, and
- ii. The entity must carry out one or more of the specified charitable activities.

- **Meaning of Charitable Activities:** The term 'charitable activities' mean activities relating to-
 - i. **Public health** by way of-
 - care or counselling of
 - terminally ill persons or persons with severe physical or mental disability;
 - persons afflicted with HIV or AIDS;
 - persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or
 - public awareness of preventive health, family planning or prevention of HIV infection;
 - ii. **Advancement of religion**, spirituality or yoga;
 - iii. **Advancement of educational programmes/skill development** relating to,-
 - abandoned, orphaned or homeless children;
 - physically or mentally abused and traumatized persons;
 - prisoners; or
 - persons over the age of 65 years residing in a rural area;
 - iv. **Preservation of environment** including watershed, forests & wildlife.
 - **Management of educational institutions by charitable trusts:**
 - i. Activities of schools, colleges or any other educational institutions run by charitable trusts by way of education or skill development of
 - abandoned, orphans, homeless children,
 - physically or mentally abused persons,
 - prisoners or
 - persons over age of 65 years or above residing in a rural area,
 will be considered as charitable activities and income from such supplies will be wholly exempt from GST.
 - ii. The term rural area means the area comprised in a village as defined in land revenue records, excluding the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee; or any area that may be notified as an urban area by the Central Government or a State Government.
- Example:** Shiksha Academy, an educational institute run by Sarvsewa Trust, a charitable trust registered under section 12AA of the Income-tax Act, 1961, has organized a Skill Development Programme for the old age people over the age of 65 years residing in Bangalore city (an urban area). Services provided by Shiksha Academy do not fall within the purview of 'charitable activities'. The activities relating to advancement of skill development relating to persons over the age of 65 years, are covered under the definition of 'charitable activities' only when such persons are residing in rural area
- **Hostel accommodation provided by trusts:**
 - i. Hostel accommodation services provided by trusts to students do not fall within the ambit of charitable activities as defined above.

- ii. However, accommodation service in hostels including such services provided by trusts having value of supply upto ₹ 1,000 per day is exempt under Entry 14 of the Notification.

➤ **Arranging yoga and meditation camp by charitable trusts:**

- i. Services provided by entity registered under section 12AA of the Income-tax Act, 1961 by way of advancement of religion, spirituality or yoga are exempt as such activities are covered in definition of charitable activities.
- ii. Fee or consideration charged in any other form from the participants for participating in a religious, yoga or meditation programme or camp meant for advancement of religion, spirituality or yoga shall be exempt.
- iii. Residential programmes or camps where the fee charged includes cost of lodging and boarding shall also be exempt as long as the primary and predominant activity, objective and purpose of such residential programmes or camps is advancement of religion, spirituality or yoga.
- iv. However, if charitable or religious trusts merely or primarily provide accommodation or serve food and drinks against consideration in any form including donation, such activities will be taxable.
- v. Similarly, activities such as holding of fitness camps or classes such as those in aerobics, dance, music etc. will be taxable.

Example: Bhavyajyoti Foundation, a charitable trust registered under section 12AA of the Income-tax Act, 1961, has organized a 'Yoga Meditation Camp' for the old age people. GST would be exempt on the same as services provided by entity registered under section 12AA of the Income-tax Act, 1961 by way of advancement of religion, spirituality or yoga are exempt

- **Hospitals managed by charitable trusts:** Health care services provided by the religious and charitable trust will be exempted.

Note:

- 1. Thus, only those services provided by a charitable and religious trusts [registered under section 12AA of the Income-tax Act] which fall within the above definition of charitable activities, are eligible for exemption from GST.
- 2. There could be many other services provided by such charitable and religious trusts which are not covered by the definition of charitable activities and hence, such services would attract GST.
- 3. For instance, grant of advertising rights to a person on the premises of the charitable/religious trust or on publications of the trust, or granting admission to events, functions, celebrations, shows against admission tickets or fee etc. would attract GST.

2. Entry 13(a) - Conduct of Religious ceremony:

- a. The amount charged, by whatever name called, for the conduct of any religious ceremony is exempt from GST.
- b. Religious ceremonies are life-cycle rituals including special religious poojas conducted in terms of religious texts by a person so authorized by such religious texts. Occasions like birth, marriage, and death involve elaborate religious ceremonies.

Example: Raamanand Joshi, a priest, charges ₹ 12,000 for conducting a religious ceremony on the birthday of Ghanshyam's son. The amount charged for the conduct of any religious ceremony is exempt from GST.

3. Entry 13(b) - Renting of precincts of religious place meant for general public:

Services by a person by way of-renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income-tax Act, 1961 or a trust or an institution registered under section 10(23C)(v) of the Income-tax Act or a body or an authority covered under section 10(23BBA) of the said Income-tax Act.

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

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

Activities other than - conduct of religious ceremony and renting of precincts of religious place - will be taxable irrespective of the manner or the name in which the consideration is received.

Note:

- i. The word 'precincts' is not to be interpreted in a restricted manner and all immovable property of the religious place located within the outer boundary walls of the complex (of buildings and facilities) in which the religious place is located, is to be considered as being located in the precincts of the religious place.
- ii. The immovable property located in the immediate vicinity and surrounding of the religious place and owned by the religious place or under the same management as the religious place, may be considered as being located in the precincts of the religious place and extended the benefit of above exemption.

Examples:

1. Durgadevi Trust, a religious trust registered under section 12AA of the Income-tax Act, owns and manages a temple in their locality. It rents the commercial shops located in the precincts of the temple for a rent of ₹ 10,000 per month per shop. The consideration so received is liable to GST as such services are exempt only when the consideration is less than ₹ 10,000 per month.

2. *Sarvshiksha Foundation, an educational institution registered under section 10(23C)(v) of the Income-tax Act, owns and manages a gurudwara. It rents the community hall located in the precincts of the gurudwara for a rent of ₹ 9,000 per day for a marriage function. The consideration so received is exempt from GST as the consideration is less than ₹ 10,000 per day.*

4. Entry 60 - Religious yatras or pilgrimage:

- a. Only such services of religious pilgrimage as are provided by specified organization in respect of a religious pilgrimage facilitated by the Government of India (GoI), under bilateral arrangement, are exempt from GST.
- b. The term specified organization as referred herein means-
 - i. Kumaon Mandal Vikas Nigam Limited (KMVN), a Government of Uttarakhand Undertaking; or
 - ii. 'Haj Committee of India' or 'State Haj Committee including Joint State Committee'.
- c. In short, as per Entry 60, the services provided by the Haj Committee and KMVN in relation to pilgrimage to Mecca and Kailash - Mansarovar respectively are not liable to GST.

Example: *KMVN supplies numerous services, namely, medical facilities, catering services, security, accommodation services, etc. to the pilgrims undertaking Kailash-Mansarovar pilgrimage. Such services provided by KMVN in respect of the religious pilgrimage to Kailash-Mansarovar are covered under entry 60 and thus, are exempt*

5. Entry 80 - Services by way of training or coaching in recreational activities:

Services by way of training or coaching -

- i. Recreational activities relating to arts or culture, by an individual or
- ii. sports by charitable entities registered under section 12AA or 12AB of the Income-tax Act are exempt from GST.

➤ Meaning of Recreational Activities:

- i. The term recreational activities is very wide.
- ii. However, under this entry, the scope of training or coaching in recreational activities is restricted to the area of arts and culture.
- iii. Hence, the training or coaching in recreational activities in the areas other than arts, culture is outside the purview of this entry.
- iv. Further, training or coaching relating to all forms of arts, culture or sports is covered under this entry, namely, dance, music, painting, sculpture making, literary activities, theatre, etc. of any school, tradition or language or any of the sports.
- v. Services provided by way of training or coaching in recreational activities relating to sports is exempted only when said services are provided by a charitable entity registered under section 12AA or 12AB of Income-tax Act.

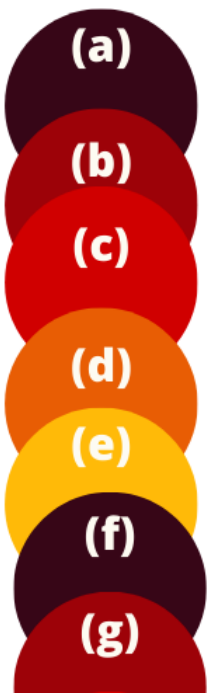
Note: Services provided to charitable or religious trusts are not outside the ambit of GST. Unless specifically exempted, all goods and services supplied to charitable or religious trusts are leviable to GST.

Example: Manavtaa Sansthaan, a charitable trust registered under section 12AA of the Income-tax Act, 1961, has organized a 'Basketball Training Camp' for teenagers. GST would be exempt on the same as services provided by entity registered under section 12AA of the Income-tax Act, 1961 by way of training or coaching in sports are exempt.

II. **AGRICULTURE RELATED SERVICES:**

1. Entry 24 - Services by way of loading, unloading, packing, storage or warehousing of rice
2. Entry 24A - Services by way of warehousing of minor forest produce.
3. Entry 24B - Services by way of storage/ warehousing of cereals, pulses, fruits and vegetables .
4. Entry 54 - Services relating to cultivation of plants and rearing of all life forms of animals, except horses :

Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of—

- 
- (a) agricultural operations **directly related to production of any agricultural produce** including cultivation, harvesting, threshing, plant protection or testing;
 - (b) **supply of farm labour;**
 - (c) **processes carried out at an agricultural farm** including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
 - (d) **renting or leasing of agro machinery** or vacant land with or without a structure incidental to its use;
 - (e) **loading, unloading, packing, storage or warehousing of agricultural produce;**
 - (f) **agricultural extension services**
 - (g) services by any **Agricultural Produce Marketing Committee or Board** or services provided by a commission agent for sale or purchase of agricultural produce

Some important points regarding Entry 54:

- Entry 54 include activities like breeding of fish (pisciculture), rearing of silk worms (sericulture), cultivation of ornamental flowers (floriculture) and horticulture, forestry, etc.

- **Process which alters the essential characteristics of the agricultural produce:** For instance, potato chips or tomato ketchup are manufactured through processes which alter the essential characteristic of farm produce (potatoes and tomatoes in this case). These kinds of services are not exempted from GST.
- **Process which makes agricultural produce marketable in the retail market:** The processes of grinding, sterilizing, extraction packaging in retail packs of agricultural products, which make the agricultural products marketable in retail market, would NOT be covered in this entry. Only such processes are covered in this entry which makes agricultural produce marketable in the primary market.
- **Agricultural Extension Services (AES):**
 - i. AES mean the application of scientific research and knowledge to agricultural practices through farmer education or training.
 - ii. The main objective of AES is to transmit latest technical know-how to farmers. It also focuses on enhancing farmers' knowledge about crop techniques and help them to increase productivity.
 - iii. This is done through training courses, kisan call centres, farm visits, on-farm trials, kisan melas, kisan clubs, advisory bulletins and the like.
- **Agricultural Produce Marketing Committee services:**
 - i. Agricultural Produce Marketing Committee or Board means any committee or board set up under a State Law for the time being in force for purpose of regulating the marketing of agricultural produce.
 - ii. Such marketing committees or boards have been set up in most of the States and provide a variety of support services for facilitating the marketing of agricultural produce by provision of facilities and amenities like, sheds, water, light, electricity, grading facilities etc.
 - iii. They also take measures for prevention of sale or purchase of agricultural produce below the minimum support price. APMCs collect market fees, license fees, rents etc.
 - iv. Services provided by such Agricultural Produce Marketing Committee or Board are covered in item (g) of entry 54 (i.e. they are exempted from GST).
 - v. However, any service provided by such bodies which is not directly related to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce, will be liable to tax For example, renting of shops or other property for commercial purposes.
- **Warehousing of agriculture produce:**
 - i. **Processed Tea and coffee:**
 - Green tea leaves are agricultural produce. Hence, unloading, packing, storage or warehousing of green tea leaves is exempted.
 - Whereas, Tea used for making the beverage, such as black tea, green tea, white tea is a processed product made in tea factories after carrying out several processes, such as drying, rolling, shaping, refining, oxidation, packing etc. on green leaf and is the processed output of the same. Hence it is not an agricultural produce and exemption will not be applicable.
 - Same is the case with coffee obtained after processing of coffee beans.

ii. **Jaggery:** Similarly, processing of sugarcane into jaggery changes its essential characteristics. Thus, jaggery is also not an agricultural produce.

iii. **Pulses:**

- Pulses commonly known as dal are obtained after dehusking or splitting or both.
- The process of dehusking or splitting is usually not carried out by farmers or at farm level but by the pulse millers.
- Therefore, pulses (dehusked or split) are also not agricultural produce.
- However, whole pulse grains such as whole gram, rajma etc. are covered in the definition of agricultural produce.

Summary: *In view of the above, it is inferred that processed products such as tea (i.e. black tea, white tea etc.), processed coffee beans or powder, pulses (dehusked or split), jaggery, processed spices, processed dry fruits, processed cashew nuts etc. fall outside the definition of agricultural produce and therefore do not fall within item 54(e).*

5. Entry No. 55 - Carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce.

• **Does Custom milling of paddy into rice be exempted?**

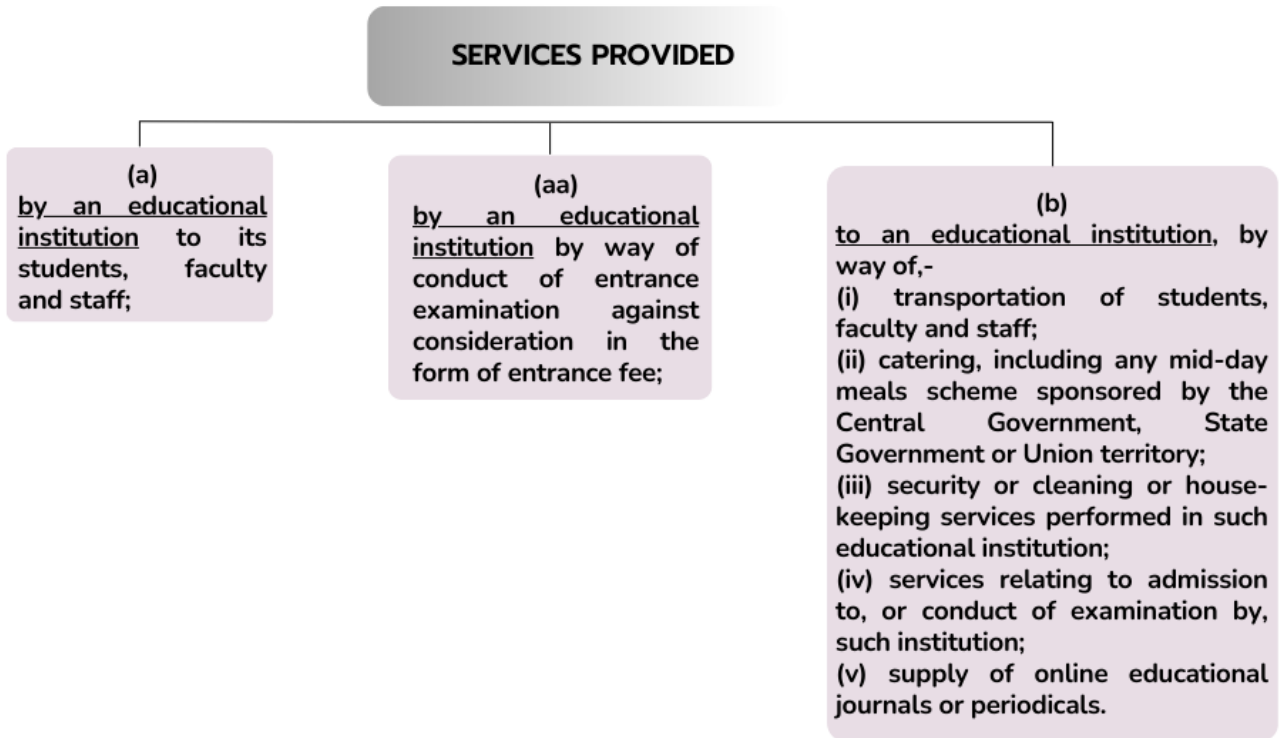
- a. Milling of paddy is not an intermediate production process in relation to cultivation of plants.
- b. It is a process carried out after the process of cultivation is over and paddy has been harvested.
- c. Further, processing of paddy into rice is not usually carried out by cultivators, but by rice millers.
- d. Milling of paddy into rice also changes its essential characteristics.
- e. Therefore, milling of paddy into rice cannot be considered as an intermediate production process in relation to cultivation of plants for food, fibre or other similar products or agricultural produce.
- f. Hence, it will not be exempted.

6. Entry 57 - Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables.

7. Entry 55A - Services by way of artificial insemination of livestock (other than horses).

III. **EDUCATION SERVICES [ENTRY No 66]:**

Services Exempted under Entry 66



However, nothing contained in sub-items (i), (ii) and (iii) of item (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent.

Further, nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of,-

- (i) pre-school education and education up to higher secondary school or equivalent; or
- (ii) education as a part of an approved vocational education course.

- **Educational Institution:** Educational institution means an institution providing services by way of,-
 - i. Pre-school education and education up to higher secondary school or equivalent;
 - ii. Education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
 - iii. Education as a part of an approved vocational education course.
- **Education as a part of curriculum for obtaining a qualification recognised by any law for the time being in force:**

EDUCATION SERVICES PROVIDED	COVERED IN SUB-CLAUSE (II)	REASONS
Conduct of degree courses by colleges, universities or institutions	✓	These courses lead to grant of qualifications recognized by law
Training given by private coaching institutes	✗	Such training does not lead to grant of a recognized qualification.
Education as a part of a prescribed curriculum for obtaining a qualification recognized by a law of a foreign country	✗	Only a course recognized by an Indian law is covered herein.

Examples:

1. *Dharam Institute of Technology' (DIT), a private engineering college in M.P., offers post graduate engineering programmes. All the engineering courses including the distance learning post graduate engineering programme offered by DIT are recognised by the law [The All India Council for Technical Education (AICTE)]. Since DIT imparts education as a part of a curriculum for obtaining a qualification recognised by the Indian law, the same is an educational institution.*
2. *Littleways Public School' is a school located in Tamil Nadu. The school has two branches – one is a pre-school and another is a higher secondary school affiliated to CBSE. A pre-school and a higher secondary school are educational institutions. Thus, Littleways Public School qualifies as an educational institution.*

- **Approved vocational education course:** An approved vocational education course means, -
- a. **A course run by an ITI (Industrial Training Institute)/ ITC Industrial Training Centre** affiliated to the National Council for Vocational Training (NCVT) or State Council for Vocational Training (SCVT) offering courses in designated trades notified under the Apprentices Act, 1961.
Some of the designated trades notified under the Apprentices Act, 1961 are electrician, wireman, carpenter, plumber, mason, mechanic, tool and die maker, baker and confectioner, weaver, tailor, footwear maker, photographer, beautician, painter, desk top publishing operator, gardener, cable television operator, library assistant, etc
 - b. **A Modular Employable Skill Course**, approved by the NCVT, run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship. It provides employable skills to early school drop-outs, existing workers seeking skill upgradation, workers seeking certification of their skills acquired informally, etc. to improve their employability and provides certification after completion of the course.

Example: Kaladrishti ITI, Gorakhpur is engaged in providing skill development courses in other than designated trades notified under the Apprentices Act, 1961. Since courses offered by Kaladrishti ITI are not in designated trades notified under the Apprentices Act, 1961, education provided by it is not approved as vocational educational course as defined above. Resultantly, it doesn't qualify as an educational institution

➤ **Services provided by Private ITI's:**

- a. Private ITIs qualify as an educational institution if the education provided by these ITIs is approved as vocational educational course as defined above.
- b. Accordingly, services provided by a private ITI only in respect of designated trades notified under Apprentices Act, 1961 are exempt from GST under this entry.
- c. Services in respect of other than designated trades are liable to GST.
- d. Further, in case of designated trades, services provided by private ITI by way of conduct of entrance examination against consideration in the form of entrance fee will also be exempt.
- e. Moreover, in respect of such designated trades, services provided TO private ITIs relating to admission to or conduct of examination by a private ITI will also be exempt.

➤ **Government ITI's:** As far as Government ITIs are concerned, services provided by a Government ITI to individual trainees/ students, are exempt.

➤ **Unrecognized educational institutions:** Private coaching centres or other unrecognized institutions, though self-styled as educational institutions, would not be treated as educational institutions under GST and thus cannot avail exemptions available to an educational institution.

Example: 'Super Minds', a coaching institute in Raipur, provides coaching for Institute of Banking Personnel Selection (IBPS) Probationary Officers Exam. Super Minds, being a coaching centre which trains candidates to secure a banking job, is not an educational institution in terms of the exemption notification

➤ **Hostel services:**

- a. Output services of lodging/boarding in hostels provided by such educational institutions which are providing pre-school education and education up to higher secondary school or equivalent or education leading to a qualification recognised by law, are fully exempt from GST.
- b. Annual subscription/fees charged as lodging/boarding charges by such educational institutions from its students for hostel accommodation shall therefore, not attract GST.
- c. Boarding schools provide service of education coupled with other services like providing dwelling units for residence and food. This may be a case of composite supply if the charges for education and lodging and boarding are inseparable. These services are naturally bundled.
- d. In this case since the predominant nature is determined by the service of education, the other service of providing residential dwelling will not be considered for the purpose of

determining the tax liability and in this case, the entire consideration for the supply will be exempt.

- **Dual Qualification:** Sometimes a course in a college leads to dual qualification only one of which is recognized by law.

Provision of dual qualifications is in the nature of two separate services as the curriculum and fees for each of such qualifications are prescribed separately .	Service in respect of each qualification would, therefore, be assessed separately .
If an artificial bundle of service is created by clubbing two courses together, when only single fee is charged for both , only one of which leads to a qualification recognized by law.	It shall be treated as a mixed supply . The taxability will be determined by the supply which attracts highest rate of GST .

- **Incidental auxiliary courses provided by way of hobby classes or extra-curricular activities in furtherance of overall well-being:**

If <u>no extra billing</u> is done	Naturally bundled and <u>exempted from GST</u>
If <u>extra billing</u> is being done	<u>Artificial bundling</u> of two different supplies. Attracts the rate of the <u>higher taxed component</u> for the entire consideration.

- **Services provided by IIM's:** All the IIMs fall under purview of "educational institutions" as they provide education as a part of a curriculum for obtaining a qualification recognized by law for the time being in force.

Long duration programs (1 year or more) for which they award diploma/ degree certificate duly recommended by Board of Governors as per the power vested in them under the IIM Act, 2017.	Exempt from levy of GST.
Short duration/ short term programs (less than 1 year) for which they award participation certificate to the executives/ professionals as they are considered as "participants" of the said programmes.	Not exempt. These participation certificates are not any qualification recognized by law. Such participants are also not considered as students of IIM.

- **Supply of food in a mess or canteen:** If the catering services is one of the services provided by an educational institution to its students, faculty and staff and the said educational institution is covered by the definition of 'educational institution' as given above, then the same is exempt.
- **Fees charged from prospective employers:** Educational institutes such as IITs, IIMs charge a fee from prospective employers like corporate houses/MNCs, who come to the institutes for recruiting candidates through campus interviews in relation to campus recruitments. Such services shall also be liable to tax.

➤ **Maritime courses approved by DG Shipping:**

- a. Maritime Training Institutes and their training courses are approved by the Director General of Shipping which are duly recognised under the provisions of the Merchant Shipping Act, 1958 read with the Merchant Shipping (standards of training, certification and watch-keeping for Seafarers) Rules, 2014.
- b. Therefore, Maritime Training Institutes are educational institutions and the courses conducted by them are exempt.

➤ **Exemption of Input services:**

	Type of educational institution		
	Educational institution providing pre-school education and education up to higher secondary school or equivalent	Educational institution providing education as a part of a curriculum for obtaining a recognised qualification	Educational institution providing education as a part of approved vocational education course
Exempt input services	i. Transportation of students, faculty and staff; ii. Catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory; iii. Security or cleaning or house-keeping services performed in such educational institution; iv. Services relating to admission to, or conduct of examination by, such institution	i. Services relating to admission to, or conduct of examination by, such institution ii. Supply of online educational journals or periodical	Services relating to admission to, or conduct of examination by, such institution.

Examples:

1. Little Millennium – a pre school in outskirts of Mumbai – has subscribed the online journals on child development and experiential learning. Services of supply of online educational journals or periodicals provided, inter alia, to an institution providing services by way of pre-school education are not exempt.
2. SM Transporters has provided services of transportation of students and faculty from their residence to school and back, to Pathwheels School - a higher secondary school. Services of transportation of students, faculty and staff provided, inter alia, to an institution providing services by way of education up to higher secondary school or equivalent are exempt.

3. *Shiksha College, offering degree courses, has to conduct its half yearly examination in November. For this purpose, it has paid the honorarium to paper setters and examiners (not on the rolls of Shiksha College) for their services. Further, it availed the printing services for printing the question papers (paper and content are provided by Shiksha College) for conducting examination. Services provided to an educational institution relating to admission to, or conduct of examination by, such institution are exempt. Therefore, services of paper setters and examiners and printing services availed by Shiksha College are exempt.*

4. *Gyaani Public School – a higher secondary school – has hired Suvidha Services Ltd. for security and housekeeping services in the school. Security and housekeeping services provided within the premises of, inter alia, a higher secondary school are exempt. Therefore, said services provided by Suvidha Services Ltd. are exempt.*

The school subsequently hired Suvidha Services Ltd. for providing the security and housekeeping services at School's Annual Day function organised in an auditorium outside the school campus. Security and housekeeping services provided to Gyaani Public School for School's Annual Day function organised outside the school campus will be taxable as only the security and housekeeping services performed within the premises of the higher secondary school are exempt

➤ **Supply of food in anganwadis and schools:**

- Any catering service provided to an educational institution is exempt from GST and it includes mid- day meal service also. The scope of this entry is thus wide enough to cover any serving of any food to a school.
- An anganwadi, inter alia, provides pre-school non-formal education. Hence, anganwadi is covered by the definition of educational institution (as pre school).
- Further, it is clarified that services provided to an educational institution by way of serving of food (catering including mid- day meals) is exempt from levy of GST irrespective of its funding from government grants or corporate donations.

➤ **Fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions:**

- Entry 66 is wide enough to cover the amount or fee charged for admission or entrance, or amount charged for application fee for entrance, or the fee charged from prospective students for issuance of eligibility certificate to them in the process of their entrance/admission to the educational institution.
- Services supplied by an educational institution by way of issuance of migration certificate to the leaving or ex-students are also covered by the exemption.
- Accordingly, such activities of educational institutions are also exempt.

➤ **Circular No. 151/07/2021 GST dated 17.06.2021: Clarification on taxability of various services supplied by Centre and State Boards such as National Board of Examination (NBE):**

- These services include

- ✓ entrance examination (on charging a fee) for admission to educational institution,
- ✓ input services for conducting such entrance examination for students,
- ✓ accreditation of educational institutions or professional so as to authorise them to provide their respective services.

For example, NBE provides services of conducting entrance examinations for admission to courses including Diplomate National Board (DNB) and Fellow of National Board (FNB), prescribes courses and curricula for PG medical studies, holds examinations and grant degrees, diplomas and other academic distinctions.

- It carries out all functions as are normally carried out by central or state educational boards and is thus a central educational board.
- “Central and State Educational Boards” are treated as educational institution for the limited purpose of providing services by way of conduct of examination to the students.
- Therefore, NBE is an ‘educational institution’ in so far as it provides services by way of conduct of examination, including any entrance examination, to the students. It is clarified that:
 - ✓ GST is exempt on services provided by Central or State Boards (including the boards such as NBE) by way of conduct of examination for the students, including conduct of entrance examination for admission to educational institution under Entry 66(aa) . Therefore, GST shall not apply to any fee or any amount charged by such Boards for conduct of such examinations including entrance examinations.
 - ✓ GST is also exempt on input services relating to admission to, or conduct of examination, such as online testing service, result publication, printing of notification for examination, admit card and questions papers etc, when provided to such Boards under Entry 66(b)(iv).
 - ✓ GST is applicable to other services provided by such Boards, namely of providing accreditation to an institution or to a professional (accreditation fee or registration fee such as fee for FMGE screening test) so as to authorise them to provide their respective services.

IV. **HEALTH CARE SERVICES**

1. Entry 46 - Services by a veterinary clinic in relation to health care of animals or birds are exempt

2. Entry 74

Services by way of-	<p>a) <u>health care services by a clinical establishment</u>, an authorised medical practitioner or para-medics;</p> <p>However, nothing in this entry shall apply to the services provided by a clinical establishment by way of <u>providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding ₹ 5000 per day</u> to a person receiving health care services.</p>
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	b) services provided by <u>way of transportation of a patient in an ambulance</u>, other than those specified in (a) above.
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- **Meaning of Health care services:** Health care services
 - i. means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and
 - ii. includes services by way of transportation of the patient to and from a clinical establishment, but
 - iii. does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

- **Recognized systems of medicines in India:** Recognized systems of medicines in India are exempt under this entry. Following systems of medicines are the recognized systems of medicines in India:-
 - i. Allopathy
 - ii. Yoga
 - iii. Naturopathy
 - iv. Ayurveda
 - v. Homeopathy
 - vi. Siddha
 - vii. Unani
 - viii. Any other system of medicine that may be recognized by Central Government

- **Clinical establishment:** Clinical establishment means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called,
 - i. that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or
 - ii. a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases.

Thus, diagnostic or investigative services of diseases provided by pathological labs are not liable to GST.

- **Authorised medical practitioner:** Authorised medical practitioner means a medical practitioner registered with any of the councils of recognised system of medicines established/recognised by law in India & includes a medical professional having requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force.

- **Paramedics:**
 - i. Paramedics are trained health care professionals, for example, nursing staff, physiotherapists, technicians, lab assistants etc.

- ii. Services by them in a clinical establishment would be in the capacity of employee and not provided in independent capacity and will thus be considered as services by such clinical establishment.
- iii. Similar services in independent capacity are also exempted.

➤ **Various services provided by clinical establishments and their taxability:**

Rent of rooms provided to in-patients	Exempted
Services provided by senior doctors/consultants/technicians	Exempted
Amount charged by hospitals from the patients	The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt
Food supplied to the patients	<ol style="list-style-type: none"> a. Health care services provided by the clinical establishments will include food supplied to the patients; but such food <ul style="list-style-type: none"> • may be prepared by the <u>canteens run by the hospitals</u> or • <u>may be outsourced</u> by the hospitals from outdoor caterers. b. <u>When outsourced</u>, there is no ambiguity that the <u>suppliers shall charge tax as applicable</u> and hospital will get no ITC. c. Food supplied to the in-patients as advised by the doctor/nutritionists is a part of <u>composite supply</u> of healthcare and <u>not separately taxable</u>. d. <u>Other supplies of food</u> by a hospital to patients (not admitted) or their attendants or visitors are <u>taxable</u>.
Services other than health care services in clinical establishment's premises	Supply of services other than healthcare services such as renting of shops, auditoriums in the premises of the clinical establishment, display of advertisements etc. <u>will be subject to GST</u> .

➤ **Clarification regarding applicability of GST on services in form of ART/ IVF [Circular No. 177/09/2022 GST dated 03.08.2022]:**

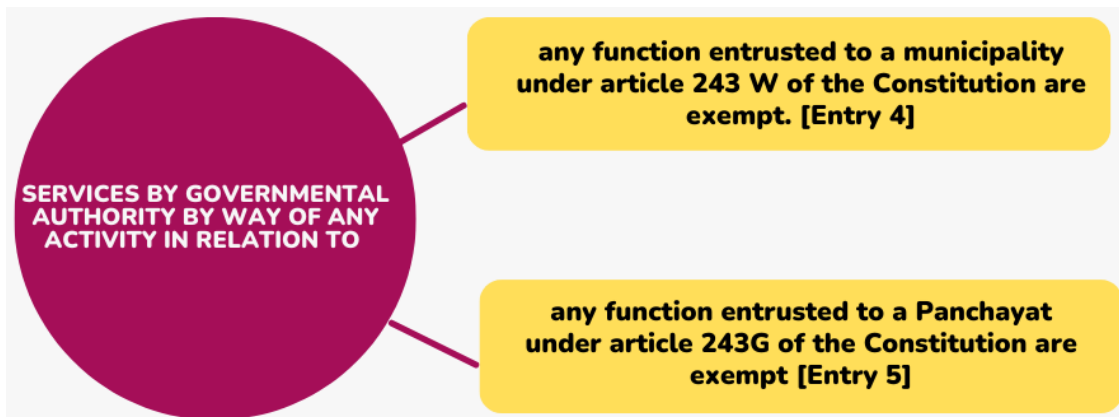
- The issue which arose for consideration was whether GST is applicable on services by way of Assisted Reproductive Technology (ART) procedures such as In vitro fertilization (IVF).
- Health care services provided by a clinical establishment, an authorized medical practitioner or para-medics are exempt vide Entry 74.
- As per the definition of health care services, it means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of

the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

- Since, the abnormality/disease/ailment of infertility is treated using ART procedure such as IVF, it is clarified that services by way of IVF are also covered under the definition of health care services.

V. SERVICES PROVIDED BY GOVERNMENT:

1. Entry 4 – Functions entrusted to a municipality and panchayat

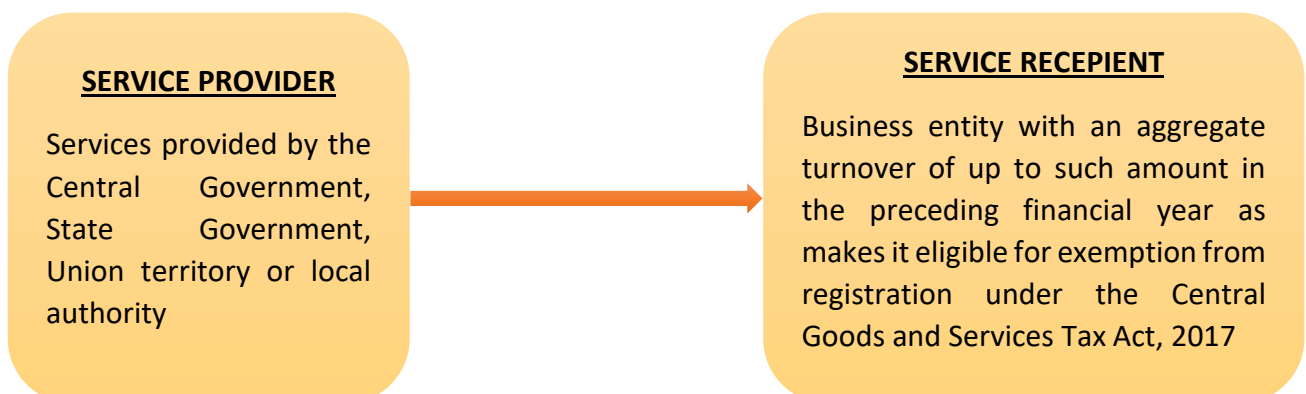


2. Entry 6 - Services by the Central Government, State Government, Union territory or local authority excluding the following services (i.e. below mentioned services provided by the government will be taxable):

- 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;
- transport of goods or passengers; or
- any service, other than services covered under entries (a) to (c) above, provided to business entities.

} Referred as
"SPECIFIED SERVICES"

3. Entry 7:



However, the said exemption shall not be applicable to following services:-

- a. item (a), (b) and (c) of Entry 6 above [SPECIFIED SERVICES].
- b. services by way of renting of immovable property.

Note:

- a. GST on services supplied by the Central Government, State Government, Union territory or local authority to a business entity [whose turnover exceeds such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act] is payable under reverse charge by such business entity.
- b. However, reverse charge provisions are not applicable to:
 - i. renting of immovable property services provided to unregistered persons and
 - ii. where 'specified services' are being provided to such business entity.

4. Entry 8:



However, nothing contained in this entry shall apply to services referred in item (a), (b) and (c) of Entry 6 above (i.e. this exemption is not applicable for specified services).

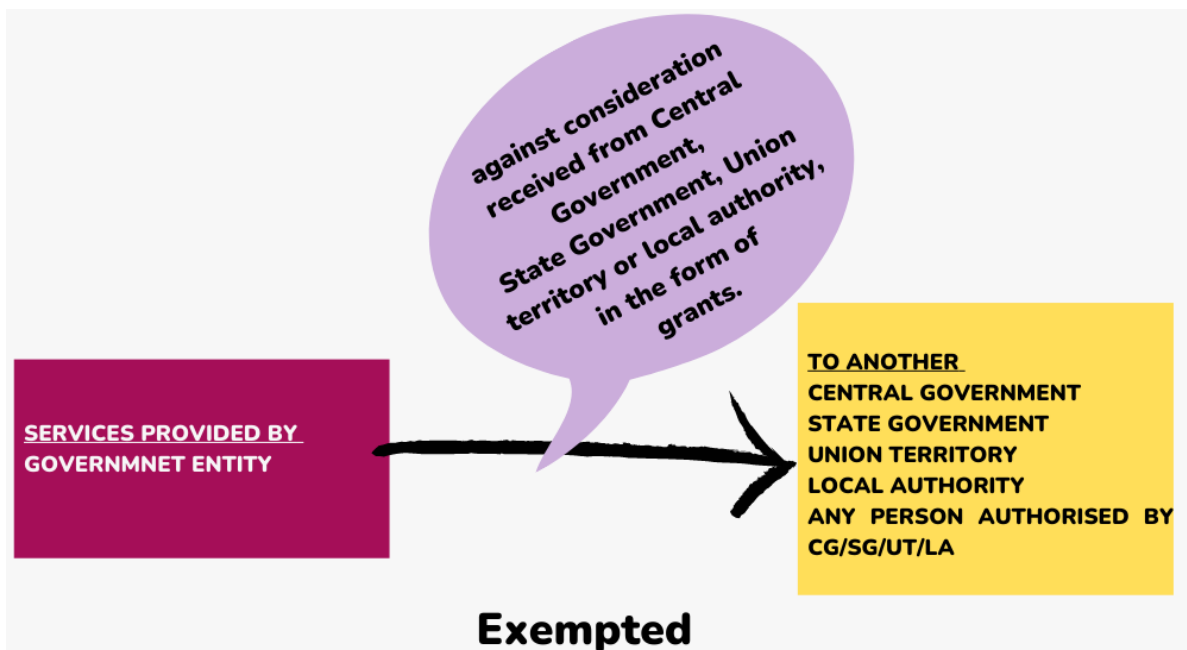
5. Entry 9 - Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services does not exceed ₹ 5,000 are exempted.

Note:

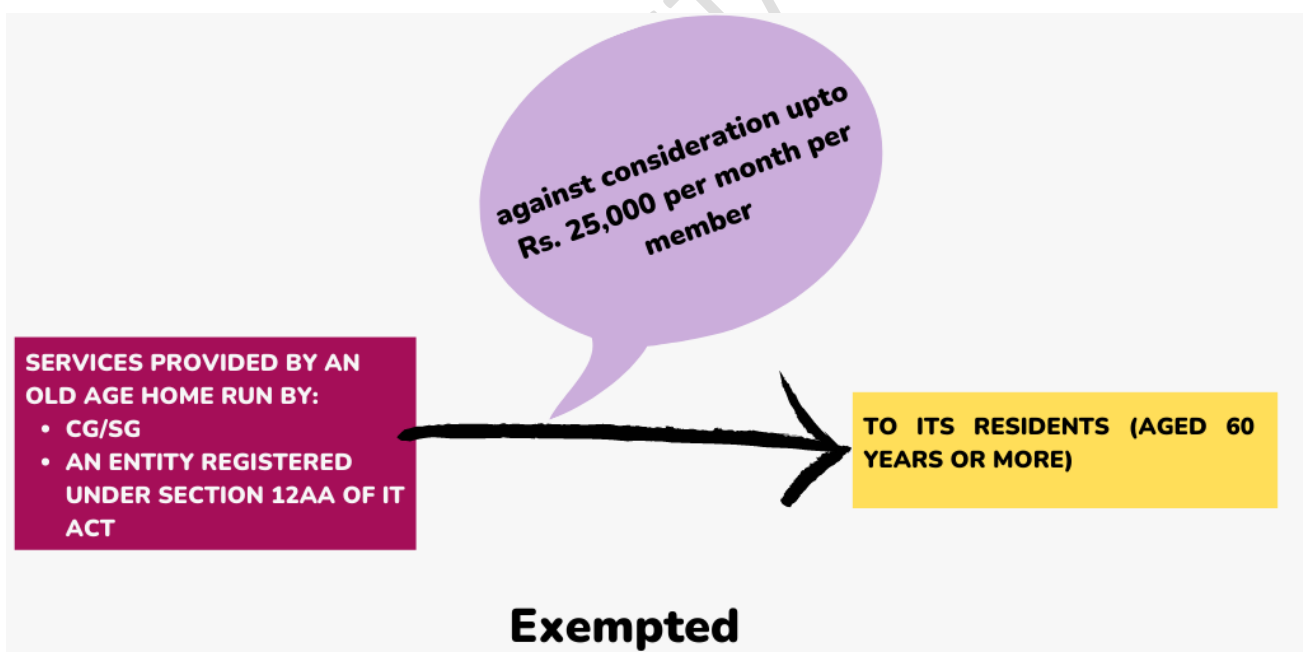
- a. However, nothing contained in this entry shall apply to services referred in item (a), (b) and (c) of Entry 6 above (i.e. this exemption is not applicable for specified services).
- b. Further, in case where continuous supply of service is provided by the Central Government, State Government, Union territory or a local authority, the exemption shall apply only where the consideration charged for such service does not exceed ₹ 5,000 in a FY.

6. Entry 24C - Services by the Department of Posts by way of post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams) [w.e.f. 18.07.2022].

7. Entry 9C:



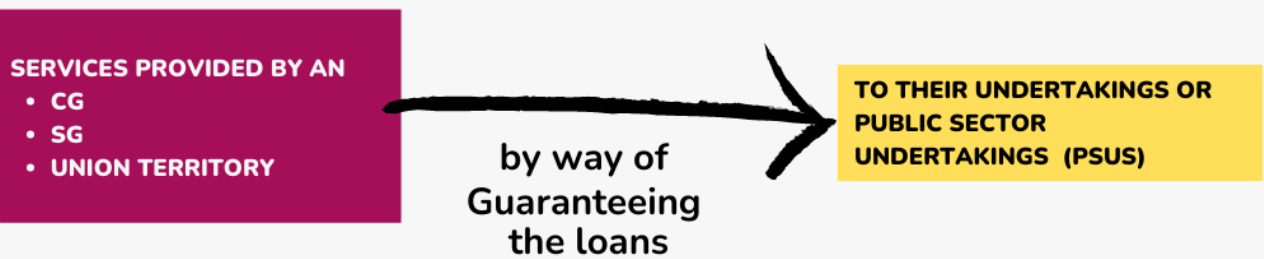
8. Entry 9D:



Note: Consideration charged is inclusive of charges for boarding, lodging and maintenance

9. Entry 34A:

Exempted



10. Entry 47 - Services provided by the Central Government, State Government, Union territory or local authority by way of -
- registration required under any law for the time being in force;
 - testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force are exempt.
11. Entry 61 - Services provided by the Central Government, State Government, Union territory or local authority by way of issuance of passport, visa, driving license, birth certificate or death certificate are exempt.
12. Entry 61A - Services by way of granting National Permit to a goods carriage to operate throughout India/ contiguous States.
13. Entry 62 - Services provided by the Central Government, State Government, Union territory or local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union territory or local authority under such contract.
14. Entry 63 - Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use natural resources to an individual farmer for cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products.
15. Entry 65 - Services provided by the Central Government, State Government, Union territory by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges.
16. Entry 65B - Services supplied by a State Government to Excess Royalty Collection Contractor (ERCC) by way of assigning the right to collect royalty on behalf of the State Government on the mineral dispatched by the mining lease holders.

Note:

- a. However, at the end of the contract period, ERCC shall submit an account to the State Government and certify that the amount of GST deposited by mining lease holders on royalty is more than the GST exempted on the service provided by State Government to the ERCC of assignment of right to collect royalty.
- b. Where such amount of GST paid by mining lease holders is less than the amount of GST exempted, the exemption shall be restricted to such amount as is equal to the amount of GST paid by the mining lease holders.
- c. And the ERCC shall pay the difference between GST exempted on the service provided by State Government to the ERCC of assignment of right to collect royalty and GST paid by the mining lease holders on royalty.

17. Entry 74A - Services provided by rehabilitation professionals recognised under the Rehabilitation Council of India Act, 1992 by way of rehabilitation, therapy or counselling and such other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centers established by Central Government, State Government or Union territory or an entity registered under section 12AA of the Income-tax Act, 1961.

➤ **Some Clarifications:**

a. Services provided by the Department of Posts:

- i. Entry 24C stipulates that the services by way of post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams) are exempted.
- ii. The Department of Posts also provides services like speed post, express parcel post, and life insurance, distribution of mutual funds, bonds, passport applications, collection of telephone and electricity bills on commission basis. These services are in the nature of intermediary and are generally called agency services. These agency services are taxable.

b. Services provided by police/security agencies of Government to PSUs/corporate entities/sports events held by private entities:

- i. Services provided by Police/security agencies of Government to PSU/private business entities are not exempt from GST.
- ii. Such services are taxable supplies and the recipients are required to pay the tax under reverse charge mechanism on the amount of consideration paid to Government for such supply of services.

Examples:

1. *The Karnataka Cricket Association, Bangalore requests the Commissioner of Police, Bangalore to provide security in and around the Cricket Stadium for the purpose of conducting the cricket match. The Commissioner of Police arranges the required security for an agreed consideration. In this case, services of providing security by the police personnel are not exempt. As the services are provided by Government, Karnataka Cricket Association is liable to pay the tax on the consideration paid, albeit under reverse charge mechanism.*

2. *Public Works Department of Karnataka entered into an agreement with M/s. ABC, a construction company, for construction of its office complex for an agreed consideration. In the agreement dated 10th July, it was agreed by both the parties that M/s. ABC shall complete the construction work and handover the project on or before 31st December.*

It was further agreed that any breach of the terms of contract by either party would give right to the other party to claim for damages or penalty. M/s. ABC did not complete the construction and did not handover the project by the specified date i.e., on or before 31st December.

As per the contract, the Department asked for damages/penalty from M/s. ABC and threatened to go to the court if not paid. Resultantly, M/s. ABC paid an amount of ₹ 10,00,000/- to the Department for non-performance of contract. Amount paid by M/s. ABC to Department is exempt from payment of tax.

VI. SERVICES PROVIDED TO GOVERNMENT:

1. ENTRY NO 3 - PURE SERVICES PROVIDED TO GOVERNMENT:

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

2. ENTRY 3A - COMPOSITE SUPPLY OF GOODS AND SERVICES TO GOVERNMENT:

- Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply
- provided to the Central Government, State Government or Union territory or local authority
- by way of any activity:
 - in relation to any function entrusted to a Panchayat under article 243G of the Constitution or
 - in relation to any function entrusted to a Municipality under article 243W of the Constitution.

3. **ENTRY NO 11A - SERVICE PROVIDED BY FAIR PRICE SHOPS:** Service provided by Fair Price Shops to Central Government, State Government or Union territory by way of sale of food grains, kerosene, sugar, edible oil, etc. under Public Distribution System against consideration in the form of commission or margin.

4. **ENTRY NO 40 – INSURANCE SERVICES TO GOVERNMENT:** Services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory.

5. **ENTRY NO 72 – SERVICES BY WAY OF TRAINING PROGRAMME:** Services provided to the Central Government, State Government, Union territory administration under any training programme for which 75% or more of the expenditure is borne by the Central Government, State Government, Union territory administration.

- **Clarification regarding coaching services supplied by coaching institutions and NGOs under the central sector scheme of ‘Scholarships for students with Disabilities’[Circular No. 164/20/2021 GST dated 06.10.2021] :**

Free coaching services provided by coaching institutions and NGOs under the central scheme of “Scholarships for students with Disabilities” where 75% or more of the expenditure is borne by the Government to coaching institutions by way of grant in aid is covered under entry 72 and hence is exempt from GST.

VII. **CONSTRUCTION SERVICES**

1. **ENTRY NO.10:** Services provided by way of pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana.

- **Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana (hereinafter referred to as PMAY):** It is a programme launched by the Ministry of Housing and Urban Poverty Alleviation (MoHUPA) which envisions provision of Housing for All by 2022 when the nation completes 75 years of its independence.

2. **ENTRY 10A:** Services supplied by Electricity Distribution Utilities by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network upto the tube well of the farmer or agriculturalist for agricultural use.

3. **ENTRY 11:** Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex.

- **Residential Complex:** The term ‘residential complex’ means any complex comprising of a building or buildings, having more than one single residential unit.
- **Single residential unit:** It means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family

4. **ENTRY 41A and 41B: Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer are exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them.**

VIII. PASSENGER TRANSPORTATION SERVICES

1. **ENTRY 15: Transportation of Passengers:** Transport of passengers, with/ without accompanied belongings, by –

- (1) **Air in economy class, embarking from or terminating** in an airport located in the State of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;
- (2) **Non-air-conditioned contract carriage** other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or
- (3) stage carriage other than air- conditioned stage carriage.

However, nothing contained in items (b) and (c) above shall apply to services supplied through an electronic commerce operator (ECO), and notified under section 9(5) of the CGST, 2017.

In other words, in case where services of transport of passengers, by non-air conditioned contract carriage other than radio taxi excluding tourism, conducted tour, charter or hire or by non-air conditioned stage carriage, are supplied through ECO, such services are not exempt from GST. Further, tax on such services shall be paid by ECO.

- **Conducted tour:** It is a short visit to a place in which someone shows you around and tells you information about it.
- **Contact Carriage:** The term contract carriage means a
 - motor vehicle which carries a passenger or passengers for hire or reward and
 - is engaged under a contract, whether expressed or implied,
 - for the use of such vehicle as a whole for the carriage of passengers mentioned therein and
 - entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum –
 - a. on a time basis, whether or not with reference to any route or distance; or
 - b. from one point to another,and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes—
 - A. a maxi cab; and
 - B. a motor cab notwithstanding that separate fares are charged for its passengers.
- **Radio taxi:** Radio Taxi means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using the Global Positioning System or General Packet Radio Service.

- **Stage Carriage:** The term stage carriage means a motor vehicle constructed or adapted to carry more than 6 passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey
- **Clarification regarding hiring of vehicles by firms for transportation of their employees to and from work [Circular No. 177/09/2022 GST dated 03.08.2022]:**
 - The issue which arose for consideration was as to whether the engagement of non-air conditioned contract carriages by firms for transportation of their employees to and from work is exempt under entry 15(b).
 - Entry 15(b) exempts transport of passengers, with or without accompanied belongings, by non-air conditioned contract carriage, other than radio taxi, for transport of passengers, excluding tourism, conducted tour, charter or hire.
 - The said exemption would apply to passenger transportation services by non-air conditioned contract carriages where transportation takes place over pre-determined route on a pre-determined schedule.
 - The exemption shall not be applicable where contract carriage is hired for a period of time, during which the contract carriage is at the disposal of the service recipient and the recipient is thus free to decide the manner of usage (route and schedule) subject to conditions of agreement entered into with the service provider.

Examples:

1. Rituraj has booked air tickets of a flight from Delhi to Guwahati, Assam. Transport of passengers by air terminating in an airport located in Assam is exempt from GST.
2. Subroto has hired a non-air-conditioned bus from Mohit Travels for organising a religious tour from Delhi to Jaipur. Transport of passengers by a non-air-conditioned contract carriage are exempt from GST. However, said transportation of passengers for tourism purposes is excluded therefrom. Therefore, such passenger transportation services are taxable.
3. The non-air-conditioned buses are being operated by a State Transport Corporation for carrying passengers within the State. The passengers are being picked and dropped from and to various points by issuing individual tickets to the passengers. Such services provided by said State Transport Corporation are exempt from GST.

2. **ENTRY 16 - RCS:** Services provided to the Central Government, by way of transport of passengers with or without accompanied belongings, by air, embarking from or terminating at a RCS (Regional Connectivity Scheme) airport, against consideration in the form of viability gap funding.

However, nothing contained in this entry shall apply on or after the expiry of a period of 3 years from the date of commencement of operations of the RCS airport as notified by the Ministry of Civil Aviation.

- **Regional Connectivity Scheme:** A Regional Connectivity Scheme is introduced to facilitate / stimulate regional air connectivity by making it affordable by supporting airline operators through

1. Concessions by Central Government/State Governments and airport operators to reduce the cost of airline operations on regional routes/other support measures and
2. Financial (viability gap funding or VGF) support to meet the gap, if any, between the cost of airline operations and expected revenues on such routes.

Under RCS, the underserved airports of India are aimed to be connected to key airports through flights that will cost ₹ 2,500 for per hour flight.

3. ENTRY 17 - Transportation of passengers: Service of transportation of passengers, with or without accompanied belongings, by—

- a. railways in a class other than:
 - i. first class; or
 - ii. an air-conditioned coach;
- b. metro, monorail or tramway;
- c. inland waterways;
- d. public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and
- e. metered cabs or auto rickshaws (including e-rickshaws).

However, nothing contained in item (e) above shall apply to services supplied through an electronic commerce operator (ECO), and notified under section 9(5) of the CGST, 2017.

In other words, in case where service of transport of passengers by metered cabs or auto rickshaws (including e-rickshaws) are supplied through ECO, such services are not exempt from GST. Further, tax on such services shall be paid by ECO

- **Metered Cab:** The term metered cab means any contract carriage on which an automatic device, of the type and make approved under the relevant rules by the State Transport Authority, is fitted which indicates reading of the fare chargeable at any moment and that is charged accordingly under the conditions of its permit issued under the Motor Vehicles Act, 1988 and the rules made thereunder (but does not include radio taxi).
- **E-rickshaw:** The term E-rickshaw means a special purpose battery powered vehicle of power not exceeding 4000 watts, having three wheels for carrying goods or passengers, as the case may be, for hire or reward, manufactured, constructed or adapted, equipped and maintained in accordance with such specifications, as may be prescribed in this behalf.
- **Clarification regarding applicability of GST on tickets of private ferry used for passenger transportation [Circular No. 177/09/2022 GST dated 03.08.2022]:**
 - The circular clarifies the applicability of GST on private ferry tickets.
 - For instance, private ferries are used as means of transport from one island to another in Andaman and Nicobar Islands.
 - As per Entry 17(d), transportation of passengers by public transport, other than predominantly for tourism purpose, in a vessel between places located in India is exempted.

- It is clarified that this exemption would apply to tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/government.
- It is further clarified that, the expression 'public transport' used in the exemption notification only means that the transport should be open to public. It can be privately or publicly owned.
- Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise etc.

4. ENTRY 52A – TOUR OPERATOR SERVICES PARTLY IN INDIA: Tour operator service, which is performed partly in India and partly outside India, supplied by a tour operator to a foreign tourist, to the extent of the value of the tour operator service which is performed outside India.

- However, value of the tour operator service performed outside India shall be such proportion of the total consideration charged for the entire tour which is equal to
 - the proportion which the number of days for which the tour is performed outside India has to the total number of days comprising the tour, or
 - 50% of the total consideration charged for the entire tour, whichever is less.
- Further, in making the above calculations,
 - any duration of time equal to or exceeding 12 hours shall be considered as one full day and
 - any duration of time less than 12 hours shall be taken as half a day.
- **Explanation** - "Foreign tourist" means a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non-immigrant purposes.

Example: A tour operator provides a tour operator service to a foreign tourist as follows: -

- 3 days in India, 2 days in Nepal; Consideration charged for the entire tour: ₹ 1,00,000/-
Exemption: ₹ 40,000/- (= ₹ 1,00,000/- x 2/5) or, ₹ 50,000/- (= 50% of ₹ 1,00,000/-) whichever is less, i.e., ₹ 40,000/- (i.e., Taxable value: ₹ 60,000/-);
- 2 days in India, 3 nights in Nepal; Consideration charged for the entire tour: ₹ 1,00,000/-
Exemption: ₹ 60,000 (= ₹ 1,00,000/- x 3/5) or, ₹ 50,000/- (= 50% of ₹ 1,00,000/-) whichever is less, i.e., ₹ 50,000/- (i.e., Taxable value: ₹ 50,000/-);
- 2.5 days in India, 3 days in Nepal; Consideration charged for the entire tour: ₹ 1,00,000/-
Exemption: ₹ 54,545 (= ₹ 1,00,000/- x 3/5.5) or, ₹ 50,000/- (= 50% of ₹ 1,00,000/-) whichever is less, i.e., ₹ 50,000/- (i.e., Taxable value: ₹ 50,000/-).

IX. GOODS TRANSPORTATION SERVICES

1. **ENTRY NO 18 – TRANSPORTATION OF GOODS BY ROAD/WATER:** Services by way of transportation of goods-
 - a. by road except the services of
 - i. a goods transportation agency;
 - ii. a courier agency;
 - b. by inland waterways.

2. **ENTRY NO 20 – TRANSPORTATION OF ESSENTIAL GOODS:** Services by way of transportation by rail or a vessel from one place in India to another of the following goods –
 - a. relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
 - b. defence or military equipments;
 - c. newspaper or magazines registered with the Registrar of Newspapers;
 - d. ~~railway equipments or materials;~~
 - e. agricultural produce;
 - f. milk, salt and food grain including flours, pulses and rice; and
 - g. organic manure.

➤ **WHAT IS GOODS TRANSPORT AGENCY(GTA)?**

1. Goods transport agency has been defined in the Notification to mean any person who:
 - a. provides service in relation to transport of goods by road and
 - b. issues consignment note, by whatever name called.
2. **Significance of the term 'in relation to' in the definition of GTA:**
 - a. The use of the phrase 'in relation to' has extended the scope of the definition of GTA.
 - b. It includes not only the actual transportation of goods, but also various intermediary and ancillary services, such as, loading/ unloading, packing/ unpacking, transshipment and temporary warehousing, which are provided in the course of transport of goods by road.
 - c. These services are not provided as independent services but as ancillary to the principal service, namely, transportation of goods by road.
 - d. The invoice issued by the GTA for providing the said service includes the value of intermediary and ancillary services.
 - e. In view of this, if any intermediary and ancillary service is provided in relation to transportation of goods by road, and charges, if any, for such services are included in the invoice issued by the GTA, such service would form part of the GTA service, being a composite supply, and would not be treated as a separate supply.
 - f. However, if such incidental services are provided as separate services and charged separately, whether in the same invoice or separate invoices, they shall be treated as separate supplies.
3. **Consignment note:**

- a. Consignment note means a document, issued by a GTA against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains:
- the name of the consignor and consignee,
 - registration number of the goods carriage in which the goods are transported,
 - details of the goods transported,
 - details of the place of origin and destination,
 - gross weight of the consignment;
 - GSTIN of the person liable for paying tax whether consignor, consignee or GTA
 - other particulars as prescribed for a tax invoice.
- b. If a consignment note is issued, it indicates that the lien on the goods has been transferred (to the transporter) and the transporter becomes responsible for the goods till its safe delivery to the consignee.
- c. Thus, it can be seen that issuance of a consignment note is the sine-qua-non for a supplier of service to be considered as a GTA. If such a consignment note is not issued by the transporter, the service provider will not come within the ambit of GTA.
4. **Individual truck/tempo operators who do not issue any consignment note are not covered within the meaning of the term GTA.** As a result, the services provided by such individual transporters who do not issue a consignment note will be covered by the entry at Entry 18 of Notification, which are exempt from GST.

Example: Hari Prasad owns a truck and operates it himself. He carries the goods booked for his truck without issuance of consignment note. Services provided by Hari Prasad by way of transportation of goods by road are exempt under Entry 18 of the Notification.

➤ **WHAT IS COURIER AGENCY?**

- a. **Meaning:** Courier agency has been defined in the Notification to mean any person engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles.
- b. **Express cargo service:** Some transporters undertake door-to-door transportation of goods or articles and they have made special arrangements for speedy transportation and timely delivery of such goods or articles. Such services are known as 'Express Cargo Service' with assurance of timely delivery.
- c. The nature of service provided by 'Express Cargo Service' falls within the scope and definition of the courier agency. Hence, the said service relating to transportation of goods by road is not exempt.

3. ENTRY NO 21 – TRANSPORTATION OF ESSENTIAL ITEMS BY GTA: Services provided by a goods transport agency, by way of transport in a goods carriage of –

- a. agricultural produce;
- b. milk, salt and food grain including flour, pulses and rice;

- c. organic manure;
- d. newspaper or magazines registered with the Registrar of Newspapers;
- e. relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or
- f. defence or military equipments.

➤ **Goods carriage:** Goods carriage means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods.

4. ENTRY NO 21A - SERVICES PROVIDED BY A GTA TO AN UNREGISTERED PERSON: Services provided by a GTA to an unregistered person, including an unregistered casual taxable person, other than the following recipients, namely: -

- a. any factory registered under/governed by the Factories Act, 1948; or
- b. any Society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or
- c. any Co-operative Society established by or under any law for the time being in force; or
- d. any body corporate established, by or under any law for the time being in force; or
- e. any partnership firm whether registered or not under any law including association of persons;
- f. any casual taxable person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act.

5. ENTRY NO 21B - SERVICES PROVIDED BY A GTA TO GOVERNMENT ESTABLISHMENTS: Services provided by a GTA, by way of transport of goods in a goods carriage, to, -

- a. a Department or Establishment of the Central Government or State Government or Union territory; or
- b. local authority; or
- c. Governmental agencies, which has taken registration under the Central Goods and Services Tax Act, 2017 only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.

6. ENTRY 9B – TRANSIT CARGO TO NEPAL AND BHUTAN: Supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries).

7. ENTRY NO 22 - SERVICES BY WAY OF HIRING OF MOTOR VEHICLE: Services by way of giving on hire –

- a. to a state transport undertaking (STU), a motor vehicle meant to carry more than 12 passengers;

Note: This exemption is applicable to services provided to State Transport Undertaking and not to other departments of Government or local authority.

- aa. to a local authority, an Electrically operated vehicle (EOV) meant to carry more than 12 passengers;
- b. to a goods transport agency, a means of transportation of goods
- c. motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent.

➤ **Clarification regarding renting of vehicles to State Transport Undertakings and Local Authorities [Circular No. 164/20/2021 GST dated 06.10.2021]:**

- Entry 22 exempts services by way of giving on hire
 - a. to a state transport undertaking, a motor vehicle meant to carry more than 12 passengers; or
 - aa. to a local authority, an Electrically Operated vehicle meant to carry more than 12 passengers.
- It is clarified that the expression “giving on hire” here includes renting of vehicles.
- Accordingly, where the said vehicles are rented or given on hire to State Transport Undertakings or Local Authorities, said services are eligible for above exemption irrespective of whether such vehicles are run on routes, timings as decided by the State Transport Undertakings or Local Authorities and under effective control of State Transport Undertakings or Local Authorities which determines the rules of operation or plying of vehicles.

➤ **Clarification regarding applicability of GST on transport of minerals from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time**

- The issue which arose for consideration was whether transport of minerals within a mining area, say from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time would be covered under Entry 18 which exempts transport of goods by road except by a GTA.
- Usually in such cases the vehicles such as tippers, dumpers, loader, trucks etc., are given on hire to the mining lease operator.
- Expenses for fuel are generally borne by the recipient of service. The vehicles with driver are at the disposal of the mining lease operator for transport of minerals within the mine area (mining pit to railway siding, beneficiation plant etc.) as per his requirement during the period of contract.
- Such services are nothing but “rental services of transport vehicles with operator”. The person who takes the vehicle on rent defines how and when the vehicles will be operated, determines schedules, routes and other operational considerations.
- The person who gives the vehicles on rent with operator cannot be said to be supplying the service by way of transport of goods.
- Accordingly, it is clarified that such renting of trucks and other freight vehicles with driver for a period of time is a service of renting of transport vehicles with operator and not service of transportation of goods by road. Consequently, it is not eligible for exemption under Entry 18.

X. BANKING AND FINANCIAL SERVICES

1. **ENTRY NO 27 – LOANS, DEPOSITS AND EXCHANGE OF FOREIGN CURRENCY:** Services by way of:
- extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (**other than interest involved in credit card services**);
 - inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.

- **Deposits, loans or advances:** They would cover any facility by which an amount of money is lent or allowed to be used or retained on payment of what is commonly called the time value of money which could be in the form of an interest or a discount.

This entry would not cover investments by way of equity or any other manner where the investor is entitled to a share of profit.

- **Interest:** Interest means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized.

- **Illustrations of services exempt under Entry 27 are**

- Fixed deposits or saving deposits or any other such deposits in a bank or a financial institution for which return is received by way of interest.
- Providing a loan or overdraft facility or a credit limit facility in consideration for payment of interest.
- Mortgages or loans with a collateral security to the extent that the consideration for advancing such loans or advances are represented by way of interest.
- Corporate deposits to the extent that the consideration for advancing such loans or advances are represented by way of interest or discount.

- **Charges other than interest:** Service charges/ fees, documentation fees, broking charges, administrative charges, entry charges or such like fees or charges collected over and above interest on loan, advance or a deposit are not exempt and thus, represent taxable consideration.

- **Discounting:** Invoice discounting/ cheque discounting or any other similar form of discounting is covered only to the extent consideration is represented by way of discount as such discounting is a manner of extending a credit facility or a loan.

- **Interest/ delayed payment charges charged to clients for delay in payment of brokerage amount/ settlement obligations/ margin trading facility:** Any interest/ delayed payment

charges charged to clients for delay in payment of brokerage amount/ settlement obligations/ margin trading facility is exempt from GST since settlement obligations/ margin trading facilities are transactions which are in the nature of extending loans or advances and are covered by Entry 27.

- **Charges for late payment of outstanding dues on credit card:** Interest charged on outstanding credit card balances has been specifically excluded from Entry 27. Hence, the same is liable to GST.

- **Additional/ penal interest on the overdue loan:**

- a. In cases where the Equated Monthly Instalment (EMI) 34 is not paid at the scheduled time, there is a levy of additional/ penal interest on account of delay in payment of EMI.
- b. There may arise a doubt as to whether this additional / penal interest on the overdue loan is exempt under Entry 27 or such penal interest is to be treated as consideration for liquidated damages.
- c. There are two transaction options involving EMI that are prevalent in the trade. These two options, along with the GST applicability on them, have been explained with the help of illustrations as under.
- d. *X sells a mobile phone to Y. The cost of mobile phone is ₹ 40,000. However, X gives Y an option to pay in installments, ₹ 11,000 every month before 10th day of the following month, over next four months (₹ 11,000/- × 4 = ₹ 44,000/-). As per the contract, if there is any delay in payment by Y beyond the scheduled date, Y would be liable to pay additional/ penal interest amounting to ₹ 500/- per month for the delay.*

In some instances, X is charging Y ₹ 40,000/- for the mobile and is separately issuing another invoice for providing the services of extending loans to Y, the consideration for which is the interest of 2.5% per month and an additional/ penal interest amounting to ₹ 500/- per month for each delay in payment.

In this case, the amount of penal interest is to be included in the value of supply. The transaction between X and Y is for supply of taxable goods i.e. mobile phone. Accordingly, the penal interest would be taxable as it would be included in the value of the mobile, irrespective of the manner of invoicing.

- e. *X sells a mobile phone to Y. The cost of mobile phone is ₹ 40,000/-. Y has the option to avail a loan at interest of 2.5% per month for purchasing the mobile from M/s. ABC Ltd. The terms of the loan from M/s. ABC Ltd. allows Y a period of four months to repay the loan and an additional/ penal interest @ 1.25% per month for any delay in payment.*

Here, the additional/ penal interest is charged for a transaction between Y and M/s. ABC Ltd., and the same is getting covered under exemption Entry 27. Consequently, in this case the 'penal interest' charged thereon on a transaction between Y and M/s. ABC Ltd. would not be subject to GST as the same would be covered under said exemption entry. However,

any service fee/ charge or any other charges, if any, are levied by M/s. ABC Ltd. in respect of the transaction related to extending deposits, loans or advances does not qualify to be interest as defined in exemption notification, and accordingly will not be exempt.

Moreover, the value of supply of mobile by X to Y would be ₹ 40,000/- for the purpose of levy of GST.

➤ **Services provided by banks or authorized dealers of foreign exchange by way of sale of foreign exchange:**

- a. The term 'authorised dealer of foreign exchange' means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under section 10(1) of FEMA, 1999 to deal in foreign exchange or foreign securities.
- b. It is important to note that such services provided to general public will not be covered in this entry as this entry only covers sale and purchase of foreign exchange between banks and authorized dealers of foreign exchange or between banks and such dealers.

2. ENTRY NO 27A - BASIC SAVING BANK DEPOSIT (BSBD) ACCOUNT HOLDERS: Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY).

3. ENTRY NO 34 – SETTLEMENT OF AMOUNT UPTO ₹ 2000: Services by an acquiring bank, to any person in relation to settlement of an amount upto ₹ 2,000 in a single transaction transacted through credit card, debit card, charge card or other payment card service.

Explanation - For the purposes of this entry, "acquiring bank" means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card.

4. ENTRY NO 39A - SERVICES BY AN INTERMEDIARY OF FINANCIAL SERVICES LOCATED IN A MULTI SERVICES SEZ: Services by an intermediary of financial services located in a multi services SEZ with International Financial Services Centre (IFSC) status to a customer located outside India for international financial services in currencies other than Indian rupees (INR).

XI. LIFE INSURANCE BUSINESS SERVICES:

- 1. ENTRY 28:** Services of life insurance business provided by way of annuity under the National Pension System regulated by the Pension Fund Regulatory and Development Authority of India under the Pension Fund Regulatory and Development Authority Act, 2013.
- 2. ENTRY 29:** Services of life insurance business provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government.

3. **ENTRY 29A:** Services of life insurance provided or agreed to be provided by the Naval Group Insurance Fund to the personnel of Coast Guard under the Group Insurance Schemes of the Central Government.
4. **ENTRY 29B:** Services of life insurance provided/agreed to be provided by the Central Armed Police Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the Group Insurance Schemes of the concerned Central Armed Police Force.
5. **ENTRY 36:** Services of life insurance business provided under following schemes-
 - a. Janashree Bima Yojana;
 - b. Aam Aadmi Bima Yojana;
 - c. Life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of ₹ 2,00,000;
 - d. Varishtha Pension BimaYojana;
 - e. Pradhan Mantri Jeevan Jyoti BimaYojana;
 - f. Pradhan Mantri Jan DhanYogana;
 - g. Pradhan Mantri Vaya Vandan Yojana.

XII. GENERAL INSURANCE BUSINESS SERVICES:

1. **ENTRY NO 35:** Services of general insurance business provided under following schemes –
 - a. Hut Insurance Scheme;
 - b. Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna;
 - c. Scheme for Insurance of Tribals;
 - d. Janata Personal Accident Policy and Gramin Accident Policy;
 - e. Group Personal Accident Policy for Self-Employed Women;
 - f. Agricultural Pumpset and Failed Well Insurance;
 - g. premia collected on export credit insurance;
 - h. Restructured Weather Based Crop Insurance Scheme (RWCIS), approved by the Government of India and implemented by the Ministry of Agriculture;
 - i. Jan Arogya Bima Policy;
 - j. Pradhan Mantri Fasal Bima Yojana (PMFBY);
 - k. Pilot Scheme on Seed Crop Insurance;
 - l. Central Sector Scheme on Cattle Insurance;
 - m. Universal Health Insurance Scheme;
 - n. Rashtriya Swasthya Bima Yojana;
 - o. Coconut Palm Insurance Scheme;
 - p. Pradhan Mantri Suraksha BimaYojna;
 - q. Niramaya Health Insurance Scheme implemented by the Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.
 - r. Bangla Shasya Bima
2. **ENTRY 36A:** Services by way of reinsurance of the insurance schemes specified in serial number 35 or 36.

XIII. SERVICES PROVIDED BY SPECIFIED BODIES:

1. **ENTRY NO 30:** Services by the **Employees' State Insurance Corporation** to persons governed under the Employees' State Insurance Act, 1948.
2. **ENTRY NO 31:** Services provided by the **Employees Provident Fund Organisation** to the persons governed under the Employees Provident Funds and the Miscellaneous Provisions Act, 1952.
3. **ENTRY NO 31A:** Services by **Coal Mines Provident Fund Organisation** to persons governed by the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948.
4. **ENTRY NO 31B:** Services by **National Pension System (NPS)** Trust to its members against consideration in the form of administrative fee.
5. **ENTRY NO 58:** Services provided by the **National Centre for Cold Chain Development** under the Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination.
6. **ENTRY NO 59:** Services by a **foreign diplomatic mission** located in India.

XIV. PENSION SCHEMES

1. **ENTRY NO 37:** Services by way of collection of contribution under the Atal Pension Yojana.
2. **ENTRY NO 38:** Services by way of collection of contribution under any pension scheme of the State Governments.

XV. BUSINESS FACILITATOR/CORRESPONDENT

ENTRY NO 39: Services by the following persons in respective capacities –

- a. business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch;
- b. any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or
- c. business facilitator or a business correspondent to an insurance company in a rural area.

XVI. RENTING / LEASING SERVICES:

1. **ENTRY NO 12 – RENTING FOR RESEDENTIAL DWELLING:** Services by way of renting of residential dwelling for use as residence **except where the residential dwelling is rented to a registered person**.

Explanation: For the purpose of exemption under this entry, this entry shall cover services by way of renting of residential dwelling to a registered person where -

- i. the registered person is proprietor of a proprietorship concern and rents the residential dwelling in his personal capacity for use as his own residence; and
- ii. such renting is on his own account and not that of the proprietorship concern.

2. **ENTRY NO 41 – UPFRONT PREMIUM IN RESPECT OF LONG TERM LEASE:** Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of 30 years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20% or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area.

Explanation - For the purpose of this exemption, the Central Government, State Government or Union territory shall have 20% or more ownership in the entity directly or through an entity which is wholly owned by the Central Government, State Government or Union territory.

XVII. LEGAL SERVICES:

ENTRY 45: Services provided by-

- a. an arbitral tribunal to –
 - i. any person other than a business entity; or
 - ii. a business entity with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017;
 - iii. the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.
- b. a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to-
 - i. an advocate or partnership firm of advocates providing legal services;
 - ii. any person other than a business entity; or
 - iii. a business entity with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017;
 - iv. the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.
- c. a senior advocate by way of legal services to-
 - i. any person other than a business entity; or
 - ii. a business entity with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017.
 - iii. the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.

XVIII. SPORTS EVENTS:

1. **ENTRY 53 – SPONSORSHIP OF SPORTS EVENTS:** Services by way of sponsorship of sporting events organised –
 - a. by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State, zone or Country;

- b. by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
- c. by the Central Civil Services Cultural and Sports Board;
- d. as part of national games, by the Indian Olympic Association; or
- e. under the Panchayat Yuva Kreedha Aur Khel Abhiyaan Scheme.

2. ENTRY 9AA – SERVICES PROVIDED BY AND TO FIFA: Services provided by and to Fédération Internationale de Football Association (FIFA) and its subsidiaries directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020 to be hosted in India.

Condition to be fulfilled: Director (Sports), Ministry of Youth Affairs and Sports have to certify that the services are directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020.

3. ENTRY 82A – ADMISSION TO FIFA: Services by way of right to admission to the events organised under FIFA U-17 Women's World Cup 2020.

4. ENTRY 68 - SERVICES PROVIDED TO A RECOGNISED SPORTS BODY: Services provided to a recognised sports body by-

- a. an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organised by a recognized sports body;
- b. another recognised sports body.

However, services by individuals such as selectors, commentators, curators, technical experts are taxable. The service of a player to a franchisee which is not a recognized sports body is also taxable.

XIX. SKILL DEVELOPMENT SERVICES:

1. ENTRY NO 69: Any services provided by,

- a. the National Skill Development Corporation set up by the Government of India;
 - b. a Sector Skill Council approved by the National Skill Development Corporation;
 - c. an assessment agency approved by the Sector Skill Council or the National Skill Development Corporation;
 - d. a training partner approved by the National Skill Development Corporation or the Sector Skill Council,
- in relation to-
- i. the National Skill Development Programme implemented by the National Skill Development Corporation; or
 - ii. a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or

iii. any other Scheme implemented by the National Skill Development Corporation.

2. **ENTRY 70:** Services of assessing bodies empanelled centrally by the Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under the Skill Development Initiative Scheme.
3. **ENTRY 71:** Services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDUGKY) implemented by the Ministry of Rural Development, Government of India by way of offering skill or vocational training courses certified by the National Council for Vocational Training.

XX. **PERFORMANCE BY AN ARTIST**

ENTRY 78: Services by an artist by way of a performance in folk or classical art forms of-

- a. music, or
- b. dance, or
- c. theatre,

if the consideration charged for such performance is not more than ₹ 1,50,000 are exempt from GST.

- However, if consideration from such activities exceeds ₹ 1,50,000, entire consideration is subject to GST.
- Further, all other activities by an artist in other art forms e.g. western music or dance, modern theatres, performance of actors in films or television serials would be taxable. Similarly, activities of artists in still art forms e.g. painting, sculpture making etc. are taxable.
- However, the exemption shall not apply to service provided by such artist as a brand ambassador. 'Brand ambassador' means a person engaged for promotion or marketing of a brand of goods, service, property or actionable claim, event or endorsement of name, including a trade name, logo or house mark of any person.

XXI. **RIGHT TO ADMISSION TO VARIOUS EVENTS**

1. **ENTRY 79 - ADMISSION TO A MUSEUM, NATIONAL PARK:** Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo.
2. **ENTRY 79A - ADMISSION TO A PROTECTED MONUMENT:** Services by way of admission to a protected monument so declared under the Ancient Monuments and Archaeological Sites & Remains Act 1958 or any of the State Acts, for the time being in force.
3. **ENTRY 81 – ADMISSION TO EVENTS:** Services by way of right to admission to-
 - I. circus, dance, or theatrical performance including drama or ballet;
 - II. award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event

III. recognised sporting event;

IV. planetarium,

where the consideration for right to admission to the events or places as referred to in items (a), (b), (c) or (d) above is not more than ₹ 500 per person.

➤ **Recognised sporting event:** Recognised sporting event means any sporting event,-

- i. organised by a recognised sports body where the participating team or individual represent any district, state, zone or country;
- ii. organized
 - B. by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State or zone;
 - C. by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
 - D. by Central Civil Services Cultural and Sports Board;
 - E. as part of national games, by Indian Olympic Association; or
 - F. under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme.

➤ **Recognised sports body:** Recognised sports body means –

- i. the Indian Olympic Association;
- ii. Sports Authority of India;
- iii. a national sports federation recognised by the Ministry of Sports and Youth Affairs of the Central Government, and its affiliate federations;
- iv. national sports promotion organisations recognised by the Ministry of Sports and Youth Affairs of the Central Government;
- v. the International Olympic Association or a federation recognised by the International Olympic Association; or
- vi. a federation or a body which regulates a sport at international level and its affiliated federations or bodies regulating a sport in India.

XXII. **SERVICES BY AN UNINCORPORATED BODY OR A NON- PROFIT ENTITY**

1. **ENTRY 77:** Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution –

- a. as a trade union
- b. for the provision of carrying out any activity which is exempt from the levy of Goods and Services Tax; or
- c. up to an amount of ₹ 7,500 per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.

➤ **Some clarifications relating to GST on monthly contribution charged by a Residential welfare association(RWA):**

- **Applicability of GST in case of RWA liable for registration:**

- a. If the aggregate turnover of housing society/RWA providing services to its members is above the applicable threshold limit for registration, it needs to take registration under GST in terms of section 22.
- b. However, taking registration does not mean that the housing society has to compulsorily charge GST in the monthly maintenance bills raised on its members.
- c. If the services provided by it are exempt under an exemption notification, for instance, in view of entry 77(c) above, supply of service by a RWA (unincorporated body or a non-profit entity registered under any law) to its own members by way of reimbursement of charges or share of contribution up to an amount of ₹ 7500 per month per member for providing services and goods for the common use of its members in a housing society/a residential complex are exempt from GST.
- d. So, there can be case where a society is registered under GST, but the monthly contribution received from all the members is less than ₹ 7,500/- per member (and the amount is for the purpose of sourcing of goods and services from a third person for the common use of its members). In such a case, no GST is to be charged by the housing society on the monthly bill raised by the society.

Example:

1. *RWA of Chulbul Housing Society, registered under GST, collected the maintenance charges of ₹ 6,000 per month per member. In this case, no GST is to be charged by the RWA.*
2. *If, in above example, other things remaining the same, the RWA of Chulbul Housing Society collected the maintenance charges of ₹ 9,000 per month per member, GST @18% shall be payable on the entire amount of ₹ 9,000 and not on [₹ 9,000 - ₹ 7,500] = ₹ 1,500.*

- **Applicability of GST in case of RWA not liable for registration:**

- a. There can also be a case where the aggregate turnover of the society/RWA is less than the applicable threshold limit for registration and the monthly contribution of all the individual members towards maintenance is less than ₹ 7,500/- (such services being exempt). Further, the society is providing no other taxable service to its members or outsiders. In this case, the society (essentially exclusively providing wholly exempt services) need not take registration under GST.
- b. However, an RWA is not required to obtain registration even though the amount of maintenance charges exceeds ₹ 7500 per month per member but aggregate turnover of the RWA in a financial year does not exceed the threshold limit for registration.

Example:

1. *The turnover of RWA of Bulbul Housing Society located in New Delhi in a financial year is ₹ 15 lakh. It has collected the maintenance charges of ₹ 6,000 per month per member. RWA is not providing any other taxable service to its members. In this case,*

RWA is not required to take registration under GST since its aggregate turnover is less than the applicable threshold limit of ₹ 20 lakh.

2. *In the above example, other things remaining the same, if the maintenance charges collected by the RWA are ₹ 8,000 per month per member, RWA is still not required to take registration under GST since its aggregate turnover is less than the applicable threshold limit of ₹ 20 lakh.*

- Statutory dues such as property tax, electricity charges etc. forming part of the monthly maintenance bill raised by the society on its members would be excluded while computing the aforesaid monthly limit of ₹ 7,500.

Thus, RWA shall be required to pay GST on monthly subscription/ contribution charged from its members, only if such subscription is more than ₹ 7500/- per month per member and the annual aggregate turnover of RWA by way of supplying of services and goods is also more than ₹ 20 lakh.

In other words:

Annual turnover of RWA	Monthly maintenance charge	Whether exempt?
More than ₹ 20 lakhs (RP)	More than ₹ 7,500/-	No (taxable)
	₹ 7,500/- or less	Yes (Exempt)
₹ 20 lakhs or less (URP)	More than ₹ 7,500/-	Yes (Exempt)
	₹ 7500/- or less	Yes (Exempt)

2. ENTRY 77A - SERVICES PROVIDED BY AN UNINCORPORATED BODY OR A NON-PROFIT ENTITY RELATING TO AGRICULTURE AND TRADE: Services provided by an unincorporated body or a non-profit entity registered under any law for the time being in force, engaged in,-

- i. activities relating to the welfare of industrial or agricultural labour or farmers; or
 - ii. promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment,
- to its own members against consideration in the form of membership fee upto an amount of ₹ 1000/- per member per year.

XXIII. PUBLIC UTILITY SERVICES:

1. ENTRY NO 23 – PAYMENT OF TOLL: Service by way of access to a road or a bridge on payment of toll charges.

➤ Clarification regarding GST on overloading charges at toll plaza

- Entry 23 exempts service by way of access to a road or a bridge on payment of toll charges.

- With regard to said entry, following issues have been clarified:
 - i. Ministry of Road Transport and Highways (MORTH) permitted the overloaded vehicles to ply on the national highways after payment of higher toll charges. It has been clarified that overloading charges at toll plazas would get the same treatment as given to toll charges.
 - ii. MORTH has directed to collect additional amount from the users of the road to the extent of two times of the fees applicable to that category of vehicle which is not having a valid functional Fastag. Essentially, the additional amount collected from the users of the road not having a functional Fastag, is in the nature of toll charges and should be treated as additional toll charges.

Therefore, it is clarified that additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll for allowing access to roads or bridges to such vehicles and may be given the same treatment as given to toll charges.

2. ENTRY NO 23A – ACCESS TO ROAD ON PAYMENT OF ANNUITY: Service by way of access to a road or a bridge on payment of annuity.

- **Clarification regarding applicability of GST on the activity of construction of road where considerations are received in deferred payment (annuity) [Circular No.150/06/2021 GST dated 17.06.2021]:**
 - The said circular clarifies the applicability of GST on annuities paid for construction of road where certain portion of consideration is received upfront while remaining payment is made through deferred payment (annuity) spread over years.
 - It is important to note that Entry 23A exempts the access to road or bridge on payment of annuity, but it does not cover construction of road services.
 - Thus, it has been clarified that Entry 23A does not exempt GST on the annuity (deferred payments) paid for construction of roads.

3. ENTRY NO 25 – ELECTRICITY: Transmission/distribution of electricity by an electricity transmission / distribution utility.

- However, in this regard CBIC has clarified that the other services provided by DISCOMS (distribution companies) to consumer against charges are liable to GST such as,
 - i. Application fee for releasing connection of electricity;
 - ii. Rental Charges against metering equipment;
 - iii. Testing fee for meters/transformers, capacitors etc.;
 - iv. Labour charges from customers for shifting of meters or shifting of service lines; v. charges for duplicate bill.

4. ENTRY NO 49 – PROVIDING NEWS: Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India.

➤ **Clarification regarding GST on payment of honorarium to the Guest Anchors [Circular No. 177/09/2022 GST dated 03.08.2022]:**

- The circular clarifies the applicability of GST on honorarium paid to Guest Anchors. Sansad TV and other TV channels invite guest anchors to participate in their shows and pay remuneration to them in the form of honorarium.
- It is clarified that supply of all goods & services are taxable unless exempt or declared as 'neither a supply of goods nor a supply of service'.
- Services provided by the guest anchors in lieu of honorarium attract GST liability.
- However, guest anchors whose aggregate turnover in a financial year does not exceed ₹ 20 lakh (₹ 10 lakh in case of specified Special Category States) shall not be liable to take registration and pay GST.

5. **ENTRY NO 50 - SERVICES OF PUBLIC LIBRARIES:** Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material.
6. **ENTRY NO 65A – RIGHT TO INFORMATION:** Services by way of providing information under the RTI Act (Right to Information Act, 2005).
7. **ENTRY 76 - FACILITIES OF BATHROOM, WASHROOMS:** Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets.

XXIV. INCUBATEE SERVICES:

1. **ENTRY NO 44 - SERVICES PROVIDED BY AN INCUBATEE:** Services provided by an incubatee up to a total turnover of ₹ 50 lakh in a financial year subject to the following conditions, namely:-
- a. the total turnover had not exceeded ₹ 50 lakh during the preceding financial year; and
 - b. a period of 3 years has not elapsed from the date of entering into an agreement as an incubatee.

- **Incubatee:** Incubatee means an entrepreneur located within the premises of a Technology Business Incubator (TBI)/ Science and Technology Entrepreneurship Park (STEP) recognised by the National Science and Technology Entrepreneurship Development Board of the Department of Science and Technology, Government of India (NSTEDB) and who has entered into an agreement with the TBI/STEP to enable himself to develop and produce hi-tech and innovative products.

2. **ENTRY NO 48 - SERVICES, PROVIDED OR TO BE PROVIDED, BY A TBI/STEP/BIO- INCUBATORS:** Taxable services, provided or to be provided, by a TBI/STEP recognised by NSTEDB or bio-incubators recognised by the Biotechnology Industry Research Assistance Council, under the Department of Biotechnology, Government of India (BIRAC).

XXV. OTHER EXEMPT SERVICES:

1. ENTRY 2 - SERVICES BY WAY OF TRANSFER OF A GOING CONCERN:

Services by way of transfer of a going concern, as a whole or an independent part thereof.

➤ Transfer of a going concern:

- Transfer of a going concern means transfer of a running business which is capable of being carried on by the purchaser as an independent business, but shall not cover mere or predominant transfer of an activity comprising a service.
- Transfer of business for a lump sum consideration commonly referred to as slump sale is covered under this entry.
- Such sale of business as a whole will comprise comprehensive sale of immovable property, goods and transfer of unexecuted orders, employees, goodwill etc.

***Example:** Royal Hotel Group is in the business of running a chain of restaurants. It intends to sell its business as a going concern. It would not be required to pay GST on such sale of its business.*

2. ENTRY 19C - SATELLITE LAUNCH SERVICES: Satellite launch services supplied by Indian Space Research Organisation, Antrix Corporation Limited or New Space India Limited.

3. ENTRY 52 - BUSINESS EXHIBITION HELD OUTSIDE INDIA: Services by an organiser to any person in respect of a business exhibition held outside India.

➤ RECENTLY WITHDRAWN EXEMPTIONS:

- ~~Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having value of supply of a unit of accommodation below or equal to ₹ 1,000 per day or equivalent~~
- ~~Services by the Reserve Bank of India.~~
- ~~Services provided by the IRDAI Regulatory and Development Authority of India to insurers under IRDAI Act, 1999.~~
- ~~Services provided by the SEBI (Securities and Exchange Board of India) set up under the SEBI Act, 1992 by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.~~
- ~~Services of leasing of assets (rolling stock assets including wagons, coaches, locos) by the Indian Railways Finance Corporation to Indian Railways.~~
- ~~Services by way of licensing, registration and analysis or testing of food samples supplied by the Food Safety and Standards Authority of India (FSSAI) to Food Business Operators.~~
- ~~Services provided by the GSTN (Goods and Services Tax Network) to the Central Government or State Governments or Union territories for implementation of Goods and Services Tax.~~
- ~~Services by way of fumigation in a warehouse of agricultural produce.~~
- ~~Services by way of slaughtering of animals.~~

- ~~Services provided by the cord blood banks by way of preservation of stem cells or any other service in relation to such preservation.~~
- ~~Services provided by operators of the common bio-medical waste treatment facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto.~~

SHRESHTA

QUESTIONS

- 1. Exempt supply includes supply of any goods or services or both which attracts nil rate of tax and which may be wholly exempt from tax, but excludes nontaxable supply. Discuss the validity of the statement.**

Answer:

The statement is not fully valid in law. Exempt supply has been defined as supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax and includes non-taxable supply.

- 2. Services provided by an entity registered under section 12AA of the Incometax Act, 1961 are exempt from GST if such services are provided by way of charitable activities. Elaborate the term 'charitable activities'.**

Answer: Refer Charitable activities section of the chapter

- 3. Sukhiya Das is engaged in providing following services. With the help of information given below, determine which of the services provided by Sukhiya Das are exempt from GST:**
- a. **Packaging of the onions purchased from village farmers into small packets of 1 kg each, in Sukhiya Das warehouse, so that same can be sold in a nearby city mall.**
 - b. **Warehousing of jaggery and tea.**
 - c. **Renting of warehouse for storage of agricultural produce.**

Answer:

- a. Entry 54, inter alia, exempts the processes/operations carried out at an agricultural farm on the agricultural produce which do not alter the essential characteristics of agricultural produce, but make it marketable only for the primary market. In the given case, though the packaging of onions does not alter their essential characteristic, it makes them marketable for retail market and not for the primary market and further, such packaging is being done at the warehouse of Sukhiya Das and not at an agricultural farm. Hence, said services are not exempt.
 - b. Entry 54, inter alia, exempts the warehousing of agricultural produce. Jaggery and tea do not qualify as agricultural produce, their warehousing not exempt.
 - c. Entry 54, inter alia, exempts the services of loading, unloading, packing, storage or warehousing of agricultural produce. Thus, warehousing of agricultural produce, per se, is exempt. However, in the given case, services being provided are not warehousing services but renting of immovable property services. Such services are not exempt.
- 4. Good Health Medical Centre, a clinical establishment, offers the following services:**
- (i) **Reiki healing treatments.**
 - (ii) **Plastic surgeries. One such surgery was conducted to repair cleft lip of a new born baby.**
 - (iii) **Air ambulance services to transport critically ill patients from distant locations to the Medical Centre.**
 - (iv) **Palliative care for terminally ill patients. On request, such care is also provided to patients at their homes. (Palliative care is given to improve the quality of life of patients who have a serious or life-threatening disease but the goal of such care is not to cure the disease).**

(v) **Alternative medical treatments by way of yoga.**

Good Health Medical Centre also operates a cord blood bank which provides services in relation to preservation of stem cells.

Good Health Medical Centre is of the view that since it is a clinical establishment, all the service provided by it as well as all the services provided to it are exempt from GST. You are required to examine the situation in the light of relevant statutory provisions.

Answer:

- (i) **Not Exempt.** Since reiki healing is not a recognized system of medicine in terms of section 2(h) of Clinical Establishments Act, 2010, it would not be exempt and thus, GST would be payable thereon.
- (ii) **Exempt.** Health care service does not include, inter alia, cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma. Therefore, plastic surgeries will not be entitled to the said exemption and thus, GST would be payable thereon. However, plastic surgery conducted to repair a cleft lip will be eligible for exemption as it reconstructs anatomy or functions of body affected due to congenital defects (cleft lip).
- (iii) **Exempt.** Health care service includes services by way of transportation of the patient to and from a clinical establishment. Thus, air ambulance service to transport critically ill patients to Good Health Medical Centre would be eligible for exemption under the said notification. (iv
- (iv) **Exempt.** Health care service means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India. It is immaterial whether such service is provided at the clinical establishment or at the home of the patient or at any other place. Thus, palliative care for terminally ill patients is exempt.
- (v) **Exempt.** Since Yoga is a recognized system of medicine in terms of section 2(h) of Clinical Establishments Act, 2010, the same would be eligible for exemption under the said notification.

Further, services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation are not exempt from GST.

It is important to note that Entry 74 of the exemption notification grants exemption to health care services provided BY a clinical establishment and not to services provided TO a clinical establishment. Therefore, Good Health Medical Centre's contention that since it is a clinical establishment, all the services provided to it are also exempt from GST is not correct in law.

5. M/s. Apna Bank Limited, a scheduled commercial bank, has furnished the following details for the month of August:

Particulars	Amount (in cr Excluding GST)
Extended housing loan to its customers	100
Processing fees collected from its customers on sanction of loan	20

Commission collected from its customers on bank guarantee	30
Interest income on credit card issued by the bank	40
Interest received on housing loan extended by the bank	25
Minimum balance charges collected from current account and saving account holder	01

Compute the value of taxable supply

Answer:

Computation of value of taxable supply of M/s. Apna Bank Limited for the month of August:

Particulars	Amount in crores
Housing loan extended to customers [Since money does not constitute goods, extending housing loan is not a supply.]	Nil
Processing fee collected on sanction of loan [Interest does not include processing fee on sanction of the loan. Hence, the same is taxable.]	20
Commission collected on bank guarantee [Any commission collected over and above interest on loan, advance or deposit are not exempt.]	30
Interest income on credit card issued by the bank [Services by way of extending loans in so far as the consideration is represented by way of interest are exempt from tax. However, interest involved in credit card services is specifically excluded from this exemption entry.]	40
Interest received on housing loan [Services by way of extending loans in so far as the consideration is represented by way of interest are exempt from tax.]	Nil
Minimum balance charges collected from current account and saving account holder [Any charges collected over and above interest on loan, advance or deposit are not exempt.]	01
Value of taxable supply	91

6. Determine the GST payable, if any, in each of the following independent cases, assuming that the rate of GST is 18% and that the service providers are registered:
- Bollywood dance performance by a film actor in a film and consideration charged is ₹ 1,45,000.
 - Carnatic music performance by a classical singer to promote a brand of readymade garments and consideration charged is ₹ 1,30,000.
 - Carnatic music performance by a classical singer in a music concert and consideration charged is ₹ 1,55,000.

- d. Kathak dance performance by a classical dancer in a cultural programme and consideration charged is ₹ 1,45,000.**

Answer:

- a. Bollywood Dance performance by a film actor in a film is not exempt from GST even though the consideration charged is less than threshold limit of ₹ 1,50,000. The reason for the same is that the dance performance by an artist is exempt only if it is a performance in folk or classical art forms of dance.
- b. Carnatic music performance by a classical singer to promote a brand of readymade garments is not exempt from GST even though, the consideration charged is less than threshold limit of ₹ 1,50,000 and it is a performance in classical art forms of music. The reason for the same is that the said exemption is not applicable to service provided by such artist as a brand ambassador.
- c. Carnatic music performance by a classical singer in a music concert is not exempt from GST even though it is a performance in classical art forms of music. The reason for the same is the consideration charged for the service exceeds ₹ 1,50,000. Consequently, entire consideration charged is subject to GST as follows: = ₹ 1,55,000 × 18% = ₹ 27,900
- d. Kathak dance performance by a classical dancer in a cultural programme is exempt from GST as it is a performance in classical art forms of dance and consideration charged does not exceed ₹ 1,50,000 [i.e. ₹ 1,45,000].

7. Examine which of the following independent services are exempt from GST:

- a. Food supplied by the canteen run by a hospital to the in-patients as advised by the doctors.
- b. An RWA, registered under GST, collects the maintenance charges of ₹ 6,500 per month per member.

Answer:

- a. Services by way of health care services by a clinical establishment, an authorised medical practitioner or para-medics are exempt from GST. Food supplied to the in-patients by a canteen run by the hospital, as advised by the doctor/nutritionists, is a part of composite supply of healthcare and not separately taxable. Thus, said services are exempt from GST.
- b. Supply of service by a RWA (unincorporated body or a non-profit entity registered under any law) to its own members by way of reimbursement of charges or share of contribution up to an amount of ₹ 7500 per month per member for providing services and goods for the common use of its members in a housing society/a residential complex are exempt from GST. Hence, in the given case, services provided by the RWA are exempt from GST since the maintenance charges collected per month per member do not exceed ₹ 7500

8. An individual acts as a referee in a football match organized by Sports Authority of India. He has also acted as a referee in another charity football match organized by a local sports club, in lieu of a lump sum payment. Discuss whether any GST is payable on the activities undertaken by him.

Answer:

Services provided to a recognized sports body by an individual, inter alia, as a referee in a sporting event organized by a recognized sports body is exempt from GST.

Since in the first case, the football match is organized by Sports Authority of India, which is a recognized sports body, services provided by the individual as a referee in such football match will be exempt.

However, when he acts as a referee in a charity football match organized by a local sports club, he would not be entitled to afore-mentioned exemption as a local sports club is not a recognized sports body and thus, GST will be payable in this case

9. RXL Pvt. Ltd. manufactures a beauty soap with the brand name 'Forever Young'. RXL Pvt. Ltd. has organized a concert to promote its brand. Ms. Ahana Kapoor, its brand ambassador, who is a leading film actress, has given a classical dance performance in the said concert. The proceeds of the concert worth ₹ 1,20,000 will be donated to a charitable organization. Examine whether Ms. Ahana Kapoor will be required to pay any GST.

Answer:

Services by an artist by way of a performance in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre are exempt from GST, if the consideration charged for such performance is not more than ₹ 1,50,000. However, such exemption is not available in respect of service provided by such artist as a brand ambassador.

Since Ms. Ahana Kapoor is the brand ambassador of 'Forever Young' soap manufactured by RXL Pvt. Ltd., the services rendered by her by way of a classical dance performance in the concert organized by RXL Pvt. Ltd. to promote its brand will not be eligible for the above-mentioned exemption and thus, be liable to GST. The fact that the proceeds of the concert will be donated to a charitable organization will not have any bearing on the eligibility or otherwise to the above-mentioned exemption.

10. Examine whether GST is exempted on the following independent supplies of services:

- (i) Service provided by a private transport operator to Scholar Boys Higher Secondary School in relation to transportation of students to and from the school.**
- (ii) Services provided by way of vehicle parking to general public in a shopping mall**

Answer:

- (i)** Yes. Services provided TO an educational institution by way of transportation of students are exempted from GST.
- (ii)** No. Services provided by way of vehicle parking to general public are not exempted from GST. Therefore, GST is payable on the same.

11. A State Transport Undertaking has hired motor vehicles meant to carry 8 - 10 passengers from Fast Cab Renting, a motor vehicle renting company. Give your comments as to whether any GST is payable in this case.

Answer:

Services by way of giving on hire, inter alia, to a State Transport Undertaking, a motor vehicle meant to carry more than 12 passengers is exempt from GST. Since the motor vehicles given on hire by Fast Cab Renting to the State Transport Undertaking are meant to carry 8-10 passengers, the same would not be eligible for exemption and would thus, be liable to GST.

12. Indiana Engineering College, a recognised educational institution, has conducted an entrance test examination for various courses run by it and charged entrance fees from the applicants. Determine whether Indiana Engineering College is liable to pay GST on the same.

Answer:

Services provided by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee are exempt from GST. Since in the given case, services provided by Indiana Engineering College - an educational institution - are by way of conduct of entrance examination against entrance fee, the same is exempt and thus, GST is not payable in this case.

13. Poorva acts as a team manager for Indian Sports Authority (ISA), a recognised sports body, for a tennis tournament organised by a multinational company and received a remuneration of ₹ 2,00,000. Determine whether GST is payable on the remuneration received by Poorva.

Answer:

Services provided by a team manager to a recognised sports body for participation in a sporting event are exempt from GST provided said sporting event is organised by a recognized sports body. In the given case, the services are being provided by a team manager to a recognised sports body, but the sporting event is not organised by a recognised sports body. Therefore, the services provided by Poorva are not exempt from GST

14. Babloo Transporters, a Goods Transport Agency, transported relief materials meant for victims of Kerala floods, a natural disaster, by road from Delhi to Ernakulam, for a company. Babloo Transporters is of the view that it is not liable to pay GST on the said services provided as said services are exempt. You are required to advice it on the said issue.

Answer:

Services provided by a goods transport agency, by way of transport in a goods carriage of relief materials meant for victims of, inter alia, natural or man-made disasters, calamities, are exempt from GST. Therefore, services provided by Babloo Transporters will be exempt from GST.

15. Keyan Enterprises, an event organizer, provided services to Breathing Wall Ltd. by way of organizing business exhibition in New Delhi as part of Make in India initiative. Keyan Enterprises claims that it is not required to pay GST as the services provided by way of organizing business exhibition are exempt from GST. Examine the technical veracity of the claim of Keyan Enterprises, in the given case.

Answer:

No, the claim made by Keyan Enterprises that it is not required to pay GST is not correct. Services provided by an organiser to any person in respect of a business exhibition are exempt from GST only when such business exhibition is held outside India. However, since in the given case, the exhibition is being organized in India, the services of organization of event by Keyan Enterprises will not be exempt from GST .

16. Ekta Charitable trust, registered under section 10(23C)(v) of the Income-tax Act, 1961, manages a temple in Rohini, Delhi. It has given on rent a community hall, located within temple premises,

to public for celebration of Teej Mela. Rent charged is ₹ 9,500. You are required to determine whether the services provided by Ekta Charitable trust are liable to GST.

Answer:

Services by a person by way of renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a trust or an institution under section 10(23C)(v) of the Income-tax Act are exempt provided renting charges of premises, community halls, kalyanmandapam or open area are not ₹ 10,000 or more per day. Thus, in the given case, renting of community hall by Ekta Charitable Trust is exempt from GST, as rent is less than ₹ 10,000 per day

17. ST Ltd. has given on hire 5 trucks to Titu Transporters of Delhi (a goods transport agency) for transporting goods in Central and West Delhi. The hiring charges for the trucks are ₹ 7,500 per truck per day. Examine whether GST is payable in the given case.

Answer:

GST is not payable in case of hiring of trucks to Titu Transporters since services by way of giving on hire, inter alia, to a goods transport agency, a means of transportation of goods are exempt.

SHRESHTA

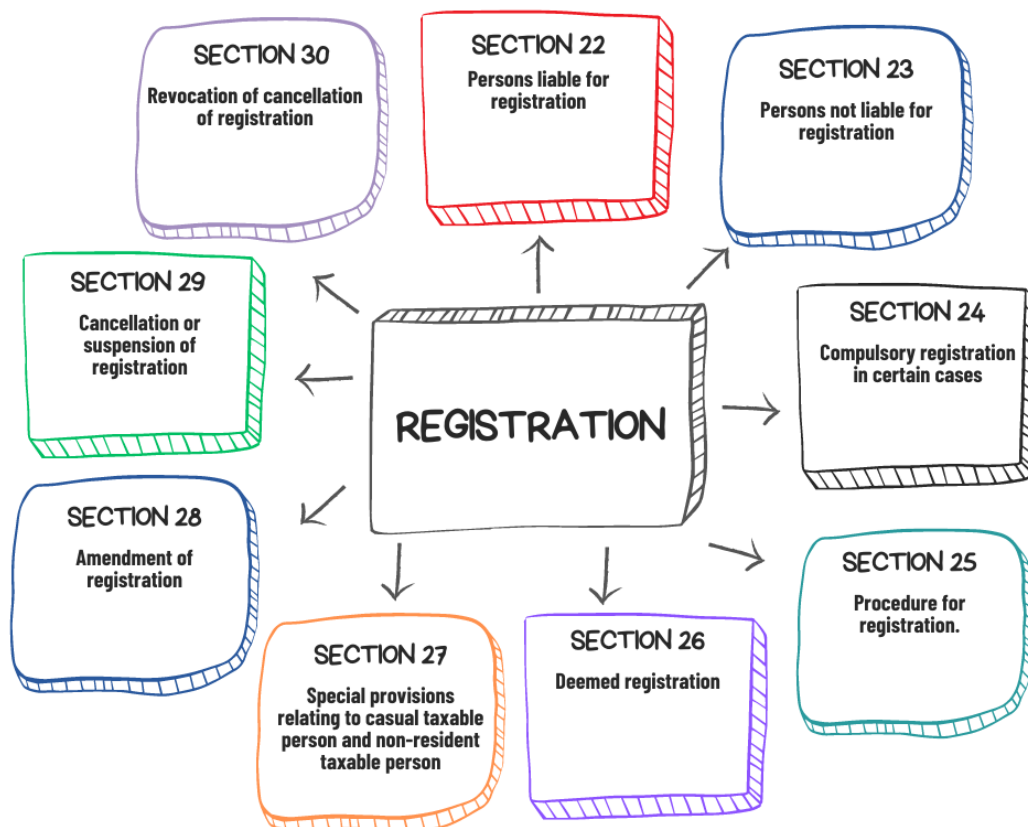
5.REGISTRATION

INTRODUCTION

Under any taxation law, registration is the most fundamental requirement for identification of tax payers ensuring tax compliance in the economy. It is the first step towards becoming GST compliant. Under indirect tax regime, without registration, a person can neither collect tax from his customers nor claim any credit of tax paid by him.

Registration legally recognizes a person as supplier of goods or services or both and legally authorizes him to collect taxes from his customers and pass on the credit of the taxes paid on the goods or services supplied to the purchasers/recipients. He can claim the input tax credit of taxes paid and can utilize the same for payment of taxes due on supply of goods or services. Registration ensures the seamless flow of input tax credit from suppliers to recipients at the national level.

Relevant Sections:



I. PERSONS LIABLE FOR REGISTRATION [SECTION 22]:

1. Requirement of Registration:

- Every supplier of goods or services or both is required to obtain registration
- in the State or the Union territory from where he makes the taxable supply
- if his aggregate turnover exceeds specified threshold limit in a FY.

- 2. Aggregate Turnover:** The definition of aggregate turnover as contained in section 2(6) of the CGST Act is analysed as follows:
- a. The aggregate turnover is the sum of value of all outward supplies falling in the following four categories:
 - i. Taxable supplies
 - ii. Exempt supplies
 - iii. Exports of goods or services or both
 - iv. Inter-State supplies of persons having the same PAN be computed on all India basis.
 - b. It excludes:
 - i. The value of inward supplies on which tax is payable by a person on reverse charge basis
 - ii. Taxes including cess paid under GST law.
 - c. It is computed on all India basis for a person having same Permanent Account Number (PAN).
 - d. **Meaning of Exempt Supplies:** Exempt supply means supply of any goods or services or both
 - i. which attracts nil rate of tax or
 - ii. which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and
 - iii. includes non-taxable supply.
 - e. Aggregate turnover to include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals.

Example:

- *Raghubir Private Ltd. pays GST on sitting fees paid to its directors for the services rendered by them, under reverse charge. Value of services provided by the directors to Raghubir Private Ltd. will form part of the aggregate turnover of the directors and not of Raghubir Private Ltd.*
- *A dealer 'X' has two offices – one in Delhi and another in Haryana. In order to determine whether 'X' is liable for registration, turnover of both the offices would be taken into account and only if the same exceeds the applicable threshold limit, X is liable for registration.*
- *Madhur Oils, Punjab, is engaged in supplying machine oil as well as petrol. Supply of petrol is not leviable to GST, but supply of machine oil is taxable. In order to determine whether Madhur Oils is liable for registration, turnover of both non-taxable as well as taxable supplies would be taken into account and if the same exceeds the applicable threshold limit, Madhur Oils is liable for registration.*
- *Mohini Enterprises has appointed M/s Bestfords & Associates as its agent. M/s Bestfords & Associates makes supply of goods on its own account as well as on behalf of Mohini Enterprises. All the supplies of goods made by M/s Bestfords & Associates as agent of Mohini Enterprises as well as on its own account will be included in the aggregate turnover of M/s Bestfords & Associates.*

3. Applicable Threshold Limit:

- a. The threshold limit prescribed under section 22(1) is ₹ 20 lakh in a FY, i.e. every supplier, whose aggregate turnover in a financial year exceeds ₹ 20 lakh, is liable to be registered under GST in the State/ Union territory from where he makes the taxable supply of goods and/or services.
- b. However, in respect of 4 Special category States i.e., only Mizoram, Tripura, Manipur and Nagaland, the threshold limit is ₹ 10 lakhs in a FY.
- c. Further, Notification No. 10/2019 CT dated 07.03.2019 exempts any person who is engaged in exclusive supply of goods and whose aggregate turnover in the financial year does not exceed ₹ 40 lakh, from registration requirement.

Exceptions: Exceptions to this exemption are as follows:

- i. Persons required to take compulsory registration under section 24.
- ii. Persons engaged in making supplies of

Tariff item, subheading, heading or Chapter	Description of goods
2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2106 90 20	Pan masala
24	All goods, i.e. Tobacco and manufactured tobacco substitutes
6815	Fly ash bricks or fly ash aggregate with 90% or more fly ash content; Fly ash blocks
6901 00 10	Bricks of fossil meals or similar siliceous earths
6904 10 00	Building bricks
6905 10 00	Earthen or roofing tiles

- iii. Persons engaged in making intra-State supplies in the States of Arunachal Pradesh, Uttarakhand, Meghalaya, Sikkim, Telangana, Puducherry and Special Category States as per section 22 [Nagaland, Mizoram, Manipur, Tripura].
- iv. Person who has opted for voluntary registration or such registered persons who intend to continue with their registration under the CGST Act.

Note: A person shall be considered to be engaged exclusively in the supply of goods even if he is engaged in exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

States with threshold limit of ₹ 10 lakh for supplier of goods and/or services	States/UTs with threshold limit of ₹ 20 lakh for supplier of goods and/or services	States/UTs with threshold limit of ₹ 20 lakh for supplier of services/ both goods and services and ₹ 40 lakh for supplier of goods (Intra-State)
MANIPUR MIZORAM	ARUNACHAL PRADESH MEGHALAYA	JAMMU & KASHMIR ASSAM

NAGALAND TRIPURA	SIKKIM UTTARAKHAND PUDUCHERRY TELANGANA	HIMACHAL PRADESH ALL OTHER STATES
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Example:

- *Prithviraj of Assam is exclusively engaged in intra-State supply of shoes. His aggregate turnover in the current financial year is ₹ 22 lakh. In view of the discussion in the above paras, the applicable threshold limit for registration for Prithviraj in the given case is ₹ 40 lakh. Thus, he is not liable to get registered under GST.*

If in above example, all other things remaining the same, Prithviraj is exclusively engaged in supply of pan masala instead of shoes, he will not be eligible for higher threshold limit of ₹ 40 lakh and the applicable threshold limit for registration in that given case will be ₹ 20 lakh. Thus, Prithviraj will be liable to get registered under GST.

If instead of pan masala, Prithviraj is exclusively engaged in supply of taxable services, the applicable threshold limit for registration will still be ₹ 20 lakh. Thus, Prithviraj will be liable to get registered under GST.

Further, if Prithviraj is engaged in supply of both taxable goods and services, the applicable threshold limit for registration will be ₹ 20 lakh only. Thus, Prithviraj will be liable to get registered under GST.

- *Shivaji of Telangana is exclusively engaged in intra-State supply of toys. Its aggregate turnover in the current financial year is ₹ 22 lakh. Since Shivaji is making taxable supplies from Telangana, he will not be eligible for higher threshold limit available in case of exclusive supply of goods. The applicable threshold limit for registration for Shivaji in the given case is ₹ 20 lakh. Thus, he is liable to get registered under GST.*

If in above example, all other things remaining the same, Shivaji is exclusively engaged in supply of taxable services instead of toys, the applicable threshold limit for registration will still be ₹ 20 lakh. Thus, Shivaji will be liable to get registered under GST.

Further, if Shivaji is engaged in supply of both taxable goods and services, the applicable threshold limit for registration will be ₹ 20 lakh only. Thus, Shivaji will be liable to get registered under GST.

- *Ashoka of Manipur is exclusively engaged in intra-State supply of paper. Its aggregate turnover in the current financial year is ₹ 12 lakh. Since Ashoka is making taxable supplies from Manipur which is a Special Category State, the applicable threshold limit for registration for Ashoka in the given case is ₹ 10 lakh. Thus, he is liable to get registered under GST.*

If in above example, all other things remaining the same, Ashoka is exclusively engaged in supply of taxable services instead of paper, the applicable threshold limit for registration will still be ₹ 10 lakh. Thus, Ashoka will be liable to get registered under GST.

Further, if Ashoka is engaged in supply of both taxable goods and services, the applicable threshold limit for registration in that given case will be ₹ 10 lakh only. Thus, Ashoka will be liable to get registered under GST.

- *Raghav of Assam is exclusively engaged in intra-State supply of readymade garments. Its turnover in the current FY from Assam showroom is ₹ 28 lakh. It has another showroom in*

Tripura with a turnover of ₹ 11 lakh in the current FY. Since Raghav is engaged in supplying garments from a Special Category State as per section 22, the applicable threshold limit for him gets reduced to ₹ 10 lakh. Further, Raghav is liable to get registered under GST in both Assam and Tripura on his aggregate turnover crossing the threshold limit of ₹ 10 lakh.

4. Registration required only for a place of business from where taxable supply takes place:

- a. A person is required to obtain registration with respect to each place of business in India from where a taxable supply has taken place.
- b. However, a supplier is not liable to obtain registration in a State/UT from where he makes an exempt/non-taxable supply.
- c. Further, the threshold limit of a person having places of business in more than one State/UT in India gets reduced to ₹ 10 lakh only when such person makes taxable supplies of goods or services or both from any of the Special Category States as per section 22.
- d. However, in case he makes exempt/non-taxable supply from a Special Category State and taxable supplies from a State other than Special Category State, the threshold limit shall not be so reduced.

Example: Uday Enterprises is engaged in supply of taxable goods in Maharashtra. It also supplies alcoholic liquor for human consumption from Nagaland. Its turnover in the current financial year is ₹ 34 lakh in Maharashtra and ₹ 8 lakh in Nagaland. Since Uday Enterprises is exclusively engaged in making taxable supplies of goods from Maharashtra, the applicable threshold limit for obtaining registration is ₹ 40 lakh. However, the threshold limit will not be reduced to ₹ 10 lakh in this case, as supply of alcoholic liquor for human consumption from Nagaland (one of the Special Category States) are non-taxable supplies³. In the given case, since the aggregate turnover of Uday Enterprises exceeds the applicable threshold limit of ₹ 40 lakh, it is liable to obtain registration. It will obtain registration in Maharashtra, but is not required to obtain registration in Nagaland as he is not making any taxable supplies from said State.

5. Persons already registered under existing law: Every person who, on the day immediately preceding the appointed day, is registered or holds a license under an existing law, shall be liable to be registered under this Act with effect from the appointed day **[Sec 22(2)]**.

6. Person liable for registration in case of transfer of business:

- a. Where a business is transferred, whether on account of succession/any other reason [including transfer/change in the ownership of business due to death of the sole proprietor], to another person as a going concern, the transferee/successor, is to be registered with effect from the date of such transfer/succession **[Sec 22(3)]**.
- b. Where the business is transferred, pursuant to sanction of a scheme/ arrangement for amalgamation/ de-merger of two or more companies, pursuant to an order of a High Court/Tribunal, the transferee is to be registered with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order **[Sec 22(4)]**.

II. COMPULSORY REGISTRATION IN CERTAIN CASES [SECTION 24]

The category of persons requiring compulsory registration under GST have been enlisted below:

1. Persons making any inter-State taxable supply.
2. Casual taxable persons (CTP) making taxable supply.
3. Persons who are required to pay tax under reverse charge on inward supplies received.
4. Non-resident taxable persons (N RTP) making taxable supply.
5. Persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise.

The below points will be discussed at CA Final level, given here just for reference:

6. Every ECO (Electronic Commerce Operator) who is required to collect tax at source under section 52.
7. Persons who are required to deduct tax under section 51, whether or not separately registered under this Act.
8. Input Service Distributor, whether or not separately registered under this Act.
9. Every person supplying online information and data base access or retrieval (OIDAR) services from a place outside India to a person in India, other than a registered person⁵ ;
10. Persons who are required to pay tax under section 9(5) and
11. such other person or class of persons as may be notified by the Government on the recommendations of the Council.

III. PERSONS NOT LIABLE FOR REGISTRATION [SECTION 23]:

A. Person engaged exclusively in the business of supplying goods and /or services not liable to tax/wholly exempt from tax.

Example:

- Madhur Oils, Punjab, is exclusively engaged in supplying petrol. Supply of petrol is not leviable to GST. Thus, Madhur Oils is not liable for registration as it is engaged exclusively in supplying goods not leviable to tax. (11)
- Bhavyajyoti Foundation, a charitable trust registered under section 12AA of the Income-tax Act, 1961, is exclusively engaged in supply of services by way of charitable activities. Services by an entity registered under section 12AA of the Income-tax Act, 1961 by way of charitable activities are exempt from GST. Thus, Bhavyajyoti Foundation is not liable for registration as it is exclusively engaged in supplying services exempt from tax.

B. An agriculturist, to the extent of supply of produce out of cultivation of land:

- a. **Meaning of Agriculturist:** The term agriculturist has been defined under section 2(7) as an individual/Hindu Undivided Family (HUF) who undertakes cultivation of land—
 - i. by own labour, or
 - ii. by the labour of family, or
 - iii. by servants on wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family.
- b. From the above definition, it is clear that the benefit of not being liable to registration is only restricted to the agriculturists who are individuals or HUFs.

- c. Further, if an agriculturist is also engaged in making any supply other than supply of produce out of cultivation of land, he shall be liable to registration based on applicable threshold limit.

Example: Deshbandhu is an agriculturist engaged in cultivation of wheat in his field in the State of Punjab. He was exclusively engaged in supply of wheat cultivated in his field in the previous year. Thus, he was not liable to registration as he was exclusively engaged in supply of produce out of cultivation of land. In the current year, he decides to start trading in rice apart from supplying his wheat produce. His turnover in the current year is ₹ 32 lakh from supply of wheat produced and ₹ 9 lakh from trading of rice. Since he is engaged in trading of rice also, he is not covered under section 23 above. The threshold limit for registration applicable to a person exclusively engaged in supply of goods in the State of Punjab is ₹ 40 lakh. The aggregate turnover of Deshbandhu in the current year is ₹ 41 lakh [₹ 32 lakh + ₹ 9 lakh] which exceeds the threshold limit. Thus, he will be liable to registration.

C. Specified category of persons notified by the Government exempted from obtaining registration:

1. **Persons making only reverse charge supplies:** Persons who are only engaged in making supplies of taxable goods or services or both, the total tax on which is liable to be paid on reverse charge basis by the recipient of such goods or services or both under section 9(3) have been exempted from obtaining registration.

Example: Manikaran Transporters is a Goods Transport Agency (GTA) engaged exclusively in supplying GTA services liable to tax under reverse charge [since tax is being paid on GTA services @ 5% in the given case]. Thus, it is exempt from registration as it is engaged exclusively in making supplies, tax on which is liable to be paid on reverse charge basis. Further, Manikaran Transporters supplies said service to Diwakar Manufacturing Pvt. Ltd. whose aggregate turnover does not exceed the applicable threshold limit. However, since Diwakar Manufacturing Pvt. Ltd. has to pay tax on GTA services [@ 5%] under reverse charge, it is required to obtain registration mandatorily irrespective of its aggregate turnover.

2. **Persons making inter-State supplies of taxable services up to ₹ 20 lakh:**

- a. The persons making inter-State supplies of taxable services and having an aggregate turnover, to be computed on all India basis, not exceeding an amount of ₹ 20 lakh in a financial year have been exempted from obtaining compulsory registration.
- b. However, the aggregate value of such supplies, computed on all India basis, should not exceed an amount of ₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland.

Example: Dhola & Co., located in Delhi, is engaged in supply of taxable goods⁶ in the neighbouring States of Punjab and Haryana. Its aggregate turnover in current FY is ₹ 10 lakh. Since it is engaged in making inter-State taxable supply of goods, it is required to register mandatorily under GST irrespective of its aggregate turnover. However, if in the above case, Dhola & Co. is engaged in inter- State supply of taxable services instead of

goods, it will be eligible for exemption from registration till its aggregate turnover does not exceed ₹ 20 lakh.

3. Persons making inter-State taxable supplies of notified handicraft goods up to ₹ 20,00,000:

- a. In the following cases, persons making inter-State supplies of goods have been exempted from obtaining registration:
 - i. Persons making inter-State taxable supplies of notified handicraft goods.
 - ii. Persons making inter-State taxable supplies of notified products, when made by craftsmen predominantly by hand even though some machinery may also be used in the process.
- b. Conditions to be fulfilled:
 - i. The aggregate value of such supplies, to be computed on all India basis, does not exceed an amount of ₹ 20 lakh [₹ 10 lakh] in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland] in a FY.
 - ii. Such persons have obtained a PAN and have generated an e-way bill.

Example: Ariza Pvt. Ltd., located in Madhya Pradesh, is a supplier of taxable and notified handicraft goods. It supplies these goods in the neighbouring States of Uttar Pradesh and Orissa. Its aggregate turnover in the month of April is ₹ 15 lakh. Although Ariza Pvt. Ltd. is engaged in making inter-State supplies of taxable goods, it is not liable to obtain registration till its aggregate turnover does not exceed ₹ 20 lakh as it has availed the exemption from registration under Notification No. 03/2018 IT9 .

4. Casual Taxable Persons making inter-State taxable supplies of notified handicraft goods up to ₹ 20 lakh:

- a. A CTP is liable to be registered compulsorily under GST irrespective of the threshold limit.
- b. However, following categories of CTPs have been exempted from obtaining registration:
 - i. CTPs making inter-State taxable supplies of notified handicraft goods, or
 - ii. CTPs making inter-State taxable supplies of notified products, when made by the craftsmen predominantly by hand even though some machinery may also be used in the process.
- c. Conditions to be fulfilled:
 - i. The aggregate value of such supplies, to be computed on all India basis, does not exceed an amount of ₹ 20 lakh [₹ 10 lakh] in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland] in a FY.
 - ii. Such persons have obtained a PAN and have generated an e-way bill.

Liability to register in respect of services provided by the commission agent as per APMC Act for sale/ purchase of agricultural produce

Mr. A sells agricultural produce by utilizing the services of Mr. B who is a commission agent as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State. Mr. B identifies the buyers and sells the agricultural produce on behalf of Mr. A for which he charges a commission from Mr. A.

In cases where the invoice is issued directly by Mr. A to the buyer, the commission agent (Mr. B) does not fall under the category of agent covered under Schedule I.

However, in cases where the invoice is issued by Mr. B (agent) to the buyer, Mr. B is an agent as covered under Para 3 of Schedule I to the CGST Act. Hence, in such cases, the services supplied by commission agent Mr. B on behalf of the principal without consideration shall be deemed to be a supply.

The registration requirements of the commission agents in such cases have been examined and clarified as follows:

1. As we have already seen, as per section 24, a person is liable for mandatory registration if he makes taxable supply of goods or services or both on behalf of other taxable persons.
2. Accordingly, a commission agent will be liable to get mandatorily registered under this provision only when both the following conditions are satisfied:
 - a. the principal should be a taxable person; and
 - b. the supplies made by the commission agent should be taxable.

However, generally, a commission agent under APMC Act makes supplies on behalf of an agriculturist who is not a taxable person if he supplies produce out of cultivation of land. Thus, a commission agent, who is making supplies on behalf of non-taxable person [viz. agriculturist], is not liable for compulsory registration under this provision.

IV. PROCEDURE FOR REGISTRATION [SECTIONS 25, 26 & 27]:

1. DEFINITIONS:

- a. **Casual Taxable Person [Section 2(20)]:** Casual taxable person as 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/UT where he has no fixed place of business. Further, he cannot exercise the option to pay tax under composition levy.

***Example:** Krishnadev & Co., engaged in supplying taxable goods, is registered in Rajasthan. It wishes to participate in a 5 days' business exhibition being held in Delhi. However, it does not have a fixed place of business in Delhi. In this case, Krishnadev & Co. has to obtain registration as a casual taxable person in Delhi.*

- b. **Non-Resident Taxable Person [Section 2(77)]:** Non-Resident Taxable Person as 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. He cannot exercise the option to pay tax under composition levy.

Note: For NRTP, transactions undertaken need not be in the course of furtherance of business.

2. Where and by when to apply for registration? [Section 25(1)]:

Particulars	Where	When
Person who is liable to be registered under section 22 or section 24	In every such State/UT in which he is so liable	within 30 days from the date on which he becomes liable to registration
A casual taxable person or a non-resident taxable person		Date of Grant of registration certificate

Example: Sugam Services Ltd. is engaged in taxable supply of services in Delhi. The turnover of Sugam Services Ltd. exceeded ₹ 20 lakh on 1st November. It is liable to apply for registration by 1st December in Delhi.

3. State-wise registration [Section 25(2) read with rule 11]

a. One registration per State:

- Registration needs to be taken State-wise, i.e., there is no centralized registration under GST.
- A business entity having its branches in multiple States will have to take separate State-wise registration for its branches in different States.
- Further, within a State, an entity with different branches shall be granted single registration wherein it can declare one place as Principal place of business (PPOB) and other branches as Additional places of business (APOB).

b. Separate registration for different places of business within a State/UT may be granted:

- Although a taxpayer having multiple places of business in one State is not mandatorily required to obtain separate registration for each such place of business in the State, he has an option to obtain independent registrations with respect to each such separate place of business.
- However, separate registration for each place of business shall be granted provided all separately registered places of business of such person pay tax on supply of goods/services/both made another registered place of business, of such person and issue a tax invoice/bill of supply, for such supply.
- Separate registration application needs to be filed for each place of business.
- A registered person opting to obtain separate registration for a place of business shall submit a separate application in **Form GST REG 01** in respect of such place of business.
- A person having unit in SEZ/an SEZ developer will have to make a separate application for registration as distinct from his place of business located outside SEZ in the same State/UT. Thus, there may be a case where two units of a tax payer are located in same

State/UT - one in SEZ and another outside SEZ. In that case, separate registrations have to be obtained for each of the two units as separate places of business.

Example:

- *Meethalal & Sons - a supplier in Maharashtra - has three branches in Mumbai, Pune and Mahabaleshwar. Mumbai and Pune branches are engaged in supply of garments and Mahabaleshwar branch engaged in supply of shoes. Either it can obtain single registration for Maharashtra declaring one of the branches as PPOB (let's say Mumbai) and other two branches (Pune and Mahabaleshwar) as APOB or it can obtain separate GST registration for each of the three branches in Mumbai, Pune and Mahabaleshwar as separate places of business.*

In case Meethalal & Sons opts to have separate registrations for its all three branches and Mumbai branch sends some garments [subject to GST] for sale to Pune branch, Mumbai branch must raise a tax invoice and pay tax on such transfer of garments to Pune branch.

- *Suvarna Industries is engaged in manufacturing activities in Uttar Pradesh. It has two manufacturing units in UP - one in SEZ and another outside SEZ. Under GST, one registration per State is required. However, since in this case, one of the two units of Suvarna Industries is located in SEZ, SEZ unit will have to compulsorily make a separate application for registration as a place of business distinct from unit located outside SEZ in the same State.*

c. Voluntary registration [Section 25(3)]:

- i. A person who is not liable to be registered under section 22 or section 24 may get himself registered voluntarily.
- ii. In case of voluntary registration, all provisions of this Act, as are applicable to a registered person, shall apply to voluntarily registered person.
- iii. However, once a person obtains voluntary registration, he has to pay tax even though his aggregate turnover does not exceed ₹ 40 lakh/₹ 20 lakh/₹ 10 lakh, as the case may be.
- iv. Voluntary registration is usually obtained by the business for ensuring seamless flow of credit to their customers.

d. Distinct Persons/ establishments of distinct persons [Section 25(4) & (5)]:

- i. A person who has obtained/ is required to obtain more than one registration, whether in one State/ Union territory or more than one State/Union territory shall, in respect of each such registration, be treated as distinct persons.
- ii. Further, where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons.

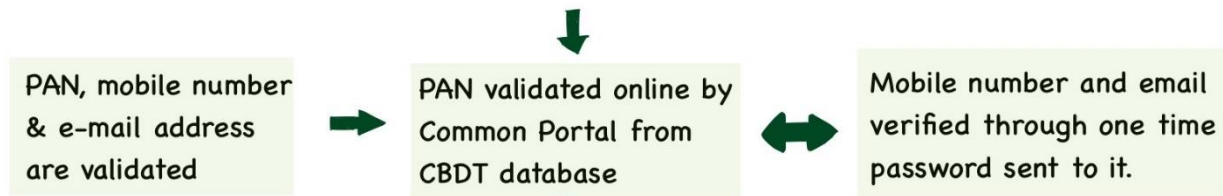
e. PAN must for obtaining registration [Section 25(6) & (7)]:

- i. Permanent Account Number is mandatory to be eligible for grant of registration.
 - ii. A Non-Resident Taxable Person (NRTP) may be granted registration on the basis of other prescribed documents.
- f. **Suo-motu registration by the proper officer [Section 25(8) read with rule 16]:**
- i. Where, pursuant to any survey, enquiry, inspection, search or any other proceedings under the Act, the proper officer finds that a person liable to registration under the Act, has failed to apply for such registration, such officer may register the said person on a temporary basis and issue an order in prescribed form.
 - ii. Such person shall either:
 - Submit an application for registration in prescribed form within 90 days from the date of grant of temporary registration, or
 - File an appeal against such temporary registration.
 - iii. In case an appeal is filed, if the Appellate Authority upholds the liability to registration, application for registration shall be submitted within 30 days from the date of issuance of such order of the Appellate Authority.
- g. **Unique Identity Number (UIN) [Section 25(9) & (10) read with rule 17]:**
- i. Any specialized agency of the United Nations Organization or any Multilateral Financial institution and organization as notified under the United Nations (Privileges and Immunities) Act, 1947, consulate or embassy of foreign countries and any other person notified by the Commissioner, is required to obtain a UIN from the GSTN portal.
 - ii. This UIN is needed for claiming refund of taxes paid on notified supplies of goods and/or services received by them, and for such other purpose as may be notified.
 - iii. UIN granted is a centralized UIN i.e. it shall be applicable to the territory of India.
 - iv. A person having UIN is not registered person and thus, is not a taxable person.
 - v. The proper officer may, upon submission of an application in prescribed form or after filling up the said form or after receiving a recommendation from the Ministry of External Affairs, Government of India, assign a UIN to the said person and issue a certificate in **Form GST REG 06** within 3 working days from the date of submission of application.
- h. **Procedure for registration [Section 25 read with rules 8, 9 & 10]:** Provisions relating to procedure for application for registration, verification of the application and approval & issue of registration certificate are contained in the rules 8, 9 and 10 respectively. However, procedure so laid down will not apply to:
- a. Non-resident taxable person (NRTP) Temporary registration
 - b. A person required to deduct tax at source under section 51
 - c. A person required to collect tax at source under section 52
 - d. A person supplying OIDAR services from a place outside India to a non-taxable online recipient referred to in section 14 of IGST Act.

Procedure for registration

Part I

Every person liable to get registered and person seeking voluntary registration shall, before applying for registration, declare his Permanent Account Number (PAN), mobile number, e-mail address, State/UT in Part A of FORM GST REG-01 on GST Common Portal.



Temporary Reference Number (TRN) is generated and communicated to the applicant on the validated mobile number and e-mail address.

Using TRN, applicant shall electronically submit application in Part B of application form, along with specified documents at the Common Portal.

Part B of application contains the details, such as, constitution of business jurisdiction, option for composition, date of commencement of business, reason to obtain registration, address of PPOB and nature of activity carried out therein details of APOB, details of bank accounts, details of authorized signatory, aadhaar authentication, etc.

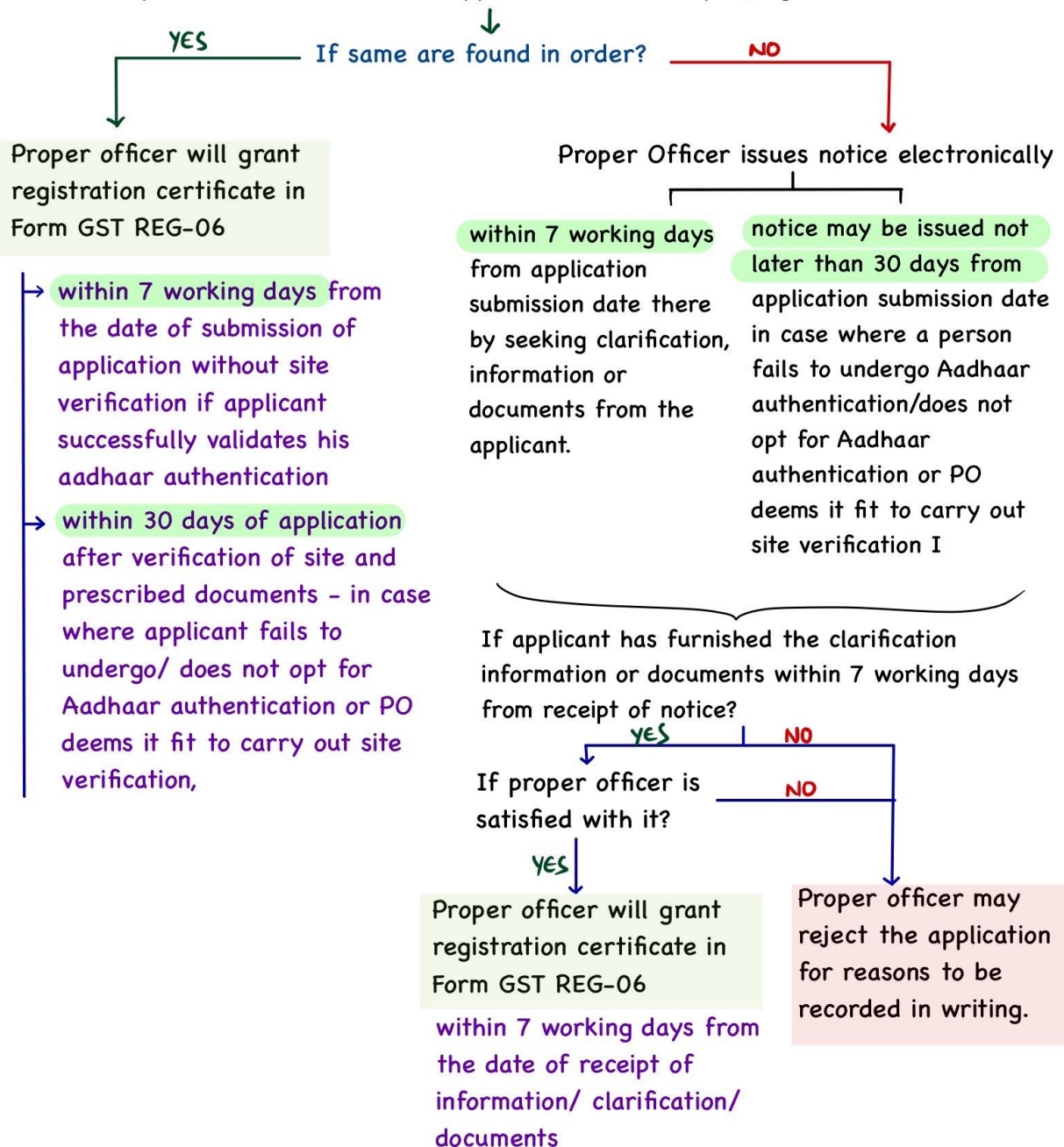
On receipt of such application, an acknowledgement in the prescribed form shall be issued to the applicant electronically. A Causal Taxable Person (CTP) applying for registration gets a TRN for making an advance deposit of tax in his electronic cash ledger and an acknowledgement is issued only after said deposit.

Application shall be forwarded to the Proper Officer.

Procedure for registration

Part II

Proper Officer examines the application and accompanying documents.



- i. **Deemed Approval of Application:** If the proper officer fails to take any action in the following cases within the stipulated time, the application for grant of registration shall be deemed to have been approved:

<p>In case where registration is to be granted after physical verification of the premises of a person</p> <p>i. who fails to undergo the aadhaar authentication/does not opt for aadhaar authentication or</p> <p>ii. since proper officer deems it fit to carry out physical verification of places of business</p>	<p>within a period of 30 days from the date of submission of the application</p>
<p>In case of a person other than those covered above</p>	<p>within a period of 7 working days from the date of submission of the application</p>
<p>In cases where proper officer issues notice seeking clarification, information or documents from the applicant</p>	<p>within 7 working days from the date of receipt of clarification, information or documents furnished by the applicant</p>

Note:

- a. Tax Officer can issue SCN within 7 working days, for grant of registration, in cases of successful Aadhar authentication.
- b. However, in cases when taxpayer do not opt to provide Aadhaar/when Aadhar authentication fails/ PO deems it fit to carry out site verification, he can issue SCN upto 30 days.

V. AADHAAR AUTHENTICATION [SECTION 25(6A), (6B), (6C) & (6D) READ WITH RULES 8, 9 AND 25]:

1. Persons required to undergo Aadhaar authentication:

a. New applicant

- i. Every
 - Individual applicant or
 - An applicant, other than an individual, shall undergo authentication/furnish proof of possession of Aadhaar number, in the manner prescribed in rule 8.
- ii. Rule 8(4A) provides that where an applicant opts for authentication of Aadhaar number, he shall, while submitting an application for registration, undergo authentication of Aadhaar number.
- iii. Said authentication is required to be eligible for grant of registration.
- iv. Date of submission of the application in such cases shall be earlier of:
 - the date of authentication of the Aadhaar number, or
 - 15 days from the submission of the application in Part B of Form GST REG-01.
- v. In case applicant is an individual, he shall undergo authentication of his own Aadhaar number.

vi. In case applicant is other than individual, the authentication will be of Aadhaar number of the Karta, Managing Director, whole time Director, such number of partners, Members of Managing Committee of Association, Board of Trustees, authorised representative, authorised signatory and such other notified class of persons

- b. **Persons already registered:** Every registered person shall undergo authentication/furnish proof of possession of Aadhaar number, in prescribed form and manner and within the prescribed time.

New rule 10B prescribes the manner in which Aadhaar authentication needs to be done by a registered person.

➤ **RULE 10B:**

1. A registered person, who has been issued a certificate of registration under GST, shall undergo authentication of the Aadhaar number of:-

- Proprietor, in the case of proprietorship firm,
- Any partner, in the case of a partnership firm,
- Karta, in the case of a Hindu undivided family,
- Managing director or any whole-time director, in the case of a company,
- Any of the Members of the Managing Committee of an Association of persons or body of individuals or a Society, or
- Trustee in the Board of Trustees, in the case of a Trust;
and of the Authorized Signatory.

2. Aadhar authentication is required in order to be eligible for the following purposes:

- a. for filing of application for revocation of cancellation of registration [Rule 23]
- b. for filing of refund application in Form RFD-01 [Rule 89]
- c. for refund of the IGST paid on goods exported out of India [Rule 96]

2. **Where Aadhaar number is not assigned**

- a. **In case of new applicant:** If an Aadhaar number is not assigned to a new applicant – either
- i. an individual or
 - ii. person/class of persons (other than individual),
- such individual/person/class of persons shall be offered alternate and viable means of identification in the manner specified in rule 9.
- b. **In case of an already registered persons:**
- i. If an Aadhaar number is not assigned to an existing registered person, such person shall be offered alternate and viable means of identification in the prescribed manner.
 - ii. In case of failure to undergo Aadhaar authentication/furnish proof of possession of Aadhaar number/furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of this Act shall apply as if such person does not have a registration.
- c. **Alternative and viable means of identification:**

- i. If Aadhaar number has not been assigned to the person required to undergo authentication of the Aadhaar number, such person shall furnish the following identification documents, namely: -
 - his/ her Aadhaar Enrolment ID slip; and
 - - Bank passbook with photograph; or
 - Voter identity card issued by the Election Commission of India; or
 - Passport; or
 - Driving license issued by the Licensing Authority
- ii. However, once Aadhaar number is allotted to such person, he shall undergo the authentication of Aadhaar number within a period of 30 days of the allotment of the Aadhaar number.

3. **Persons/class of persons exempt from Aadhaar authentication:** Section 25(6D) stipulates that above provisions shall not apply to such person or class of persons or any State or Union territory or part thereof, as may be notified. Following persons have been notified in this regard:

- a. A person who is not a citizen of India
- b. Department or establishment of State Government or Central Government
- c. Local authority
- d. Statutory body
- e. Public Sector Undertaking
- f. A person applying for Unique Identity Number under section 25(9).

4. **How Aadhaar authentication is done?**

a. **New registrants**

- i. While filing the application for registration, the applicant gets an option as to whether he wants to opt for Aadhaar authentication or not.
- ii. If he opts for Aadhaar authentication, GST system sends "authentication link" on the mobile numbers and email ids (mentioned in the registration application) of promotor/partner, and primary authorized signatory which are selected by the applicant.
- iii. On clicking the verification link, a window for Aadhaar authentication will open where they have to enter the Aadhaar Number and the OTP received by them on the mobile number and email id linked with Aadhaar.
- iv. Once Aadhaar authentication has been successfully validated, his application will be deemed to be approved within 7 working days and the registration application submitted by him will not be marked for mandatory site visit, unless the tax official raises a show cause notice within stipulated time.
- v. However, in case the new registrant does not opt for Aadhaar authentication while applying for registration or where his Aadhar authentication fails in validation, registration application will not be deemed approved within 7 working days and it will be marked for mandatory site visit and approval thereafter, by the tax official.

VI. FURNISHING OF BANK ACCOUNT DETAILS [RULE 10A]

1. While filing the application for registration on GST portal, in Part B of the application form, a person is required to furnish the details of his bank account.
2. Rule 10A relaxes this requirement to a limited extent.
3. In pursuance to the same, the registered person is allowed to furnish information with respect to details of bank account, or any other information, as may be required on the common portal in order to comply with any other provision, soon after obtaining certificate of registration and a GSTIN, but not later than
 - a. 45 days from the date of grant of registration or
 - b. the due date of furnishing return,
whichever is earlier.
4. However, this relaxation is not available for those who have been granted registration as TDS deductor/ TCS collector under rule 12 or who have obtained suo-motu registration under rule 16.
5. They are mandatorily required to furnish the bank account details at the time of filing the application for registration.

VII. PHYSICAL VERIFICATION OF BUSINESS PREMISES IN CERTAIN CASES [RULE 25]:

1. Where the proper officer is satisfied that the physical verification of the place of business of a person is required
 - a. due to failure of Aadhaar authentication or
 - b. due to not opting for Aadhaar authentication before the grant of registration, or
 - c. 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.
2. The verification report along with the other documents, including photographs, shall be uploaded in prescribed form on the common portal within a period of 15 working days following the date of such verification.

VIII. ISSUANCE OF REGISTRATION CERTIFICATE [RULE 10]: Where the application for grant of registration has been approved,

1. A certificate of registration [duly signed or verified through EVC by the proper officer] in Form **GST REG-06**
2. showing the PPoB and APoB is made available to the applicant on the Common Portal and
3. A Goods and Services Tax Identification Number (hereinafter referred to as **"GSTIN"**) i.e. the GST registration no. is communicated to applicant,
4. within 3 days after the grant of registration.

GSTIN format

State Code		PAN										Entity Code	Check character	sum

5. Every registered person shall display his registration certificate in a prominent location at his PPoB and at every APoB. Further, his GSTIN also has to be displayed on the name board exhibited at the entry of his PPoB and at every APoB [Rule 18].

IX. EFFECTIVE DATE OF REGISTRATION [RULE 10]:

Where an applicant submits application for registration	Effective date of registration is
within 30 days from the date he becomes liable to registration	the date on which he becomes liable to registration
after 30 days from the date he becomes liable to registration	after 30 days from the date he becomes liable to registration

Example:

- Sugam Services Ltd. is engaged in taxable supply of services in Madhya Pradesh. The turnover of Sugam Services Ltd. exceeded ₹ 20 lakh on 1st November. It is liable to get registered by 1st December [30 days] in the State of Madhya Pradesh. It applies for registration on 28th November and is granted registration certificate on 5th December. The effective date of registration of Sugam Services Ltd. is 1st November.*
- In above example, if Sugam Services Ltd. applies for registration on 3rd December and is granted registration certificate on 10th December. The effective date of registration of Sugam Services Ltd. is 10th December.*

X. SPECIAL PROVISIONS FOR GRANT OF REGISTRATION IN CASE OF NON-RESIDENT TAXABLE PERSON (NRTP) AND CASUAL TAXABLE PERSON (CTP) [SECTIONS 25 & 27 READ WITH RULES 13 & 15]:

- Both CTP and NRTP have to compulsorily get registered under GST irrespective of the threshold limit, at least 5 days prior to commencement of business.
- As per section 25(6), every person must have a PAN to be eligible for registration. Since NRTP will generally not have a PAN of India, he may be granted registration on the basis of other prescribed documents.
- Thus, a NRTP has to submit a self-attested copy of his valid passport along with the application signed by his authorized signatory who is an Indian Resident having valid PAN.
- However, in case of a business entity incorporated or established outside India, the application for registration shall be submitted along with its tax identification number or unique number on the basis of which the entity is identified by the Government of that country or its PAN, if available.
- Form to be submitted:

CTP	Form GST REG 01
NRTP	Different prescribed form [FORM GST REG-09]

6. Period of validity of registration certificate granted to CTP/NRTP:

Registration Certificate granted to CTP/NRTP will be valid for:

- Period specified in the registration application, or

- b. 90 days from the effective date of registration [can be extended further by a period not exceeding 90 days by making an application before the end of the validity of registration granted to him]

whichever is earlier.

7. Advance deposit of tax

- a. At the time of submitting the registration application, CTP/NRTP are required to make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought.
- b. Further, CTP/NRTP will get a Temporary Reference Number (TRN) for making an advance deposit of tax which shall be credited to his electronic cash ledger.
- c. An acknowledgement of receipt of application for registration is issued only after said deposit.
- d. Where extension of time is sought, CTP/NRTP will deposit an additional amount of tax equivalent to the estimated tax liability of such person for the period for which the extension is sought.

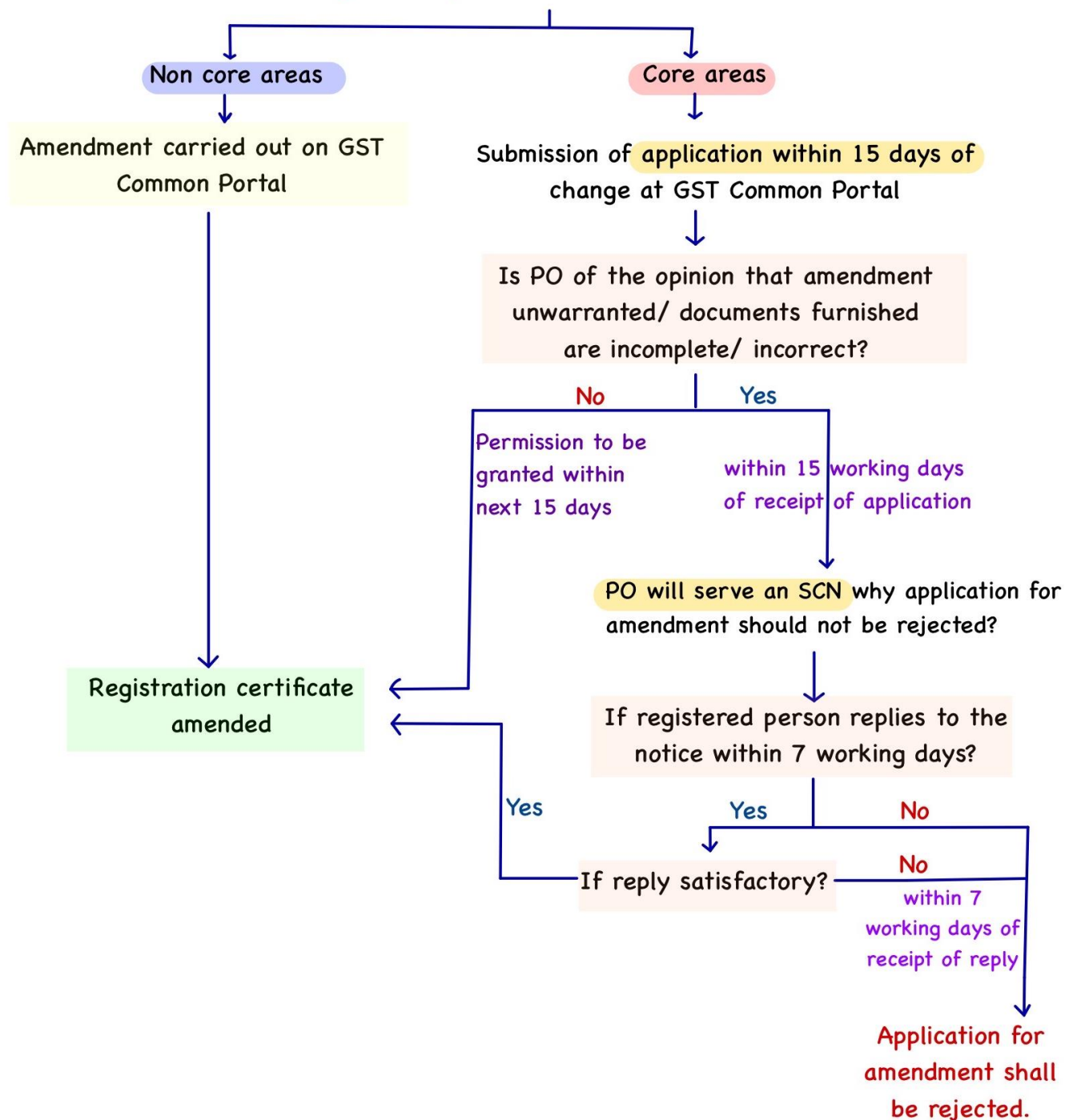
XI. DEEMED REGISTRATION [SEC 26]:

- 1. Registration under GST is not tax specific, which means that there is single registration for all the taxes i.e. CGST, SGST/UTGST, IGST and cesses.
- 2. Grant of registration/UIN under any SGST Act/ UTGST Act is deemed to be registration/UIN granted under CGST Act provided application for registration has not been rejected under CGST Act.
- 3. Further, rejection of application for registration/UIN under SGST Act/UTGST Act is deemed to be rejection of application for registration under CGST Act.

XII. AMENDMENT OF REGISTRATION [SECTION 28]:

- 1. There are two categories of details in registration application:
 - a. **Core fields:**
 - i. Core fields are name of the business, (legal name) if there is no change in PAN, addition / deletion of stakeholders, principal place of business (other than change in State) or additional place of business (other than change in State).
 - ii. In case the change is in core information in the registration application, the taxable person will apply for amendment within 15 days of the event necessitating the change.
 - iii. The proper officer, then, will approve the amendment within next 15 days.
 - b. **Non-Core Fields:**
 - i. All other fields are non-core fields like name of day-to-day functionaries, e-mail ids, mobile numbers, etc
 - ii. For changes in non-core information, no approval of the proper officer is required, and the amendment can be affected by the taxable person on his own on the common portal.

Procedure for amendment Registered person/ UIN holder



If the proper officer fails to take any action,-

- a. within a period of 15 working days from the date of submission of the application, or
- b. within a period of 7 working days from the date of the receipt of the reply to the show cause notice, the certificate of registration shall stand amended to the extent applied for and the amended certificate shall be made available to the registered person on the common portal.

Example: Varun Enterprises, a sole proprietorship firm, is engaged in supply of electrical goods in Delhi. The firm is registered under GST. Varun is the proprietor of the firm. He wishes to expand his

business and his friend – Arun - approaches him to provide additional capital for his business if he is made a partner in Varun's business. Varun agrees and changes the constitution of his business and form a partnership firm – Varun Arun & Co. Since the change in constitution of business from sole proprietorship firm to partnership firm results in change in PAN of the registered person, the partnership firm has to apply for fresh registration. The reason for the same is that GSTIN is PAN based. Any change in PAN would warrant a new registration.

XIII. CANCELLATION OF REGISTRATION [SEC 29]:

1. Circumstances when the registration can be cancelled either suo motu by proper officer or on an application of the registered person or his legal heirs (in case death of such person) [Sec 29(1)]:

- a. Business discontinued
- b. Transferred fully for any reason including
 - i. Death of the proprietor
 - ii. Amalgamated with other legal entity
 - iii. Demerged or
 - iv. Otherwise disposed of
- c. Change in the constitution of the business
- d. Taxable person who is no longer liable to be registered under section 22 or section 24 or who intends to optout of the voluntary registration.

2. A person to whom a UIN has been granted under rule 17 cannot apply for cancellation of registration.

3. Circumstances when the proper officer can cancel registration on his own [Sec 29(2)]:

In the following cases, registration can be cancelled by the proper officer from such date, including any retrospective date, as he may deem fit:

- a. **Prescribed contraventions which make a registered person liable to cancellation of registration [Rule 21]:** The registered person:
 - a) Does not conduct any business from the declared place of business, or
 - b) Issues invoice/bill without supply of goods/services in violation of the provisions of this Act, or the rules made thereunder.
 - c) Violates the provisions of section 171. Section 171 contains provisions relating to anti-profiteering measure (*will be discussed at CA FINAL*).
 - d) Violates the provision of rule 10A (discussed earlier in this chapter).
 - e) Avails input tax credit in violation of the provisions of section 16 of the CGST Act or the rules made thereunder; or
 - f) Furnishes the details of outward supplies in Form GSTR-1 under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods; or
 - g) Violates the provision of rule 86B.

- h) being a registered person required to file return under section 39(1)(GSTR -3B) for each month or part thereof (i.e. monthly return filer), has not furnished returns for a continuous period of 6 months.
 - i) being a registered person required to file return under proviso to section 39(1)(GSTR-3B under QRMP scheme) for each quarter or part thereof (i.e. quarterly return filer), has not furnished returns for a continuous period of 2 tax periods.
- b. **A person paying tax under section 10 (Composition Scheme) has not furnished *the return for a financial year beyond 3 months from the due date of furnishing the said return*;**
 - c. **Any registered person, other than a person specified in clause (b), has not furnished returns for *such continuous tax period as may be prescribed*.**
 - d. **Voluntarily registered person has not commenced the business within 6 months from the date of registration.**
 - e. **Registration was obtained by means of fraud, wilful misstatement or suppression of facts.**
4. **Procedure for cancellation of registration**
- a. **Voluntary cancellation by registered person [RULE 20]**
 - i. A registered person seeking cancellation of registration shall electronically submit the application for cancellation of registration in prescribed form within 30 days of occurrence of the event warranting cancellation.
 - ii. He is required to furnish in the application the details of:
 - inputs held in stock or
 - inputs contained in semi-finished/finished goods held in stock and
 - inputs of capital goods held in stock on the date from which cancellation of registration is sought,
 - liability thereon
 - details of the payment, if any, made against such liability and
 - may furnish relevant documents thereof
 - iii. Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered, proper officer shall issue the order of cancellation of registration within 30 days from the date of submission of application for cancellation.
 - b. **Suo-motu cancellation by the Department [RULE 22]:**
 - i. Where the proper officer cancels the registration suo-motu, he shall not cancel the same without giving a show cause notice and without giving a reasonable opportunity of being heard, to the registered person.
 - ii. The reply to such show cause notice (SCN) has to be submitted within 7 days of service of notice.

- iii. If reply to SCN is satisfactory, proper officer shall drop the proceedings and pass an order in prescribed form.
 - iv. However, where the person instead of replying to the SCN served for failure to furnish returns for a continuous period of 6 months (3 months in case of composition scheme supplier) furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order.
 - v. Where registration of a person is liable to be cancelled, proper officer shall issue the order of cancellation of registration within 30 days from the date of reply to SCN.
- c. **Effective date of cancellation:** The cancellation of registration shall be effective from a date to be determined by the proper officer and mentioned in the cancellation order. He will direct the taxable person to pay arrears of any tax, interest or penalty including the amount liable to be paid under section 29(5).
- d. **Intimation of Cancellation:** Once registration is cancelled by the tax authority, the taxpayer will be intimated about the same via sms and email. Order for cancellation of registration will be issued and intimated to the primary authorized signatory by email and sms.
- e. Taxpayer would not be allowed by the Common portal to file return for the period after date of cancellation mentioned in the cancellation order. However, he can submit returns of the earlier period (i.e. for the period before date of cancellation mentioned in the cancellation order for which registration was active).
5. **Liability to pay taxes [Sec 29(3)]:** The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.
- Example:** The proper officer cancelled the registration of Naman Associates on 11th October. The tax dues of Naman Associates for July-September quarter (determined by the proper officer on 16th December) are ₹ 50,000. The cancellation of registration of Naman Associates shall have no effect on his liability of tax dues of ₹ 50,000 even though the tax dues are determined after the cancellation of registration.*
6. **Deemed Cancellation [Sec 29(4)]:** The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.
7. **Amount payable on cancellation of registration [Section 29(5) & (6)]:**
- a. A registered person whose registration is cancelled will have to debit the electronic credit or cash ledger by an amount equivalent to:
 - i. Input tax credit (ITC) in respect of:
 - stock of inputs and inputs contained in semi-finished/finished goods' stock or

- capital goods or plant and machinery on the day immediately preceding the date of cancellation, or
 - ii. The output tax payable on such goods
whichever is higher.
- b. However, in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the
- i. input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or
 - ii. the tax on the transaction value of such capital goods or plant and machinery under section 15,
whichever is higher.
- c. **The manner of determination of amount of credit to be reversed is prescribed under RULE 44:** The amount of credit to be reversed in respect of inputs, Capital goods/Plant and Machinery shall be computed as per Rule 44 as follows:
- a. **Amount of credit to be reversed in respect of INPUTS:** ITC on inputs computed proportionately on the basis of corresponding invoices on which credit had been availed on such inputs.
Note: If tax invoices are not available, the ITC to be reversed will be based on the prevailing market price (MP) of such goods on the date of cancellation.
 - b. **Amount of credit to be reversed in respect of CAPITAL GOODS OR PLANT & MACHINERY:** ITC involved in the remaining useful life in months of the capital goods computed on pro-rata basis, taking the useful life as 5 years.
- Example:*
- Capital goods have been in use for 4 years, 6 month and 15 days.*
- The useful remaining life in months = 5 months ignoring a part of the month.*
- ITC taken on such capital goods = C*
- ITC attributable to remaining useful life = $C \times 5/60$*

8. Suspension of registration [Rule 21A]:

- (1) **Where registered person has applied for cancellation of registration:** Where a registered person has applied for cancellation of registration, the registration shall be deemed to be suspended from:
- i. the date of submission of the application or
 - ii. the date from which the cancellation is sought,
whichever is later, pending the completion of proceedings for cancellation of registration.
- (2) **Where cancellation of the registration has been initiated by the Department on its own motion:** Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled, he may suspend the registration of such person with effect from a date to be determined by him, pending the completion of the proceedings for cancellation of registration.

(2A) Where, a comparison of the returns furnished by a registered person under section 39 with:

- the details of outward supplies furnished in Form GSTR-1; or
- the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their Form GSTR-1,

or such other analysis, as may be carried out on the recommendations of the Council, show that

- there are significant differences or anomalies
- indicating contravention of the provisions of the CGST Act or the rules made thereunder,
- leading to cancellation of registration of the said person,
- his registration shall be suspended.
- Said person shall be intimated in prescribed form by sending a communication to his e-mail address provided at the time of registration or as amended from time to time.
- In this intimation for suspension and notice for cancellation of registration, the said differences and anomalies are highlighted and said person is asked to explain, within a period of 30 days, as to why his registration shall not be cancelled.

(3) A registered person, whose registration has been suspended as above:

- a. shall not make any taxable supply during the period of suspension and
- b. shall not be required to furnish any return under section 39.

Explanation: For the purposes of this sub-rule, the expression “shall not make any taxable supply” shall mean that the registered person shall not issue a tax invoice and, accordingly, not charge tax on supplies made by him during the period of suspension.”

(3A) A registered person, whose registration has been suspended under sub-rule (2) or sub-rule (2A), shall not be granted any refund under section 54, during the period of suspension of his registration.

(4) The suspension of registration under sub-rule (1) or sub-rule (2) or sub-rule (2A) shall be deemed to be revoked upon completion of the cancellation proceedings by the proper officer under rule 22. Such revocation shall be effective from the date on which the suspension had come into effect.

Provided that The suspension of registration may be revoked by the proper officer, anytime during the pendency of the proceedings for cancellation, if he deems fit.

Provided further that where the registration has been suspended under sub-rule (2A) for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29 and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be revoked upon furnishing of all the pending returns.

- (5) Where any order having the effect of revocation of suspension of registration has been passed, the provisions of section 31(3)(a) [revised tax invoices] and section 40 [first return] in respect of the supplies made during the period of suspension and the procedure specified therein shall apply.

XIV. REVOCATION OF CANCELLATION OF REGISTRATION [SECTION 30 READ WITH RULE 23]:

1. **Sec 30(1):** Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, **may subject to provisions of rule 10B**, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order.

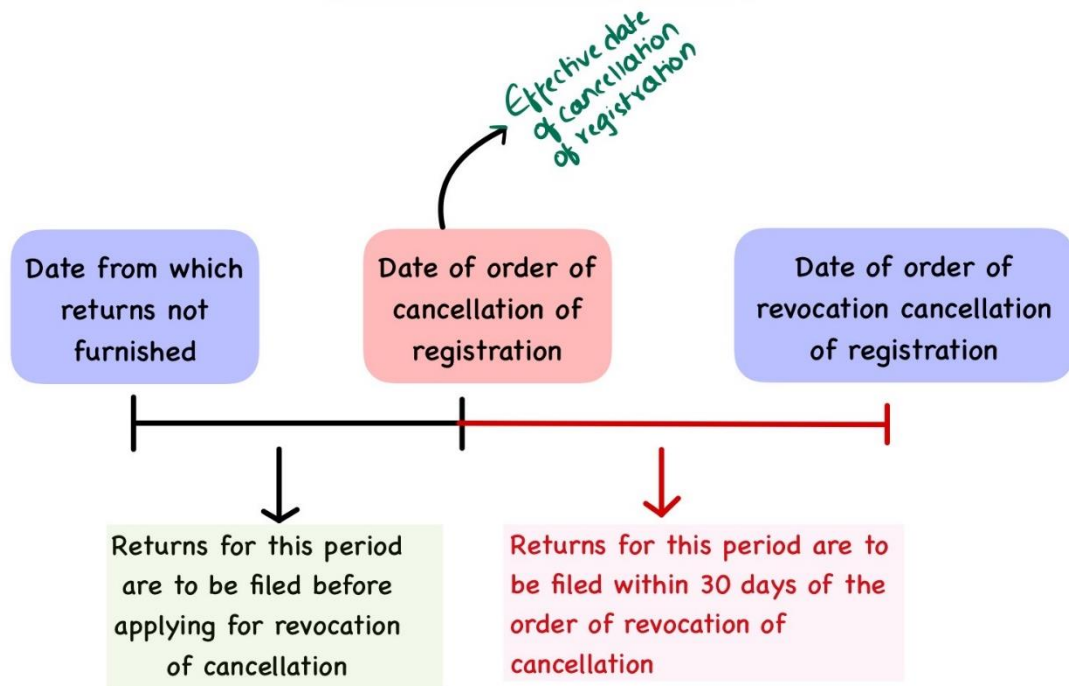
Provided that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended,—

- a. By the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days;
 - b. By the Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause (a).
2. **Sec 30(2):**
- If the proper officer is satisfied that there are sufficient grounds for revocation of cancellation, he may revoke the cancellation of registration, by an order within 30 days of receipt of application and communicate the same to applicant.
 - Otherwise, he may reject the revocation application.
 - However, before rejecting the application, he has to first issue SCN to the applicant who shall furnish the clarification within 7 working days of service of SCN.
 - The proper officer shall dispose the application (accept/reject the same) within 30 days of receipt of clarification.
3. **Sec 30(3):** The revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.
4. **Where registration was cancelled for failure of registered person to furnish returns:**
- a. Where registration was cancelled for failure of registered person to furnish returns, before applying for revocation, the person has to make good the defaults, i.e. the person needs to file such returns and pay any amount due as tax along with any amount payable towards interest, penalty and late fee in respect of the said returns.
 - b. **Where the registration has been cancelled with effect from the date of order of cancellation of registration:**
 - Where the registration is cancelled with effect from the date of order of cancellation of registration, person applying for revocation of cancellation has to furnish all returns due till the date of such cancellation before the application for revocation can be filed

and has to pay any amount due as tax, in terms of such returns along with any amount payable towards interest, penalties or late fee payable in respect of the said returns.

- All returns due for the period from the date of order of cancellation till the date of order of revocation of cancellation of registration have to be furnished within a period of 30 days from the date of the order of revocation.

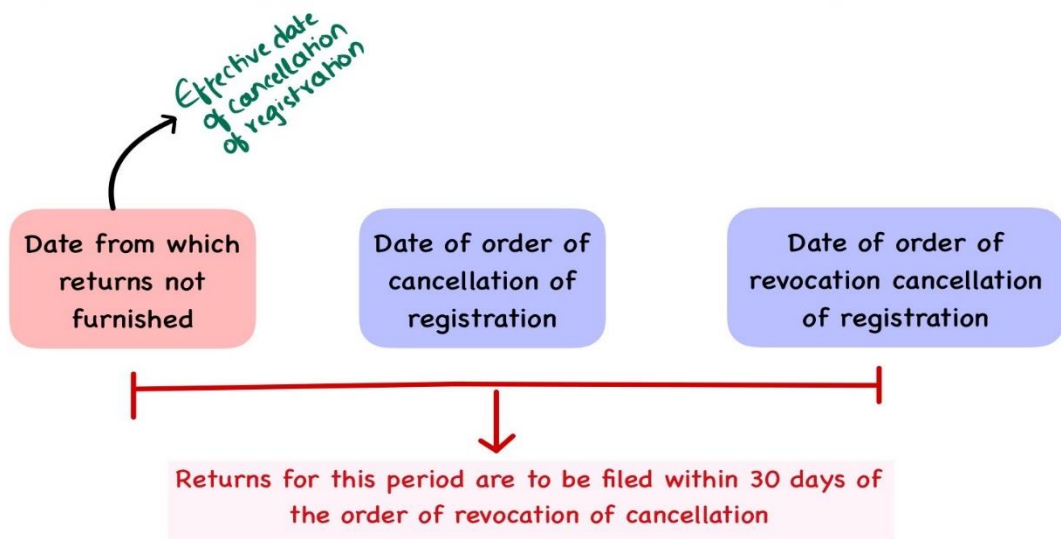
Where the registration has been cancelled with effect from date of order of cancellation of registration



c. **Where the registration has been cancelled with retrospective effect:**

- Where the registration has been cancelled with retrospective effect, it is not possible to furnish the returns before filing the application for revocation of cancellation of registration.
- In that case, the application for revocation of cancellation of registration is allowed to be filed, subject to the condition that all returns relating to the period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration shall be filed within a period of 30 days from the date of order of such revocation of cancellation of registration.

Where the registration has been cancelled with retrospective effect



5. UIN Holders (i.e. UN Bodies, Embassies and Other Notified Persons), GST Practitioner cannot apply for revocation of cancelled registration.
6. In case the registration is cancelled on the request of the taxpayer or his legal heir, one cannot apply for revocation of cancelled registration.

QUESTIONS

1. Examine, with reason, whether registration is required, under CGST Act, in the following independent cases:

- (i) Aadhav Computers of Gujarat is providing computer maintenance service. Aggregate turnover of Aadhav Computers is ₹ 15 lakh which comprises both inter-State and intra-State supply.
- (ii) Soft Wings of West Bengal, exclusively trading in garments, supplies its taxable goods in various States of India from its outlet in West Bengal. Aggregate turnover of Soft Wings is ₹ 35 lakh.

Answer:

- (i) Registration is compulsory for suppliers engaged in inter-State supply. However, as per Notification No. 10/2017 IT dated 13.10.2017, threshold exemption of ₹ 20 lakh [₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland] is available in case of inter-State supply of taxable services. Therefore, Aadhav Computers (aggregate turnover ₹ 15 lakh) is not required to obtain registration even though it is engaged in inter-State supply of taxable services.
- (ii) The threshold limit for registration in the State of West Bengal for the persons engaged exclusively in supply of goods, is ₹ 40 lakh. However, registration is compulsory if the supplier is engaged inter-State supply of goods irrespective of the quantum of aggregate turnover. The threshold exemption is not available in case of inter-State supply of taxable goods. Thus, Soft Wings is required to obtain registration.

2. Examine whether the liability to register compulsorily under section 24 arises in each of the independent cases mentioned below:

- (1) Meenu, a supplier in Maharashtra, is exclusively engaged in supply of potatoes produced out of cultivation of her own land, within Maharashtra and also outside Maharashtra.
- (2) Jinu Oils, Gujarat, is engaged in supplying machine oil as well as petrol. Further, it provides services of refining of oil to customers. Total turnover of supply of machine oil is ₹ 10 lakh, supply of petrol is ₹ 5 lakh and supply of services is ₹ 6 lakh.
- (3) Tilu is working as an agent, he is supplying taxable goods as an agent of Tikun (who is registered taxable person) and its aggregate turnover does not exceed ₹ 20 lakh during the financial year.

Answer:

- (1) Section 24 provides that persons making any inter-State taxable supply of goods are required to obtain registration compulsorily under GST laws irrespective of the quantum of aggregate turnover. However, as per section 23, an agriculturist, to the extent of supply of produce out of cultivation of land, is not liable to registration. Meenu is exclusively engaged in cultivation and supply of potatoes. Thus, she is not liable to registration irrespective of the fact that she is engaged in making inter-State supply of goods. Further, Meenu will not be liable to registration, in the given case, even if her turnover exceeds the threshold limit.
- (2) Section 24 specifies the categories of persons who are required to be mandatorily registered under GST irrespective of the quantum of their aggregate turnover. In the given case, Jinu Oils does

not fall in any of the specified categories. Therefore, it is not required to obtain registration compulsorily under GST. However, as per section 22 read with Notification No. 10/2019 CT dated 07.03.2019, a supplier is liable to be registered in the State/Union territory from where he makes a taxable supply of goods and/or services, if his aggregate turnover in a financial year exceeds the threshold limit. The threshold limit for a person making supply of both goods and services is ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland and ₹ 20 lakh for the rest of India. Thus, the applicable threshold limit for the State of Gujarat is ₹ 20 lakh for supply of both goods and services. Further, aggregate turnover includes exempted turnover of goods or services. Accordingly, Jinu Oils is liable obtain registration since its aggregate turnover [₹ 21 lakh (including turnover of exempt supply of petrol)] exceeds the threshold limit of ₹ 20 lakh.

(3) Section 24 provides that persons who make taxable supply of goods and/or services on behalf of other taxable persons whether as an agent or otherwise are required to obtain registration compulsorily under GST laws irrespective of the quantum of aggregate turnover. Therefore, Tilu will be mandatorily required to obtain registration.

3. Determine the effective date of registration under CGST Act in respect of the following cases with proper explanation:

- (i) **The aggregate turnover of Varun Industries of Mumbai has exceeded ₹ 40 lakh on 1st August. Varun Industries manufactures LED TVs in Mumbai and sells them in Pune. It submits the application for registration on 20th August. Registration certificate granted on 25th August.**
- (ii) **Sweta InfoTech Services is the provider of internet services in Pune. Its aggregate turnover exceeds ₹ 20 lakh on 25th September. It submits the application for registration on 27th October. Registration certificate is granted on 5th November.**

Answer:

As per section 22 read with Notification No. 10/2019 CT dated 07.03.2019, a supplier is liable to be registered in the State/Union territory from where he makes a taxable supply of goods and/or services, if his aggregate turnover in a financial year exceeds the threshold limit. The threshold limit for a person making exclusive intra-State taxable supplies of goods is as under:-

- (a) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.
- (b) ₹ 20 lakh for the States of States of Arunachal Pradesh, Meghalaya, Puducherry, Sikkim, Telangana and Uttarakhand.
- (c) ₹ 40 lakh for rest of India. However, the higher threshold limit of ₹ 40 lakh is not available to persons engaged in making supplies of ice cream and other edible ice, whether or not containing cocoa, Pan masala and Tobacco and manufactured tobacco substitutes.

The threshold limit for a person making exclusive taxable supply of services or supply of both goods and services is as under:-

- (a) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.
- (b) ₹ 20 lakh for the rest of India.

As per rule 10, where a person submits the application for registration within 30 days of becoming liable for registration, the effective date of registration is the date on which the person becomes

liable to registration; otherwise it is the date of grant of registration. In the light of the above provisions, in the given cases, the applicable turnover limit for registration will be ₹ 40 lakh and ₹ 20 lakh respectively in case (i) and (ii).

- (i) Since Varun Industries applied for registration within 30 days of becoming liable to registration, the effective date of registration is 1st August.
- (ii) Since Sweta InfoTech Services applied for registration after the expiry of 30 days from the date of becoming liable to registration, the effective date of registration is 5th November.

4. Determine the effective date of registration in following cases:

- (a) The aggregate turnover of Dhampur Footwear Industries of Delhi has exceeded the applicable threshold limit of ₹ 40 lakh on 1st September. It submits the application for registration on 20th September. Registration certificate is granted to it on 25th September.**
- (b) Mehta Teleservices is an architect in Lucknow. Its aggregate turnover exceeds ₹ 20 lakh on 25th October. It submits the application for registration on 27th November. Registration certificate is granted to it on 5th December.**

Answer:

- (a) Every supplier becomes liable to registration if his turnover exceeds the applicable threshold limit [₹ 40 lakh in this case] in a financial year [Section 22 read with Notification No. 10/2019 CT dated 07.03.2019]. Since in the given case, the turnover of Dhampur Industries exceeded ₹ 40 lakh on 1st September, it becomes liable to registration on said date.
Further, since the application for registration has been submitted within 30 days from such date, the registration shall be effective from the date on which the person becomes liable to registration [Section 25 read with rule 10]. Therefore, the effective date of registration is 1st September.
- (b) Since in the given case, the turnover of Mehta Teleservices exceeds the applicable threshold limit [₹ 20 lakh] on 25th October, it becomes liable to registration on said date. Further, since the application for registration has been submitted after 30 days from the date such person becomes liable to registration, the registration shall be effective from the date of grant of registration. Therefore, the effective date of registration is 5th December.

5. In order to be eligible for grant of registration, a person must have a Permanent Account Number issued under the Income- tax Act, 1961. State one exception to it.

Answer: A Permanent Account Number is mandatory to be eligible for grant of registration. One exception to this is a non-resident taxable person. A non-resident taxable person may be granted registration on the basis of other prescribed documents instead of PAN. He has to submit a self-attested copy of his valid passport along with the application signed by his authorized signatory who is an Indian Resident having valid PAN and application will be submitted in a different prescribed form [Section 25(6) & (7)].

6. State which of the following suppliers are liable to be registered:

- (a) Agent supplying taxable goods on behalf of some other taxable person and its aggregate turnover does not exceed the applicable threshold limit during the financial year.**

(b) An agriculturist who is only engaged in supply of produce out of cultivation of land and its aggregate turnover exceeds the applicable threshold limit during the financial year.

Answer:

- (a) Section 22 stipulates that every supplier becomes liable to registration if his turnover exceeds the applicable threshold limit in a financial year. However, as per section 24, a person making taxable supply of goods/services or both on behalf of other taxable persons whether as an agent or not is liable to be compulsorily registered even if its aggregate turnover does not exceed the applicable threshold limit during the financial year.
- (b) As per section 23, an agriculturist who is only engaged in supply of produce out of cultivation of land is not required to obtain registration even if his turnover exceeded the applicable threshold limit for registration.

7. Pure Oils, Delhi has supplied machine oil and high-speed diesel in the month of April as per the details given in table below. Pure Oils is not yet registered.

- (i) **Supply of machine oil in Delhi - 15,00,000**
- (ii) **Supply of high speed diesel in Delhi - 10,00,000**
- (iii) **Supply of machine oil made in Punjab by Pure Oils from its branch located in Punjab - 10,00,000**

All the figures above are excluding GST Determine whether Pure Oils is liable for registration.

Answer:

The aggregate turnover of Pure Oils for the month of April is computed as under:

S. No.	Particulars	Amount (in ₹)
(i)	Supply of machine oils in Delhi	15,00,000
(ii)	Add: Supply of high-speed diesel in Delhi	10,00,000
(iii)	Add: Supply of machine oil made by Pure Oils from its branch located in Punjab	10,00,000
	Aggregate Turnover	35,00,000

Pure Oils is making exclusive supply of goods and hence the threshold limit for registration would be ₹ 40,00,000. Since the aggregate turnover does not exceed ₹ 40,00,000, Pure Oils is not liable to be registered.

8. What will be your answer if in question 8 above, in S.No. (ii), Pure Oils supplies the high speed diesel in Delhi in the capacity of an agent of Mixed Oils Ltd.?

Answer:

In case Pure Oils makes the supply in capacity of an agent of Mixed Oils Ltd:

Section 24 provides that an agent who is engaged in making taxable supplying of goods on behalf of other taxable persons, shall be liable to obtain registration irrespective of the threshold turnover limit. However, in the present case, if Pure Oils supply high speed diesel on behalf of Mixed Oil Ltd. in Delhi as its agent, it shall still not be liable to obtain registration in Delhi since section 24 comes into play only when agent is making taxable supply of goods on behalf of principal whereas in the given case, Pure Oils is supplying non-taxable goods on behalf of Mixed Oils Ltd.

9. Examine whether the supplier of goods is liable to get registered in the following independent cases:-

- (i) **Raghav of Assam is exclusively engaged in intra-State taxable supply of readymade garments. His turnover in the current financial year (FY) from Assam showroom is ₹ 33 lakh. He has another showroom in Tripura with a turnover of ₹ 11 lakh in the current FY.**
- (ii) **Pulkit of Panjim, Goa is exclusively engaged in intra-State taxable supply of shoes. His aggregate turnover in the current financial year is ₹ 22 lakh.**
- (iii) **Harshit of Himachal Pradesh is exclusively engaged in intra-State supply of pan masala. His aggregate turnover in the current financial year is ₹ 24 lakh.**

Answer:

As per section 22 read with Notification No. 10/2019 CT dated 07.03.2019, a supplier is liable to be registered in the State/Union territory from where he makes a taxable supply of goods and/or services, if his aggregate turnover in a financial year exceeds the threshold limit. The threshold limit for a person making exclusive intra-State taxable supplies of goods is as under:-

- (a) ₹ 10 lakh for the Special Category States of Mizoram, Tripura, Manipur and Nagaland.
- (b) ₹ 20 lakh for the States, namely, States of Arunachal Pradesh, Meghalaya, Puducherry, Sikkim, Telangana and Uttarakhand.
- (c) ₹ 40 lakh for rest of India except persons engaged in making supplies of ice cream and other edible ice, whether or not containing cocoa, Pan masala and Tobacco and manufactured tobacco substitutes.

In the light of the afore-mentioned provisions, the answer to the independent cases is as under:-

- (i) Raghav is eligible for higher threshold limit of turnover for registration, i.e. ₹ 40 lakh as he is exclusively engaged in intra-State supply of goods. However, since Raghav is engaged in supplying readymade garments from a Special Category State i.e. Tripura, the threshold limit gets reduced to ₹ 10 lakh. Thus, Raghav is liable to get registered under GST as his turnover exceeds ₹10 lakh. Further, he is required to obtain registration in both Assam and Tripura as he is making taxable supplies from both the States.
- (ii) The applicable threshold limit for registration for Pulkit in the given case is ₹ 40 lakh as he is exclusively engaged in intra-State taxable supply of goods in Goa. Thus, he is not liable to get registered under GST as his turnover is less than the threshold limit.
- (iii) Harshit being exclusively engaged in supply of pan masala is not eligible for higher threshold limit of ₹40 lakh. The applicable threshold limit for registration in this case is ₹20 lakh. Thus, Harshit is liable to get registered under GST.

10. Examine whether the supplier is liable to get registered in the following independent cases:-

- (i) **Ankit of Assam is exclusively engaged in intra-State supply of taxable services. His aggregate turnover in the current financial year is ₹ 25 lakh.**
- (ii) **Sanchit of Assam is engaged in intra-State supply of both taxable goods and services. His aggregate turnover in the current financial year is ₹ 30 lakh.**

Answer:

As per section 22 read with Notification No. 10/2019 CT dated 07.03.2019, a supplier is liable to be registered in the State/Union territory from where he makes a taxable supply of goods and/or services, if his aggregate turnover in a financial year exceeds the threshold limit. The threshold limit for a person making exclusive taxable supply of services or supply of both goods and services is as under:-

- (a) ₹ 10 lakh for the Special Category States of Mizoram, Tripura, Manipur and Nagaland.
(b) ₹ 20 lakh for the rest of India.

- (i) Though Ankit is dealing in Assam, he is not entitled for higher threshold limit for registration as the same is applicable only in case of exclusively supply of goods and he is exclusively engaged in providing services. Thus, the applicable threshold limit for registration in this case is ₹ 20 lakh and hence, Ankit is liable to get registered under GST.
- (ii) Since Sanchit is engaged in supply of both taxable goods and services, the applicable threshold limit for registration in his case is ₹ 20 lakh. Thus, Sanchit is liable to get registered under GST as his turnover is more than the threshold limit.

11. What are the advantage of taking registration in GST?

Answer:

Registration will confer following advantages to the business:

- Legally recognized as supplier of goods or services.
- Proper accounting of taxes paid on the input goods or services which can be utilized for payment of GST due on supply of goods or services or both by the business.
- Legally authorized to collect tax from his purchasers and pass on the credit of the taxes paid on the goods or services supplied to purchasers or recipients.
- Become eligible to avail various other benefits and privileges rendered under the GST laws.

12. Can a person without GST registration collect GST and claim ITC?

Answer:

No, a person without GST registration can neither collect GST from his customers nor can claim any input tax credit of GST paid by him.

13. If a person is making taxable supplies from different States, with the same PAN number, can he operate with a single registration?

Answer:

No. Every person who is liable to take a registration will have to get registered separately for each of the States where he has a business operation (and making taxable supplies) provided his aggregate turnover exceeds applicable threshold limit.

14. Can a person having multiple places of business in a State obtain separate registrations for each place of business?

Answer:

Yes. In terms of the proviso to sub-section (2) of section 25, a person having multiple places of business in a State may obtain a separate registration for each place of business, subject to such conditions as may be prescribed.

15. Is there a provision for a person to get himself voluntarily registered though he may not be liable to pay GST?

Answer:

Yes. In terms of sub-section (3) of section 25, a person, though not liable to be registered under sections 22 or 24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered taxable person, shall apply to such person.

16. Can the Department, through the proper officer, suo-moto proceed to register a person under GST?

Answer:

Yes. In terms of sub-section (8) of section 25, where a person who is liable to be registered under GST law fails to obtain registration, the proper officer may, without prejudice to any action which may be taken under CGST Act, or under any other law for the time being in force, proceed to register such person in the manner as is prescribed in the CGST Rules.

17. Whether the registration granted to any person is permanent?

Answer:

Yes, the registration certificate once granted is permanent unless surrendered, cancelled, suspended or revoked.

18. Is it necessary for the UN bodies to get registration under GST?

Answer:

In terms of section 25(9), all notified UN bodies, Consulate or Embassy of foreign countries and any other class of persons so notified would be required to obtain a unique identification number (UIN) from the GST portal. The structure of the said ID would be uniform across the States in conformity with GSTIN structure and the same will be common for the Centre and the States. This UIN will be needed for claiming refund of taxes paid on notified supplies of goods and services received by them, and for any other purpose as may be notified.

19. What is the responsibility of the taxable person making supplies to UN bodies?

Answer:

The taxable supplier making supplies to UN bodies is expected to mention the UIN on the invoices and treat such supplies as supplies to another registered person (B2B).

20. What is the validity period of the registration certificate issued to a casual taxable person and non- resident taxable person?

Answer:

In terms of section 27(1) read with proviso thereto, the certificate of registration issued to a “casual taxable person” or a “non-resident taxable person” shall be valid for a period specified in the application for registration or 90 days from the effective date of registration, whichever is earlier. However, the proper officer, at the request of the said taxable person, may extend the validity of the aforesaid period of 90 days by a further period not exceeding 90 days.

21. What happens when the registration is obtained by means of willful misstatement, fraud or suppression of facts?

Answer:

In such cases, the registration may be cancelled with retrospective effect by the proper officer [Section 29(2)(e)]

22. Is there an option to take centralized registration for services under GST Law?

Answer:

No, the tax payer has to take separate registration in every State from where he makes taxable supply of services.

23. What could be the liabilities (in so far as registration is concerned) on transfer of a business?

Answer:

The transferee or the successor shall be liable to be registered with effect from such transfer or succession and he will have to obtain a fresh registration with effect from the date of such transfer or succession [Section 22(3)].

24. At the time of registration, will the assessee have to declare all his places of business?

Answer:

Yes. The principal place of business and place of business have been separately defined under section 2(89) & 2(85) respectively. The taxpayer will have to declare the principal place of business as well as the details of additional places of business in the registration form.

25. Does cancellation of registration impose any tax obligations on the person whose registration is so cancelled?

Answer:

Yes, as per section 29(5), every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher.

6.COMPOSITION LEVY

I. OBJECTIVE OF COMPOSITION LEVY: The objective of composition scheme is to bring simplicity and to reduce the compliance cost for the small taxpayers.

II. SECTION 10(1):

Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding,

- a. half percent [effective rate 1% (CGST+ SGST/UTGST)] of the turnover in State or turnover in Union territory in case of a manufacturer
 - b. two and a half per cent [effective rate 5% (CGST+ SGST/UTGST)] of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and
 - c. half per cent [effective rate 1% (CGST+ SGST/UTGST)] of the turnover in State or turnover in Union territory in case of other suppliers
- subject to such conditions and restrictions as may be prescribed.

Proviso 1: Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore and fifty lakh rupees, as may be recommended by the Council.

- **Turnover Limit for Opting Composition scheme under sec 10(1) :** In view of said power contained in Proviso 1, the Government to increase the turnover limit for composition levy as granted by first proviso to section 10(1), the turnover limit for composition levy for goods has been increased from ₹ 50 lakh to ₹ 1.5 crore [**Notification No. 14/2019 CT dated 07.03.2019**].

Hence the current turnover limit for availing composition scheme under Sec 10(1) is ₹ 1.5 crores in the preceding financial year.

However, the said notification further stipulates that the turnover limit for composition levy for goods shall be ₹ 75 lakh in respect of 8 of the Special Category States namely:

- | | |
|----------------------|--------------|
| b. Arunachal Pradesh | f. Manipur |
| c. Mizoram | g. Sikkim |
| d. Uttarakhand | h. Meghalaya |
| e. Nagaland | i. Tripura |

Proviso 2: Provided further that a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II i.e. restaurant services), of value

- a. not exceeding ten percent of turnover in a State or Union territory in the preceding financial year or
 - b. five lakh rupees,
- whichever is higher.

Explanation: For the purposes of second proviso, the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover in a State or Union territory.

RULE 7: RATES OF TAX IN CASE OF COMPOSITION LEVY FOR GOODS:

S. No.	Category of registered persons	Rate of tax
1	Manufacturers, other than manufacturers of notified goods.	½ % of the turnover in the State/Union territory
2	Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II [referred to as "Restaurant service" in discussion under this chapter]	2½ % of the turnover in the State/Union territory
3	Any other supplier eligible for composition levy under (1) and (2) of section 10 of CGST Act (e.g.-trader).	½ % of turnover of taxable supplies of goods & services in the State/Union territory

RULE 3: INTIMATION OF OPTING FOR COMPOSITION LEVY

a. Intimation by person applying for registration (Fresh registration):

- Any person who is not registered and applies for registration may give an option to pay tax under composition levy in Part B of the registration form, viz., Form GST REG-01.
- The same shall be considered as an intimation to pay tax under composition levy.
- Such intimation shall be considered only after the grant of registration to the applicant.
- The option to pay tax under composition levy shall be effective from the date from which registration is effective [RULE 4].

b. Intimation by a registered person:

- A registered person who opts to pay tax under composition levy scheme shall electronically file an intimation in Form in **FORM GST CMP-02**, on the GST Common Portal [www.gst.gov.in].
- The intimation shall be filed prior to the commencement of the FY for which said option is exercised.

- He shall also furnish the statement in prescribed form (**FORM GST ITC – 03**) in accordance with the provisions of rule 44(4) of CGST Rules, 2017 [Discussed in detail in Chapter– Input Tax Credit] within 60 days from the commencement of the relevant FY.
- Any intimation in respect of any place of business in a State/UT shall be deemed to be an intimation in respect of all other places of business registered on the same PAN.
- The option to pay tax under composition levy shall be effective from the beginning of the FY [RULE 4].

RULE 5: CONDITIONS AND RESTRICTIONS FOR COMPOSITION LEVY

Person opting for composition levy has to comply with the following conditions:

- He was not engaged in the manufacture of goods as notified under section 10(2)(e), during the preceding FY.
- He shall pay tax under section 9(3)/9(4) (reverse charge) on inward supply of goods or services or both, wherever applicable.
- He is neither a casual taxable person nor a non-resident taxable person
- He shall mention the words “composition taxable person, not eligible to collect tax on supplies” at the top of the bill of supply issued by him;
- He shall mention the words “composition taxable person” on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business.

III. SEC 10(2): INELIGIBILITY FOR COMPOSITION LEVY:

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

- Save as provided in sub-section (1), he is not engaged in the supply of services.
- He is not engaged in making any supply of goods or services which are not leviable to tax under this Act
- He is not engaged in making any inter-State outward supplies of goods or services
- He is not engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52;
- He is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council; and

Tariff item, subheading, heading or Chapter	Description
2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2106 90 20	Pan masala
24	All goods, i.e. Tobacco and manufactured tobacco substitutes
2202 10 10	Aerated Waters
6815	Fly ash bricks or fly ash aggregate with 90% or more fly ash content; Fly ash blocks*
6901 00 10	Bricks of fossil meals or similar siliceous earths

6904 10 00	Building bricks
6905 10 00	Earthen or roofing tiles

****[Notification No. 04/2022 CT dated 31.03.2022 as amended by Notification No. 16/2022 CT dated 13.07.2022]***

f. He is neither a casual taxable person nor a non-resident taxable person.

Proviso: Provided that where more than one registered persons are having the same Permanent Account Number (issued under the Income tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.

IV. SECTION 10(2A) : COMPOSITION LEVY FOR SUPPLY OF SERVICES:

Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (3) and (4) of section 9,

- a registered person, not eligible to opt to pay tax under sub-section (1) and sub-section (2),
- whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees,
- may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent of the turnover in State or turnover in Union territory,
- if he is not:
 - engaged in making any supply of goods or services which are not leviable to tax under this Act;
 - engaged in making any inter-State outward supplies of goods or services;
 - engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52;
 - a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council; and
 - a casual taxable person or a non-resident taxable person.

Provided that where more than one registered person are having the same Permanent Account Number issued under the Income-tax Act, 1961, the registered person shall not be eligible to opt for the scheme under this sub-section unless all such registered persons opt to pay tax under this sub-section.

V. SECTION 10(3): The option of a registered person to avail composition scheme for goods shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the threshold limit of ₹ 1.5 crore [₹ 75 lakh in 8 specified special category States]

RULE 6: VALIDITY OF COMPOSITION LEVY:

- (1) **Composition levy will be valid till the conditions are satisfied:** The option exercised by a registered person to pay tax under section 10 shall remain valid so long as he satisfies all the conditions mentioned in the said section and under these rules.
- (2) **Ceases to satisfy conditions:** The person referred to in sub-rule (1) shall be liable to pay tax under sub-section (1) of section 9 from the day he ceases to satisfy any of the conditions mentioned in section 10 or the provisions of this Chapter and shall issue tax invoice for every taxable supply made thereafter and he shall also file an intimation for withdrawal from the scheme in FORM GST CMP-04 within seven days of the occurrence of such event.
- (3) **Voluntary withdrawal from Composition levy:** The registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in FORM GST CMP-04, duly signed or verified through electronic verification code, electronically on the common portal.
- (4) **Proper officer to issue SCN:** Where the proper officer has reasons to believe that the registered person was not eligible to pay tax under section 10 or has contravened the provisions of the Act or provisions of this Chapter, he may issue a notice to such person in **FORM GSTCMP-05** to show cause within fifteen days of the receipt of such notice as to why the option to pay tax under section 10 shall not be denied.
- (5) **Receipt of reply and issue of Order:** Upon receipt of the reply to the show-cause notice issued under sub-rule (4) from the registered person in **FORM GST CMP-06**, the proper officer shall issue an order in FORMGST 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 section 10 from the date of the option or from the date of the event concerning such contravention, as the case may be.
- (6) **File ITC-01 within 30 days:** Every person who has furnished an intimation under sub-rule (2) or filed an application for withdrawal under sub-rule (3) or a person in respect of whom an order of withdrawal of option has been passed in FORM GST CMP-07 under sub-rule (5), may electronically furnish at the common portal, either directly or through a Facilitation Centre notified by the Commissioner, 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 or denied, within a period of thirty days from the date from which the option is withdrawn or from the date of the order passed in FORM GST CMP-07, as the case may be.
- (7) Any intimation or application for withdrawal under sub-rule (2) or (3) or denial of the option to pay tax under section 10 in accordance with sub-rule (5) in respect of any place of business in any State or Union territory, shall be deemed to be an intimation in respect of all other places of business registered on the same Permanent Account Number.

VI. SECTION 10(4): A taxable person to whom the provisions of sub-section (1) or, as the case may be, sub-section (2A) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.

VII. SEC 10(5) – PENALTY: If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) or sub-section (2A), as the case may be despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this

Act, be liable to a penalty and the provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty.

VIII. Explanation 1 to SEC 10: For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression “aggregate turnover” shall

- include the value of supplies made by such person from the 1st day of April of a financial year upto the date when he becomes liable for registration under this Act,
- but shall not include the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

IX. Explanation 2 to SEC 10: For the purposes of determining the tax payable by a person under this section, the expression “turnover in State or turnover in Union territory” shall not include the value of following supplies, namely:—

- supplies from the first day of April of a financial year upto the date when such person becomes liable for registration under this Act; and
- exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

Meaning of turnover in State or turnover in Union territory: Turnover in State/ turnover in Union territory means the aggregate value of

- all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and
- exempt supplies made within a State or Union territory by a taxable person,
- exports of goods or services or both and
- inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but
- excludes central tax, State tax, Union territory tax, integrated tax and cess.

QUESTIONS:

1. Sultan & Sons, a partnership firm, in Nagpur, Maharashtra is a wholesaler of a taxable product 'P' and product 'Q' exempt by way of a notification, in the State of Maharashtra. Its aggregate turnover in the preceding financial year is ₹ 130 lakh. The firm wishes to opt for composition scheme under sub-sections (1) & (2) of section 10. However, its accountant is of the view that a person engaged in making supply of exempt goods is not eligible for the said scheme. Discuss. Note: Assume that Sultan & Sons is not engaged in manufacture of goods as notified under section 10(2)(e).

Answer:

The view taken by the accountant of Sultan & Sons is not valid in law. A registered person with an aggregate turnover in a preceding financial year up to ₹ 1.5 crore is eligible for composition levy, under section 10(1) & 10(2), in Delhi. Further, such person must not be engaged in making any supply of goods or services which are not leviable to tax under this Act and must not be engaged in making any inter-State outward supplies of goods or services, for being eligible to pay tax under said scheme.

In the given case, the aggregate turnover of Sultan & Sons does not exceed ₹ 1.5 crore. Further, it is engaged in making only intra-State supply of goods and Product P supplied by it is taxable and Product Q supplied by it is leviable to tax, though exempted by way of notification. Therefore, it is eligible for composition levy under section 10(1) & 10(2) in the current year.

2. A person availing composition scheme, under sub-sections (1) & (2) of section 10, in Haryana during a financial year crosses the turnover of ₹ 1.5 crore in the month of December. Will he be allowed to pay tax under composition scheme for the remainder of the year, i.e. till 31st March? Please advise.

Answer:

No. The option to pay tax under composition scheme lapses from the day on which the aggregate turnover of the person availing composition scheme for goods during the financial year exceeds the specified limit (₹ 1.5 crore). Once he crosses the threshold, he is required to file an intimation for withdrawal from the scheme in prescribed form within 7 days of the occurrence of such event. Every person who has furnished such an intimation, may electronically furnish at the common portal, a statement in prescribed form 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 30 days from the date from which the option is withdrawn.

3. Determine whether the suppliers in the following cases are eligible for composition levy, under section 10(1) & 10(2), provided their turnover in preceding year does not exceed ₹ 1.5 crore:
- (i) Mohan Enterprises is engaged in trading of pan masala in Rajasthan and is registered in the same State.
 - (ii) Sugam Manufacturers has registered offices in Punjab and Haryana and supplies goods in neighbouring States.

Answer:

- (i) A supplier engaged in the manufacture of goods as notified under section 10(2)(e), during the preceding FY is not eligible for composition scheme under section 10(1) and 10(2). Ice cream and other edible ice, whether or not containing cocoa, Pan masala, Tobacco and manufactured tobacco substitutes and aerated waters are notified under this category. However, in the given case, since Mohan Enterprises is engaged in trading of pan masala and not manufacture and his turnover does not exceed ₹ 1.5 crore, he is eligible for composition scheme subject to fulfilment of specified conditions.
- (ii) Since supplier of inter-State outward supplies of goods or services is not eligible for composition levy, Sugam Manufacturers is not eligible for composition levy.

4. Subramanian Enterprises has two registered places of business in Delhi. Its aggregate turnover for the preceding year for both the places of business was ₹ 120 lakh. It wishes to pay tax under composition levy, under section 10(1) & 10(2), for one of the places of business in the current year while under normal levy for other. You are required to advise Subramanian Enterprises whether he can do so?

Answer:

A registered person with an aggregate turnover in a preceding financial year up to ₹ 1.5 crore is eligible for composition levy, under section 10(1) & 10(2), in Delhi. Since the aggregate turnover of Subramanian Enterprises does not exceed ₹ 1.5 crore, it is eligible for composition levy in the current year. However, all registered persons having the same Permanent Account Number (PAN) have to opt for composition scheme. If one such registered person opts for normal scheme, others become ineligible for composition scheme. Thus, Subramanian Enterprises either have to opt for composition levy for both the places of business or under normal levy for both the places of business.

5. Mr. Ajay has a registered repair centre where electronic goods are repaired/serviced. His repair centre is located in State of Rajasthan and he is not engaged in making any inter-State supply of services. His aggregate turnover in the preceding financial year (FY) is ₹ 45 lakh.

With reference to the provisions of the CGST Act, 2017, examine whether Mr. Ajay can opt for the composition scheme under section 10(1) & 10(2) in the current financial year? Or whether he is eligible to avail benefit of composition scheme under section 10(2A)? Considering the option of payment of tax available to Mr. Ajay, compute the amount of tax payable by him assuming that his aggregate turnover in the current financial year is ₹ 35 lakh.

Will your answer be different if Mr. Ajay procures few items required for providing repair services from neighbouring State of Madhya Pradesh?

Answer:

Section 10(1) provides that a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore (₹ 75 lakh in Special Category States except Assam, Himachal Pradesh and Jammu and Kashmir), may opt to pay, in lieu of the tax payable by him, an amount calculated at

the specified rates. However, as per proviso to section 10(1), person who opts to pay tax under composition scheme may supply services other than restaurant services, of value not exceeding 10% of the turnover in a State or Union territory in the preceding financial year or ₹ 5 lakh, whichever is higher.

In the given case, since Mr. Ajay is an exclusive supplier of services other than restaurant services [viz. repair services], he is not eligible for composition scheme under section 10(1) & 10(2).

However, section 10(2A) provides an option to a registered person (subject to certain conditions) whose aggregate turnover in the preceding financial year is upto ₹ 50 lakh and who is not eligible to pay tax under composition scheme under section 10(1) & 10(2), to pay tax @ 3% [Effective rate 6% (CGST+ SGST/UTGST)] of the turnover of supplies of goods and services in the State or Union territory.

Thus, in view of the above-mentioned provisions, Mr. Ajay is eligible to avail the composition scheme under section 10(2A) as his aggregate turnover in the preceding FY does not exceed ₹ 50 lakh and he is not eligible to opt for the composition scheme under section 10(1) & 10(2).

Thus, the amount of tax payable by him as per the composition scheme under section 10(2A) is ₹ 2,10,000 [6% of ₹ 35 lakh].

A registered person cannot opt for composition scheme under section 10(2A), if, inter alia, he is engaged in making any inter-State outward supplies. However, there is no restriction on inter-State procurement of goods. Hence, answer will remain the same even if Mr. Ajay procures few items from neighboring State of Madhya Pradesh.

6. M/s United Electronics, a registered dealer, is supplying all types of electronic appliances in the State of Karnataka. Their aggregate turnover in the preceding financial year by way of supply of appliances was ₹ 120 lakh. The firm also expects to provide repair and maintenance service of such appliances from the current financial year. With reference to the provisions of the CGST Act, 2017, examine:

- (i) Whether the firm can opt for the composition scheme, under section 10(1) and 10(2), for the current financial year, as the turnover may include supply of both goods and services?**
- (ii) If yes, up to what amount, the services can be supplied?**

Answer:

- (i) The registered persons, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore, may opt to pay tax under composition levy, under section 10(1) and 10(2). The scheme can be availed by an intra-State supplier of goods and supplier of restaurant service. However, the composition scheme permits supply of marginal services (other than restaurant services) for a specified value along with the supply of goods and restaurant service, as the case may be.

Thus, M/s United Electronics can opt for composition scheme for the current financial year as its aggregate turnover is less than ₹ 1.5 crore in the preceding financial year and it is not engaged in interState outward supplies

- (ii) The registered person opting for composition scheme, under section 10(1) and 10(2), can also supply services (other than restaurant services) for a value up to 10% of the turnover in the preceding year or ₹ 5 lakh, whichever is higher, in the current financial year.
Thus, M/s United Electronics can supply repair and maintenance services up to a value of ₹ 12 lakh [10% of ₹ 120 lakh or ₹ 5 lakh, whichever is higher] in the current financial year

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7.TIME OF SUPPLY

SECTION 12: TIME OF SUPPLY OF GOODS

- I. **SECTION 12(1):** The liability to pay tax on goods shall arise at the time of supply as determined in terms of the provisions of this section.
- II. **SEC 12(2) - TIME OF SUPPLY IN CASE OF FORWARD CHARGE:** The time of supply of goods shall be the earlier of the following dates, namely:-
- the date of issue of invoice by the supplier or the last date on which he is required, under section 31, to issue the invoice with respect to the supply; or
 - the date on which the supplier receives the payment with respect to the supply.
- A. **Time limit for issuance of invoice for supply of goods under section 31:** Following are the relevant provisions of section 31 in this regard.
- As per **section 31(1)**, the invoice needs to be issued either
 - where supply involves movement of goods** - before or at the time of removal of goods or
 - in any other case**- delivery of goods/ making goods available to recipient.
 - Continuous supply of goods [Section 31(4)]:** In case of continuous supply of goods the invoice should be issued before or at the time of issuance of periodical statement/receipt of periodical payment [Section 31(4)].
Meaning of Continuous supply [Section 2(32)]: Continuous supply of goods is a supply of goods provided or agreed to be provided continuously or on recurring basis, under a contract, and for which the supplier issues an invoice to the recipient on a regular or periodic basis
 - Goods sent or taken on approval for sale or return [Section 31(7)]:** In case of goods sent or taken on approval for sale or return, invoice should be issued before or at the time of supply or 6 months from the date of removal, whichever is earlier.
- B. **Date on which supplier receives the payment – Explanation 2 to Sec 12(2):** For the purpose of clause (b), “the date on which the supplier receives the payment” shall be
- the date on which the payment is entered in his books of account or
 - the date on which the payment is credited to his bank account,
- whichever is **earlier**.
- C. **Notification No. 66/2017 CT dated 15.11.2017**
Tax not payable at the time of receipt of advance for supply of goods – Special procedure for payment of tax in case of supply of goods:
- In exercise of the powers conferred by section 148, the Central Government, on the recommendation of the GST Council, has issued *Notification No. 66/2017 CT dated 15.11.2017* to specify that a

- registered person (excluding composition supplier) should pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a),
 - i.e., date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.
- b. In simple words, all taxpayers under forward charge (except composition suppliers) are not required to pay GST at the time of receipt of advance in relation to supply of goods.
- c. The entire GST shall be payable only when the invoice for the supply of such goods is issued or ought to have been issued.
- d. Thus, time of supply of goods for the purpose of payment of tax is the date of issue of invoice or the last date when the invoice ought to have been issued under section 31.

Note: Because of above notification, practically, in case of goods, the date of receipt of payment by the supplier is no longer a criterion for determination of time of supply for payment of tax.

The relief of not paying GST at the time of receipt of advance is available only in case of supply of goods and not for supply of services.

- D. Proviso to Sec 12(2):** Provided that where the supplier of taxable goods receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.

Since, GST on supply of goods is payable only on the basis of issuance of invoice as per Notification No. 66/2017 CT dated 15.11.2017, this provision is practically irrelevant for supply of goods.

- E. Explanation 1 - Supply shall be deemed to have been made to the extent it is covered by the invoice or payment:** For the purposes of clauses (a) and (b), the “supply” shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

Significance of “to the extent the invoice or payment covers the supply of goods”

- a. Suppose a part of the consideration is paid in advance or invoice is issued for part payment, the time of supply will not cover the full supply.
- b. The supply is deemed to have been made to the extent it is covered by the invoice or the part advance payment.

Example: A Ltd. enters into an agreement with B Ltd. to supply 100 kg of raw material. However, A Ltd. supplies only 80 kg of raw material and issues the invoice for the same. Here, the supply would be deemed to have been made in respect of 80 kg of raw material, i.e., to the extent covered by the invoice. Therefore, the provisions relating to time of supply will also be applicable to supply of 80 kg of raw material and not for entire 100 kg of raw material.

III. SECTION 12(3) - TIME OF SUPPLY IN CASE OF REVERSE CHARGE:

In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely:

- a. the date of the receipt of the goods, or
- b. the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier, or
- c. the date immediately following thirty days (i.e., 31st day from the issue of invoice by the supplier) from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier.

Proviso: Provided that where it is not possible to determine the time of supply under clause (a), (b), or (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.

The relief of not paying GST at the time of receipt of advance is available only in case of supply of goods, the tax on which is payable under forward charge. In case of reverse charge, GST is payable at the time of payment, if payment is recorded/made before receipt of goods (advance payment).

IV. SECTION 12(4) - TIME OF SUPPLY IN CASE OF VOUCHERS: In case of supply of vouchers by a supplier, the time of supply 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.

➤ Vouchers:

- a. Vouchers are instruments that can be exchanged as payment for goods or services of the designated value.
- b. As per the definition, they are instruments, that certain persons (potential suppliers) are obliged to accept as consideration, part or full, for goods and/or services.
- c. The instrument or its related documentation sets out the terms and conditions of use, the goods and/or services covered, and the identity of the potential suppliers of such goods and/or services.

Example:

1. *Acmesales Limited sells food coupons to a company. The company gives these coupons to its employees as part of the agreed perquisites. The coupons can be redeemed for purchase of any item of food /provisions in the outlets that are part of the program. As the supply against which the coupon will be redeemed is not known on the date of the sale of the coupon, the*

time of supply of the coupon will be the date on which the employee redeems it against food / provision items of his choice.

2. *With each purchase of a large pizza during the Christmas week from Perfect Pizza, one can buy a voucher for ₹ 20 which will be redeemable till 5th Jan for a small pizza. As the supply against which the voucher will be redeemed is known on the date of issue of the vouchers, the time of supply is the date of issue of the voucher.*

V. SECTION 12(5) - TIME OF SUPPLY IN CASE OF RESIDUAL CASES: Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—

- a. in a case where a periodical return has to be filed, be the date on which such return is to be filed; or
- b. in any other case, be the date on which the tax is paid.

VI. SECTION 12(6) - TIME OF SUPPLY IN CASE OF PENALTY, INTEREST IN CASE OF DELAYED PAYMENT: The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

Example:

Radha Traders sold goods to Shyam Sales on 6th June with a condition that interest @ 2% per month will be charged if Shyam Sales failed to make payment within 15 days of the delivery of the goods. Goods were delivered as also the invoice was issued on 6th June. Shyam Sales paid the consideration for the goods on 6th July along with applicable interest. Time of supply for the goods sold is the date of issue of invoice i.e., 6th June and the time of supply for addition in value by way of interest is the date when such addition in value is received by Radha Traders i.e., 6th July.

SECTION 13: TIME OF SUPPLY OF SERVICES

I. SECTION 13(1): The liability to pay tax on services shall arise at the time of supply, as determined in terms of the provisions of this section.

II. SECTION 13(2) - TIME OF SUPPLY IN CASE OF FORWARD CHARGE: The time of supply of services shall be the earliest of the following dates, namely:-

(a) **If invoice is issued within the period prescribed under section 31:**

- The date of issue of invoice by the supplier, or
- the date of receipt of payment,
whichever is earlier; or

(b) **If the invoice is not issued within the period prescribed under section 31:**

- the date of provision of service, or
- the date of receipt of payment,
whichever is earlier; or

- (c) The date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply.

➤ **Time limit for issuance of invoice for supply of services under section 31:**

1. As per section 31(2) read with rule 47 of CGST Rules, the tax invoice needs to be issued either
 - a. before the provision of service or
 - b. within 30 days (45 days in case of insurance companies/ banking companies/ financial institutions including NBFCs) from the date of supply of service.
2. In case of insurance companies/ banking companies/ financial institutions including NBFCs/ telecom companies/ notified supplier of services making taxable supplies between distinct persons as specified in section 25, invoice may be issued
 - a. before or at the time of recording such supply in the books of account or
 - b. before the expiry of the quarter during which the supply was made [Second proviso to rule 47].
3. As per Section 31(5), in case of continuous supply of services, the invoice should be issued either
 - a. on/ before the due date of payment or
 - b. before/ at the time when the supplier of service receives the payment, if the due date of payment is not known
 - c. on/ before the date of completion of the milestone event when the payment is linked to completion of an event.

Meaning of Continuous supply of services: Continuous supply of services are provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding 3 months with periodic payment obligations and includes supply of such services as the Government may notify

4. As per Section 31(6), in case of cessation of supply of services before completion of supply, the invoice (to the extent of the supply made before such cessation) should be issued at the time when the supply ceases.

➤ **Date of receipt of payment [Explanation (ii) to Section 13(2)]:** “The date of receipt of payment” shall be the

- date on which the payment is entered in the books of account of the supplier or
- date on which the payment is credited to his bank account,
whichever is earlier.

➤ **Proviso to Sec 13(2):** Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

This provision facilitates the supplier to defer payment of tax on small amounts typically received by him in excess of the invoice amount.

Example: A telephone company receives ₹ 5000 against an invoice of ₹ 4800. The excess amount of ₹ 200 can be adjusted against next invoice. The company has the option to take date of next invoice as the time of supply of service in relation to the amount of ₹ 200 received in excess against earlier invoice.

Explanation - For the purposes of clauses (a) and (b) –

- (i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

III. SECTION 13(3) - TIME OF SUPPLY IN CASE OF REVERSE CHARGE: In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely-

- (a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
(b) the date immediately following sixty days (i.e., 61st day) from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Proviso 1: Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply.

Proviso 2 – Time of Supply in case of Import of services between associated enterprises:

In the case of service received from an associated enterprise located outside India, the time of supply will be the

- date of payment for the service, or
- the date of entry of the service in the books of account of the recipient, whichever is earlier.

IV. SECTION 13(4) - TIME OF SUPPLY IN CASE OF VOUCHERS: In case of supply of vouchers by a supplier, the time of supply shall be-

- a. **If the supply is identifiable at that point** - the date of issue of voucher, or
b. **In all other cases** - the date of redemption of voucher.

Example: Best Hospitality Services enters into agreement with Drive Marketing Ltd by which Drive Marketing Ltd. markets Best Hospitality Services' hotel rooms and sells coupons / vouchers redeemable for a discount against stay in the hotel. As the supply against which the voucher will be redeemed is identifiable, the time of supply of the voucher will be its date of issue.

V. SECTION 13(5) - TIME OF SUPPLY IN RESIDUARY CASES: Where it is not possible to determine the time of supply of services under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall

- a. in a case where a periodical return has to be filed, be the date on which such return is to be filed; or
- b. in any other case, be the date on which the tax is paid.

VI. SECTION 13(6) - TIME OF SUPPLY IN CASE OF PENALTY, INTEREST IN CASE OF DELAYED: The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

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QUESTIONS

1. Explain the significance of time of supply under GST law.

Answer:

GST is payable on supply of goods or services. Time of supply indicates the point in time when the liability to pay tax arises. However, it is important to note that though the liability to pay tax arises at the time of supply, the same can be paid to the Government by the due date prescribed with reference to the said 'time of supply'. The CGST Act provides separate provisions for time of supply for goods and services vide sections 12 and 13.

2. GST is payable on advance received for supply of goods and services taxable under forward charge. Do you agree with the statement? Support your answer with legal provisions.

Answer:

The statement is not correct. While GST is payable on advance received for supply of services taxable under forward charge, the same is not payable in case of advance received for supply of goods taxable under forward charge. As per section 13, the time of supply of services taxable under forward charge is –

- Date of issue of invoice or date of receipt of payment, whichever is earlier, if the same is issued within 30 days from the date of supply of service; OR
- Date of provision of service or date of receipt of payment, whichever is earlier, if the invoice is not issued within 30 days from the date of supply of service.

Thus, in case of services, if the supplier receives any payment before the provision of service or before the issuance of invoice for such service, the time of supply gets fixed at that point in time and the liability to pay tax on such payment arises. However, the tax can be paid by the due date prescribed with reference to such time of supply.

As regards time of supply of goods taxable under forward charge is concerned, Notification No. 66/2017 CT dated 15.11.2017 provides that a registered person (excluding composition supplier) should pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31. Therefore, in case of goods, tax is not payable on receipt of advance payment.

3. A machine has to be supplied at site. It is done by sourcing various components from vendors and assembling the machine at site. The details of the various events are:

17th September	Purchase order with advance of ₹ 50,000 is received for machine worth ₹ 12 lakh and entry duly made in the seller's books of account
20th October	The machine is assembled, tested at site, and accepted by buyer
23rd October	Invoice raised

4 th November	Balance payment of ₹ 11,50,000 received
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Determine the time of supply(ies) in the above scenario for the purpose of payment of tax.

Answer:

As per Notification No. 66/2017 CT dated 15.11.2017, a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a) i.e., date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.

Therefore, the time of supply for the purpose of payment of tax for the entire amount of ₹ 12,00,000 is 20th October which is the date on which the goods were made available to the recipient as per section 31(1)(b), and the invoice should have been issued on this date [Section 12(2)(a)].

- 4. Gas is supplied by a pipeline to the recipient. The supply is to be made for a period of one year. Monthly payments are to be made by the recipient as per the contract. The details of the payment made are:**

July 5, August 5, September 5 - Payments of Rs. 2 lakh made in each month.

Determine the time of supply for the purpose of payment of tax.

Answer:

As per Notification No. 66/2017 CT dated 15.11.2017, a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31. As per section 31(4), in case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice is issued before or at the time of each such statement is issued or, as the case may be, each such payment is received. Therefore, invoices should be issued for ₹ 2 lakh each on or before July 5, August 5 and September 5, when monthly payments of ₹ 2 lakh are received.

Thus, assuming that the invoice is issued on July 5, August 5 and September 5, the time of supply for the purpose of payment of tax will be July 5, August 5 and September 5 respectively for goods valued at ₹ 2 lakh each.

- 5. Mansh & Vansh Trading Company, a registered supplier, is liable to pay GST under forward charge. It has furnished the following information:**

(i) Goods were supplied on 3rd October

(ii) Invoice was issued on 5th October

(ii) Payment received on 9th October

Determine the time of supply of goods for the purpose of payment of tax.

Answer:

As per Notification No. 66/2017 CT dated 15.11.2017, a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.

Further, a registered person is required to issue a tax invoice before or at the time of removal of goods for supply to the recipient. Thus, in the given case, the invoice for supply of goods should have been issued on or before the removal of goods i.e., on 3rd October.

However, since the invoice has not been issued within the prescribed time, the time of supply for the purpose of payment of tax will be the last date on which the invoice is required to be issued i.e., 3rd October.

- 6. Investigation shows that 150 cartons of ceramic capacitors were dispatched on 2nd August but no invoice was raised and the transaction (dispatch of cartons) were not entered in the accounts. There was no evidence of receipt of payment. What is the time of supply of 150 cartons for the purpose of payment of tax?**

Answer:

As per Notification No. 66/2017 CT dated 15.11.2017, a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.

In this case since the invoice has not been issued, the time of supply for the purpose of payment of tax will be the last date on which the invoice is required to be issued.

The invoice for supply of goods must be issued on or before the dispatch of goods, i.e. on 2nd August. Therefore, the time of supply for the purpose of payment of tax for the goods will be 2nd August, the date when the invoice should have been issued.

- 7. An order is placed on Ram & Co. on 18th August for supply of a consignment of customized shoes. Ram & Co. gets the consignment ready and informs the customer and issues the invoice on 2nd December. The customer collects the consignment from the premises of Ram & Co. on 7th December and electronically transfers the payment on the same date, which is entered in the accounts on the next day, 8th December. What is the time of supply of the shoes for the purpose of payment of tax?**

Answer:

As per Notification No. 66/2017 CT dated 15.11.2017, a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in

section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.

In this case, the invoice is issued before the removal of the goods and is thus, within the time limit prescribed under section 31(1). Therefore, the time of supply for the purpose of payment of tax is the date of issue of invoice, which is 2nd December.

8. Determine the time of supply in the following cases assuming that GST is payable under reverse charge:

S.No.	Date of Receipt of goods	Date of payment by the recipient of goods	Date of issue of invoice by the supplier of goods
(i)	July 1	August 10	June 29
(ii)	July 1	June 25	June 29
(iii)	July 1	Part payment made on June 30 and balance amount paid on July 20	June 29
(iv)	July 5	Payment is entered in the books of account on June 28 and debited in recipient's bank account on June 30	June 1
(v)	July 1	Payment is entered in the books of account on June 30 and debited in recipient's bank account on June 26	June 29
(vi)	August 1	August 10	August 10

Answer:

S. No.	Date of receipt of goods	Date of payment by the recipient of goods	Date of issue of invoice by the supplier of goods	Date Immediately following 30 days from the date of invoice	Time of supply of goods [Earlier of (1), (2) & (4)]
	(1)	(2)	(3)	(4)	(5)
(i)	July 1	August 10	June 29	July 30	July 1
(ii)	July 1	June 25	June 29	July 30	June 25
(iii)	July 1	Part payment made on June 30 and	June 29	July 30	June 30 for part payment made and July 1 for balance

		balance amount paid on July 20			amount
(iv)	July 5	Payment is entered in the books of account on June 28 and debited in recipient's bank account on June 30	June 1	July 2	June 28 (i.e., when payment is entered in the books of account of the recipient)
(v)	July 1	Payment is entered in the books of account on June 30 and debited in recipient's bank account on June 26	June 29	July 30	June 26 (i.e., when payment is debited in the recipient's bank account)
(vi)	August 1	August 10	June 29	July 30	July 30 (i.e., 31st day from issuance of invoice)

9. Determine the time of supply from the given information.

May 4	Supplier invoices goods taxable on reverse charge basis to Bridge & Co. (30 days from the date of issuance of invoice elapse on June 3)
May 12	Bridge & Co receives the goods
May 30	Bridge & Co makes the payment

Answer:

Here, May 12 will be the time of supply, being the earliest of the three stipulated dates namely, receipt of goods, date of payment and date immediately following 30 days of issuance of invoice [Section 12(3)]. (Here, date of invoice is relevant only for calculating thirty days from that date.)

10. Determine the time of supply from the given information.

May 4	Supplier invoices goods taxable on reverse charge basis to Pillar & Co. (30 days from the date of issuance of invoice elapse on June 3)
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June 12	Pillar & Co receives the goods, which were held up in transit
July 3	Payment made for the goods

Answer:

Here, June 4, 31st day from the date of supplier's invoice, will be the time of supply, being the earliest of the three stipulated dates namely, receipt of goods, date of payment and date immediately following 30 days of issuance of invoice [Section 12(3)].

11. Meal coupons are sold to a company on 9th August for being distributed to the employees of the said company. The coupons are valid for six months and can be used against purchase of food items. The employees use them in various stores for purchases of various edible items on different dates throughout the six months. What is the date of supply of the coupons?

Answer:

As the coupons can be used for a variety of food items, which are taxed at different rates, the supply cannot be identified at the time of purchase of the coupons. Therefore, the time of supply of the coupons is the date of their redemption in terms of section 12(4).

12. Mr. X supplied goods for ₹ 50,000 to its customer Miss Diyana on 1st January on the condition that payment for the same will be made within a week. However, Miss Diyana made payment for the said goods on 2nd February and thus, paid interest amounting to ₹ 2,000. What is the time of supply with regard to addition in the value by way of interest in lieu of delayed payment of consideration?

Answer:

As per section 12(6), the time of supply with regard to an addition in value on account of interest, late fee or penalty or delayed payment of consideration is the date on which the supplier received such additional consideration.

Thus, time of supply in respect of interest would be the date on which the supplier has received such additional consideration, i.e. 2nd February.

13. Determine the time of supply from the given information.

6th May	Booking of convention hall, sum agreed ₹ 15000, advance of ₹ 3000 received
15th September	Function held in convention hall
27th October	Invoice issued for ₹ 15000, indicating balance of ₹ 12000 payable
3rd November	Balance payment of ₹ 12000 received

Answer:

As per section 31(2) read with rule 47 of CGST Rules, the tax invoice is to be issued within 30 days of supply of service. In the given case, the invoice is not issued within the prescribed time limit. As per section 13(2)(b), in a case where the invoice is not issued within the prescribed time, the time of supply of service is the date of provision of service or receipt of payment, whichever is earlier.

Therefore, the time of supply of service to the extent of ₹ 3,000 is 6th May as the date of payment of ₹ 3000 is earlier than the date of provision of service. The time of supply of service to the extent of the balance ₹ 12,000 is 15th September which is the date of provision of service.

14. Raju Pvt Ltd. receives the order and advance payment on 5th January for carrying out an architectural design job. It delivers the designs on 23rd April. By oversight, no invoice is issued at that time, and it is issued much later, after the expiry of prescribed period for issue of invoice. When is the time of supply of service?

Answer:

Since the invoice has not been issued within the prescribed time period, time of supply of service will be the earlier of the following two dates in terms of section 13(2)(b):

- Date of provision of service
- Date of receipt of payment

The payment was received on 5th January and the service was provided on 23rd April. Therefore, the date of payment, i.e. 5th January is the time of supply of the service in this case.

15. XYZ & Co., a firm of Chartered Accountants, issued invoice for services rendered to Mr. A on 7th September. Determine the time of supply in the following independent cases:

- 1) The provision of service was completed on 1st August and payment was received on 28th September.
- 2) The provision of service was completed on 14th August and payment was received on 28th September.
- 3) Mr. A made the payment on 3rd August. However, provision of service was remaining to be completed at that time.
- 4) Mr. A made the payment on 15th September. However, provision of service was remaining to be completed at that time.

Answer:

The time of supply of services is the date of issue of invoice if the same is issued within 30 days from the date of supply of service OR the date of receipt of payment, whichever is earlier [Section 13(2)(a)].

In case the invoice is not issued within 30 days from the date of supply of service, time of supply is the date of provision of service OR the date of receipt of payment, whichever is earlier [Section 13(2)(b)].

In accordance with the aforesaid provisions, the time of supply in the four independent cases will be:

- 1) 1st August since the invoice is not issued within 30 days of supply of service.
- 2) 7th September since the invoice is issued within 30 days of supply of service and the payment is received after the issuance of invoice.
- 3) 3rd August viz., earlier of date of issuance of invoice (7th September) or date of receipt of payment (3rd August)
- 4) 7th September viz., earlier of date of issuance of invoice (7th September) or date of receipt of payment (15th September)

16. Investigation shows that ABC & Co carried out service of cleaning and repairs of tanks in an apartment complex, for which the Apartment Owners' Association showed a payment in cash on 4th April to them against work of this description. The dates of the work are not clear from the records of ABC & Co. ABC & Co have not issued invoice or entered the payment in their books of account.

Answer:

The time of supply cannot be determined vide the provisions of clauses (a) and (b) of section 13(2) as neither the invoice has been issued nor the date of provision of service is available as also the date of receipt of payment in the books of the supplier is also not available. Therefore, the time of supply will be determined vide clause (c) of section 13(2) i.e., the date on which the recipient of service shows receipt of the service in his books of account.

Thus, time of supply will be 4th April, the date on which the Apartment Owners' Association records the receipt of service in its books of account.

17. Modern Security Co. provides service of testing of electronic devices. In one case, it tested a batch of devices on 4th and 5th September but could not raise invoice till 19th November because of some dispute about the condition of the devices on return. The payment was made in December. What is the method to fix the time of supply of the service?

Answer:

The time of supply of services, if the invoice is not issued in time, is the date of payment or the date of provision of service, whichever is earlier [Section 13(2)(b)]. In this case, the service is provided on 5th September but not invoiced within the prescribed time limit. Therefore, 5th September, the date of provision of service, being earlier than the date of payment, will be the time of supply.

18. Determine the time of supply from the given information. (Assume that service being supplied is taxable under reverse charge)

May 4	The supplier of service issues invoice for service provided. There is a dispute about amount payable, and payment is delayed.
August 21	Payment made to the supplier of service

Answer:

Here, July 4 will be the time of supply, being the earliest of the two stipulated dates namely, date of payment and date immediately following 60 days since issue of invoice.

19. Determine the time of supply in the following cases assuming that GST is payable under reverse charge:

S. No.	Date of payment by the recipient for supply of services	Date of issue of invoice by the supplier of services
(i)	August 10	June 29
(ii)	August 10	June 7
(iii)	Part payment made on June 30 and balance amount paid on September 1	June 29
(iv)	Payment is entered in the books of account on June 28 and debited in recipient's bank account on June 30	June 7
(v)	Payment is entered in the books of account on June 30 and debited in recipient's bank account on June 26	June 29

Answer:

S. No.	Date of payment by the recipient for supply of services	Date of issue of invoice by the supplier of services	Date immediately following 60 days from invoice	Time of supply of goods [Earlier of (1) & (3)]
	(1)	(2)	(3)	
(i)	August 10	June 29	August 29	August 10
(ii)	August 10	June 1	August 1	August 1
(iii)	Part payment made on June 30 and balance	June 29	August 29	June 30 for part payment and August 29 for

	amount paid on September 1			balance amount
(iv)	Payment is entered in the books of account on June 28 and debited in recipient's bank account on June 30	June 1	August 1	June 28 (i.e. when payment is entered in the books of account of the recipient)
(v)	Payment is entered in the books of account on June 30 and debited in recipient's bank account on June 26	June 29	August 29	June 26 (i.e., when payment is debited in the recipient's bank account)

20. Kabira Industries Ltd engaged the services of a transporter for road transport of a consignment on 17th June and made advance payment for the transport on the same date, i.e. 17th June. However, the consignment could not be sent immediately on account of a strike in the factory, and instead was sent on 20th July. Invoice was received from the transporter on 22nd July. What is the time of supply of the transporter's service?

Answer:

Time of supply of service taxable under reverse charge is the earlier of the following two dates in terms of section 13(3):

- Date of payment
- 61st day from the date of issue of invoice

In this case, the date of payment precedes 61st day from the date of issue of invoice by the supplier of service. Hence, the date of payment, i.e. 17th June, will be treated as the time of supply of service [Section 13(3)(a)]

21. A firm of advocates issues invoice for services to ABC Ltd. on 17th Feb. The payment is contested by ABC Ltd. on the ground that on account of negligence of the firm, the company's case was dismissed by the Court for non-appearance, which necessitated further appearance for which the firm is billing the company. The dispute drags on and finally payment is made on 3rd November. Identify the time of supply of the legal services.

Answer:

Tax on services supply by a firm of advocates by way of legal services to any business entity is payable under reverse charge by such firm of advocates. Time of supply of services that are taxable under reverse charge is earliest of the following two dates in terms of section 13(3):

- Date of payment [3rd November]
- 61st day from the date of issue of invoice [19th April]

The date of payment comes subsequent to the 61st day from the issue of invoice by the supplier of service. Therefore, the 61st day from the date of supplier's invoice has to be taken as the time of supply. This fixes 19th April as the time of supply.

22. M/s Pranav Associates, a partnership firm, provided recovery agent services to Newtron Credits Ltd., a non-banking financial company and a registered supplier, on 15th January. Invoice for the same was issued on 7th February and the payment was made on 18th April by Newtron Credits Ltd. Bank account of the company was debited on 20th April. Determine the following:

- (i) Person liable to pay GST**
(iii) Time of supply of service.

Answer:

- (i) Tax on services supplied by a recovery agent to, inter alia, a nonbanking financial company (NBFC) is payable under reverse charge by such non-banking financial company. Therefore, in the given case, person liable to pay GST is the NBFC - Newton Credits Ltd.
- (ii) As per section 13(3), the time of supply of service on which GST is payable under reverse charge is earlier of the following:-
- Date of payment as entered in the books of account of the recipient (18th April) or the date on which the payment is debited in his bank account (20th April), whichever is earlier;
 - Date immediately following 60 days since issue of invoice by the supplier, i.e. 9th April.

Thus, time of supply of service is 9th April.

23. Determine the time of supply from the given information.

May 4	A German company issues email informing its associated company ABC Ltd. of the cost of technical services provided to it.
July 2	ABC Ltd transfers the amount to the account of the German company

Answer:

As there is no prior entry of the amount in the books of account of ABC Ltd., July 2 will be the time of supply, being the date of payment in terms of second proviso to section 13(3).

8.VALUE OF SUPPLY

Introduction: As GST is an ad valorem levy, i.e. it is levied as a percentage of the value of supply of goods and/or services, it becomes important to know how to arrive at the value on which tax is to be paid. Provisions relating to 'value of supply' set out the mechanism to compute such value basis which CGST and SGST/UTGST (intra-State supply) and IGST (inter-State supply) should be paid.

SECTION 15 - VALUE OF TAXABLE SUPPLY

I. SECTION 15(1) – DETERMINATION OF VALUE OF SUPPLY IN CASE OF UNRELATED PARTIES WHERE PRICE IS THE SOLE CONSIDERATION: When a transaction of supply of goods / services is made

- between two persons who are not related to each other and
 - price is the sole consideration for the supply
- the value of supply is the "transaction value."

➤ **Meaning of Related persons [Explanation to Section 15]:** Persons including legal persons shall be deemed to be "related persons" if—

- i. such persons are officers or directors of one another's businesses;
- ii. such persons are legally recognised partners in business;
- iii. such persons are employer and employee;
- iv. any person directly or indirectly owns, controls or holds twenty-five per cent or more of the outstanding voting stock or shares of both of them;
- v. one of them directly or indirectly controls the other;
- vi. both of them are directly or indirectly controlled by a third person;
- vii. together they directly or indirectly control a third person; or
- viii. they are members of the same family;
- ix. persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

➤ **Meaning of Transaction value:**

1. Transaction value is the price actually paid or payable for the said supply of goods or services or both.
2. This is the price for the specific supply that is being valued. It includes the amount already paid at the time the supply is being valued for tax, as well as the amount payable (agrees to be paid) and not yet paid at that time.

II. SECTION 15(2) – INCLUSIONS IN TRANSACTION VALUE: The value of supply shall include:

(a) **Taxes other than GST & GST Compensation Cess:** Any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and

Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

Example: For instance, if a supplier of goods pays municipal tax in relation to the goods being supplied and charges the same separately, such tax will form part of the value of supply.

- **TCS under Income-Tax Act, 1961 not includible in the taxable value for the purpose of GST:** The CBIC vide Circular No. 76/50/2018 GST dated 31.12.2018 (amended vide corrigendum dated 7.03.2019) has clarified that for the purpose of determination of value of supply under GST, tax collected at source (TCS) under the provisions of the Income Tax Act, 1961 would not be includible as it is an interim levy not having the character of tax.

- (b) **Payments made to third parties by the recipient:** 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 or services or both;

- **Note:** Amount paid by the recipient to third parties will be added to the value under this clause only when the supplier is under contractual liability to make payment to such third parties and the said payment is in relation to such supply.

Example: Grand Biz contracts with ABC Co. to conduct a dealers' meet. In furtherance of this, Grand Biz contracts with vendors to deliver goods / services, like water, soft drinks, audio system, projector, catering, flowers etc. at the venue on the stipulated dates at the stipulated prices. Grand Biz is liable to make these payments as contracted.

The soft drinks supplier wants payment upon delivery; ABC Co. agrees to pay the bill raised by the soft drinks vendor on Grand Biz, on receiving the crates of soft drinks. This amount is not billed by Grand Biz to ABC Co. However, it would be added to the value of supply provided by Grand Biz to ABC Co. for payment of GST.

- (c) **Incidental expenses:** Incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

- **Commission:** This may be paid to an agent and recovered from the buyer of the goods / services; this is part of the value of the supply.
- **Packing,** if charged by the supplier to the recipient, is similarly part of the value of the supply.
- **Inspection or certification charges** is another element that will be added to the value, if incurred before/at the time of supply and billed to the recipient of supply.
- **Installation and testing charges** at the recipient's site will also be added, being an amount charged for something done by the supplier in respect of the supply, at the time of making the supply.

- **Weighment charges, loading charges, designing charges etc. incurred before/at the time of supply** will be added to the value, if billed to the recipient of supply.

- **Outward freight, transit insurance:**

1. Where the supplier agrees to deliver the goods at the buyer's premises and arranges for transport and insurance, the contract of supply becomes a composite supply; the principal supply being the supply of goods. Therefore, outward freight and transit insurance become part of the value of the composite supply and GST is payable thereon at the same rate as applicable for the relevant goods.
2. However, if the contract for supply is on ex-factory basis where buyer pays the outward freight and insurance, the same will not be included in the value of supply of goods.

(d) **Interest, late fee or penalty for delayed payment:** Interest or late fee or penalty for delayed payment of any consideration for any supply;

Example: A supply priced at ₹ 2,000 is made, with a credit period of 1 month for payment. Thereafter, interest @ 12% p.a. is chargeable. The payment is received after the lapse of two months from the date of supply. The amount of interest @ 12% p.a. (i.e. 1% per month) on ₹ 2,000 for one month after the free credit period of one month, is ₹ 20. Such interest will be added to the value and thus, the value of supply will work out to be ₹ 2,020, assuming the interest to be exclusive of GST.

- **Note:**

- a. Time of supply for such interest/ late fee/ penalty is the date when such amount is received by the supplier.
- b. Further, since such charges are an addition in the value of supply, same rate of tax as applicable on the main supply of goods / service are applicable on such charges as well.

(e) **Subsidies linked with price:**

- Subsidy is a sum of money given to keep the price of a service or commodity low.
- The subsidy is added to the value of supply of the supplier who receives the subsidy.
- It must be noted that only subsidies directly linked to the price of goods/services are added to the value.
- Blanket subsidy/donation received are not includible in the value.
- Note that if the subsidy is given by the State or Central Government, it is not to be added to the value of supply.

Example: The selling price of a notebook is ₹ 50. For notebooks sold to students in Government schools, a company uses its CSR funds to pay the seller ₹ 30, so that the students pay only ₹ 20 per notebook. The value of the notebook will be ₹ 50, as this is a non-government subsidy. If the same subsidy is paid by the Central Government or State Government, the value of the notebook would be ₹ 20.

III. SECTION 15(3) - EXCLUSION OF DISCOUNTS FROM VALUE: The value of the supply shall not include any discount which fulfils the conditions specified in section 15(3). Discounts that are allowed as deduction from the value are as follows:

(a) **Discounts given before or at the time of supply and shown in the invoice:** Example for such discount can be discounts that are offered for making the payment at the time of supply itself. Such discounts are thus, recorded in the invoice and thus, GST is charged on the gross value less discount recorded in the invoice.

(b) **Post supply discounts:**

- It is not always commercially feasible to determine all discounts before or at the time of supply or record them in the invoice. Examples of such discounts are cash discount, quantity/volume/performance discount etc. In such cases, initially the GST is paid on the gross value indicated in the invoice without considering the discount. The supplier, however, passes the discount to the buyers subsequently by issuing credit notes.
- Post supply discounts, i.e. the discounts that are given after supply is made, are allowed as a deduction from the value of supply if the following two conditions are satisfied:
 - i. Discount is in terms of an agreement that existed at the time of supply and can be specifically linked to relevant invoices (i.e., can be worked out invoice-wise); and
 - ii. **Proportionate input tax credit is reversed by the recipient:** The buyer would have availed input tax credit (ITC) of GST payable on the gross value specified in the invoice. Thus, when a credit note is issued to him by the supplier for the discount, the buyer will reverse the proportionate credit; consequent to which, the supplier's output tax liability will be reduced by the same amount.

If any of the above conditions are not satisfied, the GST liability of supplier cannot be reduced. The supplier, however, can issue a commercial credit note (*credit note which is not covered under GST law and is issued only for the value of discount/reduction in value of the supply, without any GST*) for the value of discount. In such a scenario, the buyer will not be required to reverse any input tax credit.

➤ **Allowability of certain specific types of discounts offered by the suppliers as clarified vide Circular No. 92/11/2019 GST dated 07.03.2019:**

- i. **Staggered discounts ('Buy more, Save more' offers):** In case of staggered discounts, rate of discount increases with increase in purchase volume. Such discounts are shown on the invoice itself. Such discounts are excluded to determine the value of supply.

For example – One may get 10 % discount for purchases above ₹ 5,000/-, 20% discount for purchases above ₹ 10,000/- and 30% discount for purchases above ₹ 20,000/-.

- ii. **Periodic/year ending discounts/volume discounts:**
 - These discounts are offered by the suppliers to their stockists, etc.

For example- Get additional discount of 1% if you purchase 10,000 pieces in a year, get additional discount of 2% if you purchase 15,000 pieces in a year.

- Such discounts are established in terms of an agreement entered into at or before the time of supply though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been effected and generally at the year end.
- In commercial parlance, such discounts are colloquially referred to as “volume discounts”.
- Such discounts are passed on by the supplier through credit notes.
- Such discounts are excluded to determine the value of supply provided they satisfy the parameters laid down in section 15(3), including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document (s) issued by the supplier.

iii. Secondary discounts:

- These are the discounts which are not known at the time of supply or are offered after the supply is already over.

For example, M/s A supplies 10,000 packets of biscuits to M/s B at ₹ 10/- per packet. Afterwards, M/s A re-values it at ₹ 9/- per packet. Subsequently, M/s A issues credit note to M/s B for ₹ 1/- per packet.

- Such secondary discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in section 15(3)(b) are not satisfied.
- It may be noted that financial / commercial credit note(s) can be issued by the supplier even if the conditions mentioned in section 15(3)(b) are not satisfied.
- Such credit notes do not include GST, and do not have any impact on value of supply for the purposes of GST.

Examples of certain discounts and their deductibility:

Discount	Deductibility
Royal Biscuit Co. gives a discount of 30% on the list price to its distributors. Thus, for a carton of Spice bisk, in the invoice the list price is mentioned as ₹ 200, on which a discount of 30% is given to arrive at the final price of ₹ 140.	The discount is deductible. The value is ₹ 140, as the discount is allowed at the time of supply and shown in the invoice.
The agreement of Raju Electrical Appliances with its dealers is that purchase of rice cookers over 1000 pieces in the Diwali month will entitle them to discount of 5% per cooker.	The quantum of discount can be determined only at the end of Diwali month. However, since the agreement relating to discount was in existence at the time of supply, and the discount can be worked out for each invoice, such post supply discount will be

	<p>allowed as a deduction from the value of supply of rice cookers.</p> <p>Raju Electrical Appliances can issue credit note for 5% of the value of goods along with GST and claim adjustment of excess tax paid. The dealer must reverse the proportionate input tax credit on the relevant stock to bring it in line with the reduced tax.</p>
<p>Pink and Blue Pvt. Ltd. (PBPL) sold goods to Orange Pvt. Ltd. (OPL) on 15th January at ₹ 50,000 (exclusive of taxes and discounts) and charged ₹ 9,000 as IGST @ 18%. The terms of supply stipulated that discount @ 2% will be given to OPL if it makes the payment within one month of the supply. OPL avails the input tax credit of ₹ 9,000 in the month of January and makes the payment for the goods on 10th February. PBPL issues credit note for ₹ 1180 [₹ 1,000 for value of discount and ₹ 180 for proportionate IGST leviable thereon] to OPL on 11th February. After receiving credit note, OPL reverses the input tax credit of ₹ 180 attributable to the discount given by the PBPL.</p>	<p>PBPL can reduce its GST liability of the month of February by ₹ 180. OPL would have paid ₹ 57,820 (₹ 50,000 + ₹ 9,000 - ₹ 1,000 - ₹ 180) to PBPL on 10th February</p>
<p>In the above example, if the terms of supply did not provide for discount @ 2% for payment within one month but PBPL offers such discount to OPL at the time of payment after negotiation</p>	<p>The discount will not be allowed as a deduction from the value. PBPL will issue a commercial credit note for only the value of discount, i.e. for ₹ 1,000. OPL will not reverse any input tax credit and PBPL will also not be able to reduce its GST liability for the month of February. In this case, OPL would pay ₹ 58,000 (₹ 50,000 + ₹ 9,000 - ₹ 1,000) to PBPL on 10th February.</p>

- IV. SECTION 15(4):** Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed. That is, if the transaction is with a related party, and/or price is not the sole consideration for the supply of goods / services, then the value will be determined in the manner as prescribed, which means as stipulated in the rules for valuation.

- V. SECTION 15(5):** Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

SHRESHTA

QUESTIONS

1. Black and White Pvt. Ltd. has provided the following particulars relating to goods sold by it to Colourful Pvt. Ltd.

Particulars	₹
List price of the goods (exclusive of taxes and discounts)	50,000
Tax levied by Municipal Authority on the sale of such good	5,000
Packing charges (not included in price above)	1,000

Black and White Pvt. Ltd. received ₹ 2,000 as a subsidy from a NGO on sale of such goods. The price of ₹ 50,000 of the goods is after considering such subsidy.

Black and White Ltd. offers 2% discount on the list price of the goods which is recorded in the invoice for the goods. Determine the value of taxable supply made by Black and White Pvt. Ltd

Answer:

Computation of value of taxable supply

Particulars	₹
List price of the goods (exclusive of taxes and discounts)	50,000
Tax levied by Municipal Authority on the sale of such goods [Includible in the value as per section 15(2)(a)]	5,000
Packing charges [Includible in the value as per section 15(2)(c)]	1,000
Subsidy received from a non-Government body [Since subsidy is received from a non-Government body, the same is included in the value in terms of section 15(2)(e)]	<u>2,000</u>
Total	58,000
Less: Discount @ 2% on ₹ 50,000 [Since discount is known at the time of supply and recorded in invoice, it is deductible from the value in terms of section 15(3)(a)]	<u>1,000</u>
Value of taxable supply	57,000

2. Samriddhi Advertisers conceptualised and designed the advertising campaign for a new product launched by New Moon Pvt Ltd. for a consideration of ₹ 5,00,000. Samriddhi Advertisers owed ₹ 20,000 to one of its vendors in relation to the advertising service provided by it to New Moon Pvt Ltd. Such liability of Samriddhi Advertisers was discharged by New Moon Pvt Ltd. New Moon Pvt Ltd. delayed the payment of consideration and thus, paid ₹ 15,000 as interest. Assume the rate of GST to be 18%.

Determine the value of taxable supply made by Samriddhi Advertisers.

Answer:

Computation of value of taxable supply

Particulars	₹
Service charges	5,00,000

Payment made by New Moon Pvt. Ltd to vendor of Samriddhi Advertisers [Liability of the supplier being discharged by the recipient, is includible in the value in terms of section 15(2)(b)]	20,000
Interest for delay in payment of consideration [Includible in the value in terms of section 15(2)(d) - Refer note below] (rounded off)	12,712
Value of taxable supply	5,32,712

Note: The interest for delay in payment of consideration will be includible in the value of supply but the time of supply of such interest will be the date when such interest is received in terms of section 13(6). Such interest has been assumed to be inclusive of GST and thus, the value has been computed by making back calculations [Interest * (100/100+tax rate)]. It is also possible to assume the interest to be exclusive of GST. In that case, the value of supply will work out to be ₹ 5,35,000.

3. Are post-supply discounts eligible for deduction from the value of supplies in all situations? Explain.

Answer:

No, the post-supply discounts are not eligible for deduction from the value of supplies in all situations. Such discounts are allowed as a deduction from the value of supply only in the situations where the following two conditions are satisfied:

- A. The discount is in terms of an agreement that existed at the time of supply and can be worked out invoice-wise; and
- B. Proportionate input tax credit (ITC) is reversed by the recipient - The buyer would have availed ITC of GST payable on the gross value specified in the invoice. Thus, when a credit note is issued to him by the supplier for the discount, the buyer will reverse the proportionate credit; consequent to which, the supplier's output tax liability will be reduced by the same amount.

If any of the above conditions are not satisfied, post-supply discount is not allowed as a deduction from the value of supply and consequently, GST liability of the supplier does not get reduced.

4. Sharp Minds Institute provides coaching for engineering entrance examinations. Monthly fee charged by the Institute from a student is ₹ 10,000. The Institute is known for its commitment to provide education to underprivileged children. It trains 10 students every year for entrance examinations free of cost.

The Institute has received ₹ 3,00,000 as coaching fees during a month. Nav Jeevan, an NGO working in the area of education for underprivileged children, has given a subsidy of ₹ 10,000 (in lumpsum) during the month to the Institute as it is serving the cause of underprivileged children.

Determine the value of supply of education services made by Sharp Minds Institute during the month.

Answer:

As per section 15(2)(e), the value of a supply includes subsidies directly linked to the price, excluding subsidies provided by the State Governments and the Central Government. In the given case, though the subsidy is given by a non-Government body, the same is not includible in the value as it is given in lumpsum and not directly linked to the price of the supply being valued. Therefore, the value of supply made by Sharp Minds during the month is ₹ 3,00,000.

- 5. Furniture Wala is a chain of retail showrooms selling both modern and classic furniture. In order to build strong customer association, the showroom provides free delivery of the furniture at the premises of the customers if the distance between the showroom and the customer's premises is upto 20 kms. Where the distance is more than 20 kms, the showroom charges a concessional freight of ₹ 10 for every additional km.**

Ms. Leena Kapoor purchases a double bed, a dressing table and a centre table for ₹ 2,00,000 from Furniture Wala. Ms. Leena gets free delivery of the furniture as her residence is located at a distance of 18 km from the showroom. The showroom incurs an expenditure of ₹ 1000 for delivering the furniture at Ms. Leena's residence.

Determine the value of taxable supply made by Furniture Wala. Will your answer change if residence of Ms. Leena is 50 km away from the showroom?

Answer:

In the given case, the showroom is not charging any amount towards freight from Ms. Leena but incurring the same out of its own pocket. Therefore, the same should not be added to the value. Hence, the value of supply will be ₹ 2,00,000.

However, the answer will change in the second case when the showroom will charge ₹ 300 for freight $[(50\text{km} - 20\text{ km}) \times ₹ 10]$ from Ms. Leena. In this case, the supply will be a composite supply (principle supply being the supply of furniture) and value thereof will be ₹ 2,00,300.

- 6. AKJ Foods Pvt. Ltd. gets an order for supply of processed food from a customer. The customer wants the consignment tested for gluten and specified chemical residues. AKJ Foods Pvt. Ltd. does the testing before the supply and charges a testing fee for the same from the customer. AKJ Foods Pvt. Ltd. argues that such testing fess should not form part of the consideration for the sale as it is a separate activity.**

Is the company's argument correct in the light of section 15?

Answer:

Section 15(2) mandates addition of certain elements in the value of supply. Clause (c) of section 15(2) specifies that amount charged for anything done by the supplier in respect of the supply at

the time of or before delivery of goods or supply of services shall be included in the value of supply.

Since AKJ Foods Pvt. Ltd. does the testing before the delivery of goods, the charges therefor will be included in the value of the consignment. Therefore, AKJ Foods Pvt. Ltd.'s argument is not correct. The testing fee should be added to the price to arrive at value of the consignment.

- 7. A philanthropic association makes a substantial donation each year to a reputed private management institution to subsidize the education of low-income group students who have gained admission there. The fee for these individuals is reduced thereby coming to ₹ 3 lakh a year compared to ₹ 5 lakh a year for other students. What would be the value of the service of coaching and instruction provided by the institution to the low-income group students?**

Answer:

As per section 15(2)(e), the value of a supply includes subsidies directly linked to the price, excluding State Government and Central Government subsidies. In this case, the subsidy is not received from the Government but from a philanthropic association. Therefore, the subsidy is to be added back to the price to arrive at the value, which comes to ₹ 5 lakh a year.

- 8. Mezda Banners, an advertising firm, gives its customers an interest-free credit period of 30 days for payment. Its customer ABC paid for the supply 32 days after the supply of service. Mezda Banners waived the interest payable for delay of two days. The Department wants to add interest for two days to the value of supply. Should notional interest be added to the value?**

Answer:

This is a supply that is valued as per transaction value under section 15(1) as the price is the sole consideration for the supply and the supply is made to unrelated person. The value of a supply includes certain elements like interest which are actually payable. Once waived, the interest is not payable and is therefore, not to be added to the value.

- 9. Crunch Bakery Products Ltd sells biscuits and cakes through its dealers, to whom it charges the list price minus standard discount and pays GST accordingly. When goods remain unsold with the dealers, it offered additional discounts on the stock as an incentive to push the sales. Can this additional discount be reduced from the price at which the goods were sold, and concomitant tax adjustments made?**

Answer:

The discounts were not known or agreed for at the time of supply of goods to the dealers. Therefore, in terms of section 15(3), such discounts cannot be reduced from the price on which tax had been paid.

10. Red Pepper Ltd., Delhi, a registered supplier, is manufacturing taxable goods. It provides the following details of taxable inter-State supply made by it during the month of March.

S.No	Particulars	Amount
1	List price of taxable goods supplied inter-state (exclusive of taxes)	15,00,000
2	Subsidy received from the Central Government for supply of taxable goods to Government School (exclusively related to supply of goods included at S. No. 1)	2,10,000
3	Subsidy received from an NGO for supply of taxable goods to an old age home (exclusively related to supply of goods included at S. No. 1)	50,000
4	Tax levied by Municipal Authority	20,000
5	Packing charges	15,000
6	Late fee paid by the recipient of supply for delayed payment of consideration (Recipient has agreed to pay ₹ 6,000 in lump sum and no additional amount is payable by him)	6,000

The list price of the goods is net of the two subsidies received. However, the other charges/taxes/fee are charged to the customers over and above the list price. Calculate the total value of taxable supplies made by Red Pepper Ltd. during the month of March. Rate of IGST is 18%.

Answer:

Particulars	Amount
List price of the goods	15,00,000
Subsidy amounting to ₹ 2,10,000 received from the Central Government [Since the subsidy is received from the Government, the same is not includible in the value in terms of section 15(2)(e)]	NIL
Subsidy received from NGO [Since the subsidy is received from a non-Government body and directly linked to the supply, the same is includible in the value in terms of section 15(2)(e)]	50,000
Tax levied by the Municipal Authority [Includible in the value as per section 15(2)(a)]	20,000
Packing charges [Being incidental expenses, the same are includible in the value as per section 15(2)(c)]	15,000
Late fees paid by recipient of supply for delayed payment [Includible in the value as per section 15(2)(d) - As the amount of interest received is a lump sum amount, the same has to be taken as inclusive of GST] [$\frac{6,000 \times 100}{118}$ rounded off]	1085
Total value of taxable supplies	15,90,085

11. M/s. Flow Pro, a registered supplier, sold a machine to BP Ltd. It provides the following information in this regard: -

S.No.	Particulars	Amount
(i)	Price of the machine [excluding taxes and other charges mentioned at S. Nos. (ii) and (iii)]	25,000
(ii)	Third party inspection charges [Such charges were payable by M/s Flow Pro but the same have been directly paid by BP Ltd. to the inspection agency. These charges were not recorded in the invoice issued by M/s Flo Pro.]	5,000
(iii)	Freight charges for delivery of the machine [M/s Flow Pro has agreed to deliver the goods at BP Ltd.'s premises]	2,000
(iv)	Freight charges for delivery of the machine [M/s Flow Pro has agreed to deliver the goods at BP Ltd.'s premises]	5,000
(v)	Discount of 2% is offered to BP Ltd. on the price mentioned at S. No. (i) above and recorded in the invoice	

Note: Price of the machine is net of the subsidy received.

Determine the value of taxable supply made by M/s Flow Pro to BP Ltd.

Answer:

Computation of value of taxable supply made by M/s. Flo Pro to BP Ltd

Particulars	Amount
Price of the machine [Since the subsidy is received from the State Government, the same is not includible in the value of supply in terms of section 15(2)(e)]	25,000
Third party inspection charges [Any amount that the supplier is liable to pay in relation to the supply but has been incurred by the recipient and not included in the price actually paid or payable for the goods, is includible in the value of supply in terms of section 15(2)(b)]	5,000
Freight charges for delivery of the machine [Since arranging freight is the liability of supplier, it is a case of composite supply and thus, freight charges are added in the value of principal supply.]	2,000
Total	32,000
Less: Discount @ 2% on ₹ 25,000 being price charged to BP Ltd. [Discount given before or at the time of supply if duly recorded in the invoice is deductible from the value of supply in terms of section 15(3)(a)]	<u>500</u>

Value of taxable supply	31,500
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12. Shri Krishna Pvt. Ltd., a registered supplier, furnishes the following information relating to goods sold by it to Shri Balram Pvt. Ltd.-

S.No.	Particulars	Amount
(i)	Price of the goods [excluding taxes and other charges mentioned at S. Nos. (iii), (v) and (vi)]	100,000
(ii)	Municipal tax	2,000
(iii)	Inspection charges	75,000
(iv)	Subsidy received from Shri Ram Trust [Subsidy is directly linked to the goods supplied]	50,000
(v)	Late fees for delayed payment inclusive of GST [Shri Balram Pvt. Ltd. paid the late fees. However, these charges were ultimately waived by Shri Krishna Pvt. Ltd. and the amount was refunded to Shri Balram Pvt. Ltd. during the same month]	1,000
(vi)	Weighment charges [Such charges were paid by Shri Balram Pvt. Ltd. to Radhe Pvt. Ltd. on behalf of Shri Krishna Pvt. Ltd.]	2,000

Note: Price of the goods is net of the subsidy received.

Determine the value of taxable supply made by Shri Krishna Pvt. Ltd. to Shri Balram Pvt. Ltd.

Answer:

Computation of value of taxable supply made by Shri Krishna Pvt. Ltd. to Shri Balram Pvt. Ltd.

Particulars	Amount
Price of the goods	1,00,000
Municipal tax [Includible in the value as per section 15(2)(a)]	2,000
Inspection charges [Any amount charged for anything done by the supplier in respect of the supply of goods at the time of/before delivery of goods is includible in the value as per section 15(2)(c)]	15,000
Subsidy received from Shri Ram Trust [Since the subsidy is received from a non-Government body and directly linked to the supply, the same is includible in the value in terms of section 15(2)(e)]	50,000
Late fees for delayed payment [Not includible since the same is waived off]	NIL
Weighment charges paid to Radhe Pvt. Ltd. on behalf of Shri Krishna Pvt. Ltd. [Any amount that the supplier is liable to pay in relation to the supply but has been incurred by the recipient and not included in the price]	<u>2,000</u>

actually paid or payable for the goods, is includible in the value of supply in terms of section 15(2)(b)]	
Value of taxable supply	1,69,000

13. Koli Ltd., a registered supplier, has supplied machinery to Ghisa Ltd. (a supplier registered in the same State). It provides following particulars regarding the same:

S.No.	Particulars	Amount
(i)	Price of machinery (exclusive of taxes and discounts)	5,50,000
(ii)	Part fitted in the machinery at the premises of Ghisa Ltd. [Amount has been paid by Ghisa Ltd. directly to the supplier. However, it was Koli Ltd.'s liability to pay the said amount. The said amount has not been recorded in the invoice issued by Koli Ltd.]	20,000
(iii)	Installation and testing charges for machinery, not included in price	25,000
(iv)	Discount @ 2% on price of the machinery mentioned at S. No. (i) above (recorded in the invoice)	
(v)	Koli Ltd. provides additional discount @ 1% at year end, based on additional purchase of other machinery for which adjustment is made at the end of the financial year without any change in individual transactions.	

Determine the value of taxable supply made by Koli Ltd. to Ghisa Ltd.

Answer:

Computation of value of taxable supply made by Koli Ltd. to Ghisa Ltd.

Particulars	Amount
Price of machinery (exclusive of taxes and discounts)	5,50,000
Amount paid by Ghisa Ltd. directly to the supplier for the part fitted in the machinery [Any amount that the supplier is liable to pay in relation to a 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 is includible in the value of supply in terms of section 15(2)(b).]	20,000
Installation and testing charges [Any amount charged for anything done by the supplier in respect of the supply of goods at the time of/before delivery of goods is includible in the value of supply in terms of section 15(2)(c).]	25,000
Less: Discount @ 2% on the price of machinery [5,50,000 x 2%]	11,000

[Since discount is given at the time of supply of machinery and recorded in the invoice, the same is deductible from the value of the supply in terms of section 15(3)(a).]	
Less: Additional 1% discount at year end [Though the additional discount is established before/at the time of supply, it is not deductible from the value of supply in terms of section 15(3)(b) as the same is not linked to any specific transaction and is adjusted by the parties at the end of the financial year.]	NIL
Value of taxable supply	5,84,000

9. INPUT TAX CREDIT

INTRODUCTION: The GST regime promises seamless credit on goods and services across the entire supply chain with some exceptions like supplies charged to tax under composition scheme and supply of exempted goods and/or services. ITC is considered to be the lifeline of the GST regime. In fact, it is the provisions of ITC, which essentially make GST a value added tax i.e., collection of tax at all points of supply chain after allowing credit of tax paid at earlier points.

DEFINITIONS:

1. **Input [Section 2(59)]:** Input means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business.
2. **Input service [Section 2(60)]:** Input service means any service used or intended to be used by a supplier in the course or furtherance of business.
3. **Capital goods [Section 2(19)]:** Capital goods means goods, the value of which is capitalized in the books of account of the person claiming the ITC and which are used or intended to be used in the course or furtherance of business.
4. **Input tax [Section 2(62)]:** Input tax in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—
 - a. the integrated goods and services tax charged on import of goods;
 - b. the tax payable under the provisions of 9(3) and 9(4);
 - c. the tax payable under the provisions of 5(3) and 5(4) of the IGST Act;
 - d. the tax payable under the provisions of 9(3) and 9(4) of the respective SGST Act; or
 - e. the tax payable under the provisions of sub-section 7(3) and 7(4) of the UTGST Act,but does not include the tax paid under the composition levy.
5. **Input tax credit[Section 2(63)]:** Input tax credit means the credit of input tax.
6. **Inward supply [Section 2(67)]:** Inward supply in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without consideration.
7. **Output Tax [Section 2(82)]:** Output tax in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis.

SECTION 16 - ELIGIBILITY AND CONDITIONS FOR TAKING INPUT TAX CREDIT

- I. **SECTION 16(1):** Every registered person shall, subject to such conditions and restrictions as may be prescribed and, in the manner, specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used

in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

- ITC of GST will be available on goods and/or services which are used in the course or furtherance of the business.
- The “intention to use” the goods and/or services in the course or furtherance of business would also suffice for availing ITC on such goods and/or services.
- Thus, tax paid on goods and or/services which are used or intended to be used for non-business purposes cannot be availed as credit.
- ITC will be credited in electronic credit ledger.

II. SECTION 16(2): CONDITIONS TO BE FULFILLED FOR CLAIMING ITC:

Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless:

- a. **16(2)(a):** He is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed [Rule 36];

- **Rule 36(1) – Documents for claiming ITC:** ITC can be availed on the basis of any of the following documents:
 - i. Invoice issued by the supplier of goods and/or services
 - ii. Invoice issued by the recipient receiving goods and/or services from unregistered supplier along with proof of payment of tax, in case of reverse charge
 - iii. Debit note issued by the supplier
 - iv. Bill of entry or similar document prescribed under the Customs Act
 - v. Revised invoice
 - vi. Document issued by input service distributor
- **Rule 36(2) – Details to be contained in the documents:** The documents basis which ITC is being taken should contain at least the following details:
 - i. Amount of tax charged
 - ii. Description of goods or services
 - iii. Total value of supply of goods and/or services
 - iv. GSTIN of the supplier and recipient
 - v. Place of supply in case of inter-State supply
- **Rule 36(3) - No ITC of tax paid towards demands involving fraud:** Tax paid in pursuance of any order where any demand has been confirmed on account of any fraud, wilful misstatement or suppression of facts cannot be availed as ITC.
- **Rule 36(4) - Restricted ITC on invoices/debit notes not furnished by supplier in his GSTR-1:** No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under section 37(1) unless,-

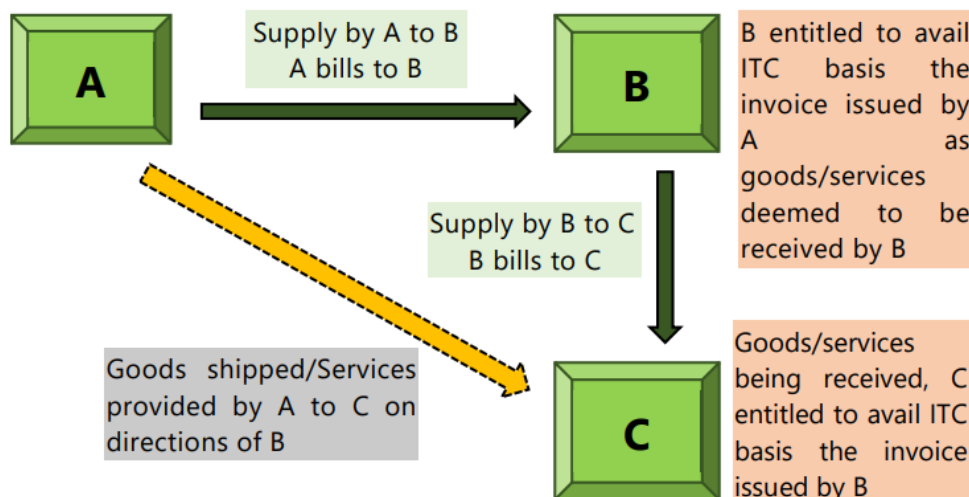
- a. the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in Form GSTR-1 or using the invoice furnishing facility (IFF); and
- b. the details of such invoices or debit notes have been communicated to the registered person in Form GSTR-2B under rule 60(7).

aa. **16(2)(aa):** the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies GSTR -1, and such details have been communicated to the recipient of such invoice or debit note through GST -2B in the manner specified under section 37 [**same as Rule 36(4)**];

b. **16(2)(b):** He has received the goods or services or both.

Explanation: For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services:

- i. **where the goods are delivered by the supplier** to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;
- ii. **where the services are provided by the supplier** to any person on the direction of and on account of such registered person.



➤ **Example:**

- a. A is a trader who places an order on B for a consignment of soda ash. A receives a buying order from C for the same quantity of soda ash. A instructs B to deliver the goods to C, and in turn he raises an invoice on C. Though the goods are not physically received at the premises of A, section 16(2)(b) allows ITC of such goods to A.
- b. The registered head office (New Delhi) of ABC Pvt. Ltd. enters into a contract with DEF Pvt. Ltd. of New Delhi for repair and maintenance of computers systems installed at its

registered branch office in Bengaluru, Karnataka. DEF Pvt. Ltd. issues an invoice on ABC Pvt. Ltd., New Delhi for the services provided by it. Though the actual services are received by the branch office and not by the head office, section 16(2)(b) allows ITC of such repair and maintenance services to head office.

- ba. **16(2)(ba)**:the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;
- c. **16(2)(c)**:Subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

➤ **Section 41 - Availment of input tax credit**

1. Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.
2. The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed.

Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.

- d. **16(2)(d)**:he has furnished the return under section 39 (GSTR- 3B).

PROVISOS TO SEC 16(2)

1. **Proviso 1**: Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment.

Example: XYZ enters into a contract with ABC for supply of 10 MT of a chemical for ₹ 1,18,000 (inclusive of GST of ₹ 18,000) in the month of August. The chemical is to be delivered in lots over a period of three months. ABC raises the invoice for the entire amount in August and XYZ also makes the payment in the same month but the supply is completed in November. Though XYZ paid the full tax as early as August, it can take the ITC of the same only on receipt of last instalment of the chemical in the month of November.

2. **Proviso 2**: Provided further that where a
- recipient fails to pay to the supplier of goods or services or both,
 - other than the supplies on which tax is payable on reverse charge basis,
 - the amount towards the value of supply along with tax payable thereon

- within a period of one hundred and eighty days from the date of issue of invoice by the supplier,
- an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest (@ 18%) thereon, in such manner as may be prescribed [Rule 37].

However, once the recipient makes the payment of value of goods and/or services along with tax, he will be entitled to avail the credit again without any time limit. In case part-payment has been made, proportionate credit would be allowed.

Exceptions: This condition of payment of value of supply plus tax within 180 days does not apply in the following situations:

- a. Supplies on which tax is payable under reverse charge
- b. Deemed supplies without consideration
- c. Additions made to the value of supplies on account of supplier's liability, in relation to such supplies, being incurred by the recipient of the supply.

III. SECTION 16(3) – ITC ON CAPITAL GOODS: Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

IV. SECTION 16(4): A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both

- after 30th day of November following the end of financial year to which such invoice or debit note pertains or
- Date of furnishing of the relevant annual return, whichever is earlier.

Note: The time limit u/s 16(4) does not apply to claim for re-availing of credit that had been reversed earlier.

SECTION 17: APPORTIONMENT OF CREDIT & BLOCKED CREDITS

I. SEC 17(1) – Inputs used partly for business and partly for other purposes: Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

Example: A registered person is in the business of manufacturing shoes. He gave 50 pairs of shoes to his friends free of cost. ITC on inputs and input services attributable to such 50 pair of shoes being used for non-business purposes will not be available.

- II. SEC 17(2) - Inputs used partly for taxable supplies and partly for other supplies:** Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

Example: A registered person manufactures a product 'X' chargeable to 18% GST, a product 'Y' chargeable to NIL rate of tax and a product 'Z' which is exported without payment of tax under bond. All the three products are manufactured from common inputs and input services. ITC on inputs and input services attributable to product 'Y' being an exempt supply, will not be available

- III. SEC 17(3) – INCLUSIONS IN EXEMPT SUPPLY:** The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include
- supplies on which the recipient is liable to pay tax on reverse charge basis,
 - transactions in securities,
 - sale of land and,
 - sale of building, subject to 5(b) of Schedule III

Explanation: For the purposes of this sub-section, the expression “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.

- IV. SEC 17(6):** The Govt may prescribe the manner in which credit referred to in 17(1) & (2) may be attributed. [Rule 42 & 43 to be discussed at CA Final Level]

- V. SEC 17(4) – OPTION FOR BANKING COMPANIES:** A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to
- either comply with the provisions of sub-section 17(2), or
 - avail of, every month, an amount equal to fifty per cent of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse.

Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year.

Provided further that the restriction of fifty per cent shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

➤ **Rule 38: Claim of credit by a banking company or a financial institution**

- A banking company or a financial institution including a NBFC, which accepts deposits, or extends loans or advances, has the option to limit its availment of ITC to 50% of the eligible ITC on inputs, capital goods and input services each month and the balance amount of input tax credit shall be reversed in FORM GSTR-3B.
- Credit of tax paid on inputs and input services that are used for non-business purposes and items mentioned u/s section 17(5) (blocked credits) cannot be availed.
- The restriction of availing 50% ITC shall not apply to the tax paid on supplies procured from another registration within the same entity i.e., 100% credit of such tax can be availed.
- The option once exercised cannot be changed during the remaining part of the financial year.

VI. SEC 17(5) - BLOCKED CREDIT: Notwithstanding anything contained in sub-section (1) of section 16 and sub- section (1) of section 18, input tax credit shall not be available in respect of the following, namely:

a. Motor vehicles for transportation of persons having approved seating capacity ≤ 13 persons (including the driver):

Except when they are used for making the following taxable supplies, namely:—

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

aa. Vessels and aircraft

Except when they are used—

(i) for making the following taxable supplies, namely:-

- (A) further supply of such vessels or aircraft; or
- (B) transportation of passengers; or
- (C) imparting training on navigating such vessels; or
- (D) imparting training on flying such aircraft;

(ii) for transportation of goods;

ab. Services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the input tax credit in respect of such services shall be available—

- (i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;
- (ii) where received by a taxable person engaged—

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

Some examples:

1. ITC on cars purchased by a manufacturing company for official use of its employees is blocked.
2. ITC on cars purchased by a car dealer for sale to customers is allowed.
3. ITC on cars purchased by a company engaged in renting out cars for transportation of passengers, is allowed
4. ITC on cars purchased by a car driving school is allowed.
5. ITC on buses (seating capacity for 24 persons) purchased by a company for transportation of its employees from their residence to office and back, is allowed.
6. ITC on trucks purchased by a company for transportation of its finished goods is allowed.
7. ITC on aircraft purchased by a manufacturing company for official use of its CEO is blocked.
8. ITC on aircraft purchased by an Aviation School providing training on non-flying aircrafts, is allowed.
9. ITC on general insurance taken on a car used by employees of a manufacturing company for official purposes, is blocked.
10. ITC on maintenance & repair services availed by a company for a truck used for transporting its finished goods, is allowed.
11. ITC on general insurance services taken on cars manufactured by a car manufacturing company is allowed.

b. The following supply of goods or services or both—

- (i) **food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance.**

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of

- the same category of goods or services or both or
- as an element of a taxable composite or mixed supply;

- (ii) **membership of a club, health and fitness centre; and**

- (iii) **travel benefits extended to employees on vacation such as leave or home travel concession.**

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force **[this proviso is applicable for all (i), (ii) and (iii)].**

Some examples:

1. A manufacturing company purchases food items for being served to its customers, free of cost. ITC on such goods is blocked.
2. AB & Co., a caterer of Amritsar, has been awarded a contract for catering in a marriage to be held at Ludhiana. The firm has given the contract for supply of snacks, to be served in the marriage, to CD & Sons, a local caterer of Ludhiana. ITC on such outdoor catering services availed by AB & Co., is allowed.
3. ITC on outdoor catering services availed by a garment exporter for a marketing event organised for its prospective customers, is blocked.
4. Outdoor catering service is availed by a company to run a free canteen in its factory. The Factories Act, 1948 requires the company to set up a canteen in its factory. ITC on such outdoor catering is allowed.
5. The Managing Director of a company has taken membership of a club, the fees for which is paid by the company. ITC on such service is blocked.
6. A company avails services of a travel agency for organizing a free vacation for its top performing employees. ITC on such services is blocked.

c. Works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

However, ITC is available for routine construction related services like repairs, maintenance, renovation etc. of office and factory building. Thus, broadly, ITC in respect of construction services is not available when the expenses are capitalised in books of account.

Note: Here, it needs to be noted that capitalisation of an expense does not depend on whether the taxpayer intends to avail ITC, but on the basis of Accounting Standards and GAAP.

- **Plant and machinery:** “Plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural supports that are used for making outward supply of goods and/or services and includes such foundation or structural support but excludes land, building or other civil structures, telecommunication towers, and pipelines laid outside the factory premises.

Some examples:

1. ITC on works contracts services availed by a software company for construction of its office, is blocked.
2. CD & Co., a works contractor of Noida, has been awarded a contract for construction of a commercial complex in Lucknow. The firm avails services of EF & Co., a local works contractor of Lucknow, for the construction of complex. ITC on such works contract services availed by CD & Co., is allowed.

3. *ITC on works contract services availed by an automobile company for construction of a foundation on which a machinery (to be used in the production process) is to be mounted permanently, is allowed.*
4. *ITC on works contract services availed by a manufacturing company for construction of pipelines to be laid outside its factory, is blocked.*
5. *A consulting firm has availed services of a works contractor for repair of its office building. The company has booked such expenditure in its profit and loss account. ITC on such services is allowed.*
6. *A telecommunication company has availed services of a works contractor for repair of its office building. The company has capitalized such expenditure. ITC on such services is blocked.*

- d. Goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.**

Explanation: For the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property.

Some examples:

1. *A company buys cement, tiles etc. and avails the services of an architect for construction of its office building. ITC on such goods and services is blocked.*
2. *MN & Constructions procures cement, paint, iron rods and services of architects and interior designers for construction of a commercial complex for one of its clients. ITC on such goods and services is allowed to MN & Co.[Since not on its own account]*
3. *MN & Constructions procures cement, paint, iron rods and services of architects and interior designers for construction of a complex for its own use. ITC on such goods and services is not allowed to MN & Co.[Since on its own account]*
4. *A company buys cement, tiles etc. and avails the services of an architect for renovation of its office building. The company has booked such expenditure in its profit and loss account. ITC on such goods and services is allowed.*
5. *ITC on goods and/or services used by an automobile company for construction of a foundation on which a machinery (to be used in the production process) is to be mounted permanently, is allowed.*

- e. Goods or services or both on which tax has been paid under section 10 (Composition levy)**

A supplier registered under composition scheme cannot collect tax from its customers. A composition supplier pays a lumpsum tax at a specified rate on its quarterly turnover. Hence 17(5)(e) specifically blocks the ITC on inward supplies received by a taxable person from a composition supplier.

- f. Goods or services or both received by a non-resident taxable person except on goods imported by him.

Essentially, a non-resident taxable person has no fixed place of business in India but he sporadically supplies goods or services in India. Tax paid on goods and/or services received by such non-resident taxable person, is not available as ITC. However, tax paid by him on imported goods is allowed as ITC.

- fa. Goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013;] [Inserted by The Finance Act, 2023, effective date yet to be notified]

- g. Goods or services or both used for personal consumption;

Example: Mr. X owns a grocery store. He procures rice, wheat and biscuits for being sold in its store. Out of the inventory so purchased, he gives 10 kgs each of rice and wheat to his wife for household use. Being used for personal consumption, ITC on 10 kg of rice and 10 kg of wheat is blocked.

- h. Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples;

- Circular No. 92/11/2019 GST dated 28.03.2019 has clarified the entitlement of ITC in the hands of supplier in respect of various sales promotional schemes

A. Samples and free gifts:

- Samples which are supplied free of cost, without any consideration, do not qualify as “supply” under GST, except where the activity falls within the ambit of Schedule I of the CGST Act.
- Thus, where the activity of distribution of gifts or free samples falls within the scope of “supply” on account of the provisions contained in Schedule I (supply between distinct persons) of the said Act, the supplier would be eligible to avail the ITC.

B. Buy one get one free offer:

- It can at best be treated as supplying two goods for the price of one.
- Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8.
- ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

- C. **Discounts including 'Buy more, save more' offers:** The supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.
- D. **Secondary discounts:** These are the discounts which are not known at the time of supply or are offered after the supply is already over. Such discounts shall not be excluded while determining the value of supply. There is no impact on availability or otherwise of ITC in the hands of supplier in this case.

- **Circular No. 72/46/2018 GST dated 26.10.2018: ITC reversal when return of time expired medicines/drugs are treated as fresh supply:** The retailer/ wholesaler can return the time expired goods, either by treating the same as fresh supply or by issuing credit notes.

Return of time-expired goods by treating the same as fresh supply

- In case the person returning the time expired goods is a registered person (other than a composition taxpayer), he may, at his option, return the said goods by treating it as a fresh supply and thereby issuing an invoice for the same (hereinafter referred to as the, "return supply").
- The wholesaler or manufacturer, as the case may be, who is the recipient of such return supply, shall be eligible to avail ITC of the tax levied on the said return supply subject to the fulfillment of the conditions specified in section 16.
- In case the person returning the time-expired goods is a composition taxpayer, he may return the said goods by issuing a bill of supply and pay tax at the rate applicable to a composition taxpayer. In this scenario there will not be any availability of ITC to the recipient of return supply.
- In case the person returning the time-expired goods is an unregistered person, he may return the said goods by issuing any commercial document without charging any tax on the same. There will not be any availability of ITC to the recipient of return supply.
- Where the goods returned by the retailer/wholesaler as a fresh supply, are destroyed by the manufacturer, he/she is required to reverse the ITC availed on the return supply in terms of section 17(5)(h).
- It is pertinent to mention here that the ITC which is required to be reversed in such scenario is the ITC availed on the return supply and not the ITC that is attributable to the manufacture of such time expired goods.
- The clarification may also be applicable to return of goods for reasons other than being time expired.

Example: If a manufacturer has availed ITC of ₹ 10/- at the time of manufacture of medicines valued at ₹ 100/-. At the time of return of such medicine on the account of expiry, the ITC available to the manufacturer on the basis of fresh invoice issued by wholesaler is ₹ 15/-. So, when the time expired goods are destroyed by the manufacturer, he would be required to reverse ITC of ₹ 15/- and not of ₹ 10/.

i. **Any tax paid in accordance with the provisions of sections 74, 129 and 130.**

These sections prescribe the provisions relating to tax paid as a result of evasion of taxes, or upon detention of goods or conveyances in transit, or towards redemption of confiscated goods/conveyances.

SECTION 18: CREDIT IN SPECIAL CIRCUMSTANCES

I. SECTION 18(1):

Subject to such conditions and restrictions as may be prescribed:

- a. **New registration:** A person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration
- shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock
 - on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;

Example: 'Z' becomes liable to pay tax on 1st August and has obtained registration on 15th August. 'Z' is eligible for ITC on inputs held in stock and as part of semi-finished goods or finished goods held in stock as on 31st July. 'Z' cannot take ITC on capital goods.

- b. **Voluntary registration:** A person who takes registration under sub-section (3) of section 25
- shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock
 - on the day immediately preceding the date of grant of registration;

Example: 'A' applies for voluntary registration on 5th June and obtains registration on 22nd June. 'A' is eligible for ITC on inputs held in stock and as part of semi-finished goods or finished goods held in stock as on 21st June. 'A' cannot take ITC on capital goods.

- c. **Composition scheme to regular:** Where any registered person ceases to pay tax under section 10,
- he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods
 - on the day immediately preceding the date from which he becomes liable to pay tax under section 9.

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed **[As per Rule 40 – 5% per quarter/part there of]**.

Example: 'B', a registered taxable person, was paying tax under composition scheme upto 30th July. However, w.e.f. 31st July, 'B' becomes liable to pay tax under regular scheme. 'B' will be eligible for ITC on inputs held in stock and inputs contained in semi-finished or finished

goods held in stock and on capital goods as on 30th July. ITC on capital goods will be reduced by 5% per quarter from the date of the invoice.

- d. Exempt supply to taxable supply:** Where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person
- shall be entitled to take credit of input tax in respect of
 - inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and
 - on capital goods exclusively used for such exempt supply
 - on the day immediately preceding the date from which such supply becomes taxable.
- Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed **[As per Rule 40 – 5% per quarter/part thereof]**.

➤ **Rule 40 - Manner of claiming credit in special circumstances:**

(1) The input tax credit claimed in accordance with the provisions of section 18(1) on the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or the credit claimed on capital goods in accordance with the provisions of clauses (c) and (d) of the said sub-section, shall be subject to the following conditions, namely –

- a. Reducing the ITC on Capital goods by 5% per quarter or part thereof:** The input tax credit on capital goods, in terms of section 18(1)(c) and 18(1)(d), shall be claimed after reducing the tax paid on such capital goods by five percentage points per quarter of a year or part thereof from the date of the invoice or such other documents on which the capital goods were received by the taxable person.
- b. Submission of Form GST ITC – 01:** The registered person shall within a period of thirty days from the date of becoming eligible to avail the input tax credit under sub-section (1) of section 18, or within such further period as may be extended by the Commissioner by a notification in this behalf,
- shall make a declaration, electronically, on the common portal
 - in FORM GST ITC - 01 to the effect that he is eligible to avail the input tax credit as aforesaid.

Provided that any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

- c. Declaration should clearly specify the details:** The declaration under clause (b) shall clearly specify the details relating to the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or as the case may be, capital goods–
- i. on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of the Act, in the case of a claim under clause (a) of sub-section (1) of section 18;

- ii. on the day immediately preceding the date of the grant of registration, in the case of a claim under clause (b) of sub-section (1) of section 18;
- iii. on the day immediately preceding the date from which he becomes liable to pay tax under section 9, in the case of a claim under clause (c) of sub-section (1) of section 18;
- iv. on the day immediately preceding the date from which the supplies made by the registered person becomes taxable, in the case of a claim under clause (d) of sub-section (1) of section 18;

d. Declaration to be certified by practicing CA/CMA: The details furnished in the declaration under clause (b) shall be duly certified by a practicing chartered accountant or a cost accountant if the aggregate value of the claim on account of central tax, State tax, Union territory tax and integrated tax exceeds two lakh rupees.

e. The input tax credit claimed in accordance with the provisions of clauses (c) and (d) of sub-section (1) of section 18 shall be verified with the corresponding details furnished by the corresponding supplier in FORM GSTR-1 or as the case may be, in FORM GSTR-4, on the common portal.

(2) The amount of credit in the case of supply of capital goods or plant and machinery, for the purposes of section 18(6), shall be calculated by reducing the input tax on the said goods at the rate of five percentage points for every quarter or part thereof from the date of the issue of the invoice for such goods.

II. SECTION 18(2): No ITC for invoices older than 1 year: A registered person shall not be entitled to take input tax credit under sub-section (1) in respect of any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply.

III. SECTION 18(3)-Change in constitution:

Where there is a change in the constitution of a registered person

- on account of sale, merger, demerger, amalgamation, lease or transfer of the business
- with the specific provisions for transfer of liabilities,
- the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger
- to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed (Rule 41).

Circular No. 96/15/2019 GST dated 28.03.2019 has clarified that transfer or change in the ownership of business includes transfer or change in the ownership due to death of the sole proprietor.

➤ **Rule 41 - Transfer of credit on sale, merger, amalgamation, lease or transfer of a business**

(1) Furnishing FORM GST ITC – 02 by transferor: A registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of

business for any reason, furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in FORM GST ITC-02, electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee.

Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.

Explanation: For the purpose of this sub-rule, it is hereby clarified that the “value of assets” means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.

(2) Transferor shall also submit a copy of a certificate issued by a practicing chartered accountant or cost accountant: The transferor shall also submit a copy of a certificate issued by a practicing chartered accountant or cost accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.

(3) Acceptance of details by transferee: The transferee shall, on the common portal, accept the details so furnished by the transferor and, upon such acceptance, the un-utilized credit specified in FORM GST ITC-02 shall be credited to his electronic credit ledger.

(4) Duly accounted in books of accounts: The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.

➤ **Rule 41A - Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory:**

(1) A registered person who has obtained separate registration for multiple places of business in accordance with the provisions of rule 11 and who intends to transfer, either wholly or partly, the unutilised input tax credit lying in his electronic credit ledger to any or all of the newly registered place of business, shall furnish within a period of thirty days from obtaining such separate registrations, the details in FORM GST ITC-02A electronically on the common portal, either directly or through a Facilitation Centre notified in this behalf by the Commissioner

Provided that the input tax credit shall be transferred to the newly registered entities in the ratio of the value of assets held by them at the time of registration.

Explanation: For the purposes of this sub-rule, it is hereby clarified that the ‘value of assets’ means the value of the entire assets of the business whether or not input tax credit has been availed thereon.

- (2) The newly registered person (transferee) shall, on the common portal, accept the details so furnished by the registered person transferor) and, upon such acceptance, the unutilised input tax credit specified in FORM GST ITC-02A shall be credited to his electronic credit ledger.

IV. SECTION 18(4): Where any registered person who has availed of input tax credit opts to pay tax under section 10 or, where the goods or services or both supplied by him become wholly exempt,

- he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger,
- equivalent to the
 - credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and
 - on capital goods, reduced by such percentage points as may be prescribed,
- on the day immediately preceding the date of exercising of such option or, as the case may be, the date of such exemption.

Provided that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

➤ **Rule 44 - Manner of reversal of credit under special circumstances**

(1) The amount of input tax credit relating to inputs held in stock, inputs contained in semi-finished and finished goods held in stock, and capital goods held in stock shall, for the purposes of sub-section (4) of section 18 or sub-section (5) of section 29, be determined in the following manner, namely,-

- (a) for inputs held in stock and inputs contained in semi-finished and finished goods held in stock, the input tax credit shall be calculated proportionately on the basis of the corresponding invoices on which credit had been availed by the registered taxable person on such inputs;
- (b) for capital goods held in stock, the input tax credit involved in the remaining useful life in months shall be computed on pro-rata basis, taking the useful life as five years.

Illustration:

Capital goods have been in use for 4 years, 6 month and 15 days.

The useful remaining life in months= 5 months ignoring a part of the month

Input tax credit taken on such capital goods= C

Input tax credit attributable to remaining useful life= C multiplied by 5/60

(2) The amount, as specified in sub-rule (1) shall be determined separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.

(3) Where the tax invoices related to the inputs held in stock are not available, the registered person shall estimate the amount under sub-rule (1) based on the prevailing market price

of the goods on the effective date of the occurrence of any of the events specified in sub-section (4) of section 18 or, as the case may be, sub-section (5) of section 29.

- (4) The amount determined under sub-rule (1) shall form part of the output tax liability of the registered person and the details of the amount shall be furnished in FORM GST ITC-03, where such amount relates to any event specified in sub-section (4) of section 18 and in FORM GSTR-10, where such amount relates to the cancellation of registration.
- (5) The details furnished in accordance with sub-rule (3) shall be duly certified by a practicing chartered accountant or cost accountant.
- (6) The amount of input tax credit for the purposes of sub-section (6) of section 18 relating to capital goods shall be determined in the same manner as specified in clause (b) of sub-rule (1) and the amount shall be determined separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.

Provided that where the amount so determined is more than the tax determined on the transaction value of the capital goods, the amount determined shall form part of the output tax liability and the same shall be furnished in FORM GSTR-1.

V. SECTION 18(5):The amount of credit under sub-section (1) and the amount payable under sub-section (4) shall be calculated in such manner as may be prescribed (Rule 40 and 44).

VI. SECTION 18(6) - SUPPLY OF CAPITAL GOODS OR PLANT AND MACHINERY, ON WHICH INPUT TAX CREDIT HAS BEEN TAKEN: In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to

- the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or
- the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher.

Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.

QUESTIONS

1. What is Input tax?

Answer:

Input tax 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 made to a registered person. It also includes tax paid on reverse charge basis and integrated goods and services tax charged on import of goods. It does not include tax paid under composition levy.

2. Can a person take ITC without payment of consideration for the supply along with tax?

Answer:

Yes, the recipient can take ITC. However, he is required to pay the consideration along with tax within 180 days from the date of issue of invoice. This condition is not applicable where tax is payable on reverse charge basis.

3. What is the ITC entitlement of a newly registered person?

Answer:

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 ITC 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.

In case of voluntary registration, ITC of such goods held in stock on the day immediately preceding the date of registration can be taken.

4. A registered person transfers its business to another person. Is such registered person allowed to transfer the unutilized ITC lying in its electronic credit ledger to such transferred business? Discuss.

Answer: Refer Rule 41

5. What is the tax implication of supply of capital goods by a registered person who had taken ITC on such capital goods?

Answer: Refer Section 18(6)

6. ABC Co. Ltd., registered under GST, is engaged in the manufacture of heavy machinery. It procured the following items during the month of July'

S. No.	Items	GST (₹)
i	Electrical transformers to be used in the manufacturing process	5,20,000

ii	Trucks used for the transport of raw material	1,00,000
iii	Raw material	2,00,000
iv	Confectionery items. These items were supplied free of cost to the customers in a customer meet organized by the company	25,000

Determine the amount of ITC available with ABC Co. Ltd., for the month of July by giving necessary explanations for treatment of various items. Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled.

Answer:

Computation of ITC available with ABC Co. Ltd. for the month of July

S. No.	Items	ITC (₹)
(i)	Electrical transformers [Being goods used in the course or furtherance of business, ITC thereon is available in terms of section 16(1)]	5,20,000
(ii)	Trucks used for the transport of raw material [ITC on motor vehicles used for transportation of goods is not blocked under section 17(5)(a)]	1,00,000
(iii)	Raw material [Being goods used in the course or furtherance of business, ITC thereon is available in terms of section 16(1)]	2,00,000
(iv)	Confectionery items for consumption of customers at customers meet [ITC on food or beverages is specifically disallowed unless the same is used for making outward taxable supply of the same category or as an element of the taxable composite or mixed supply-Section 17(5)(b)(i)]	Nil
	Total ITC	8,20,000

7. XYZ Ltd., registered under GST, is engaged in manufacture of taxable goods. Compute the ITC available with XYZ Ltd. for the month of October from the following particulars:-

S. No.	Inward supplies	GST (₹)	Remarks
(i)	Inputs 'A'	1,00,000	One invoice on which GST payable was ₹ 10,000, is missing
(ii)	Inputs 'B'	50,000	Inputs are to be received in two instalments. First instalment has been received in October
(iii)	Capital goods	1,20,000	XYZ Ltd. has capitalised the capital goods at full invoice value inclusive of GST as it will avail

			depreciation on the full invoice value.
(iv)	Input services	2,25,000	One invoice dated 20th January on which GST payable was ₹ 50,000 has been received in October

Note: (i) Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled. (ii) The annual return for the previous financial year was filed on 15th September.

Answer:

Computation of ITC available with XYZ Ltd. for the month of October

S. No.	Inward supplies	ITC (₹)
(i)	Inputs 'A' [ITC cannot be taken on missing invoice. The registered person should have the invoice in its possession to claim ITC-Section 16(2)(a)]	90,000
(ii)	Inputs 'B' [When inputs are received in instalments, ITC can be availed only on receipt of last instalment-First proviso to section 16(2)]	Nil
(iii)	Capital goods [Input tax paid on capital goods cannot be availed as ITC, if depreciation has been claimed on such tax component -Section 16(3)]	Nil
(iv)	Input services [As per section 16(4), ITC on an invoice cannot be availed after the 30 th November following the end of financial year to which such invoice pertains or the date of filing annual return, whichever is earlier. Since the annual return for the previous financial year has been filed on 15 th September, ITC on the invoice pertaining to previous financial year cannot be availed after 15 th September.	1,75,000
	Total ITC	2,65,000

8. Swastik Pvt. Ltd. is a manufacturer of taxable goods. It purchased a machinery for ₹ 8,00,000 on which IGST of ₹ 14,400 is paid. The company has claimed depreciation under the Income-tax Act, 1961 on the full value of the machine, i.e. including the IGST component as also availed ITC of ₹ 14,400 paid by it as IGST. Examine if the stand taken by the company is correct in law.

Answer:

As per section 16(3), if the person taking the ITC on capital goods and plant and machinery has claimed depreciation on the tax component of the cost of the said items under the Income-tax Act 1961, the ITC on the said tax component shall not be allowed. Since in the given case, Swastik Pvt. Ltd. has claimed depreciation on the tax component of the cost of the machine, it cannot claim ITC of IGST of ₹ 14,400 paid by it on the machine. It can either claim depreciation on the tax component or avail ITC of such tax but cannot avail both the benefits simultaneously.

9. Sigma Consultants, an LLP of finance professionals, provides financial consultancy services. It made an advance payment of ₹ 1,18,000 (inclusive of IGST @ 18%) in the month of October to Azuro Computer Services for developing a software. The software would be used by the LLP to enhance the precision of the financial advice given by it to various clients. The balance payment is to be made after the successful test run of the software in the month of December. Sigma Consultants has availed ITC of IGST of ₹ 18,000 in the month of October. Do you think Sigma Consultants can avail such ITC? Examine the scenario with reference to the relevant legal provisions.

Answer:

As per section 16(2)(b), tax paid on supply of goods and/or services can be availed as ITC only if such goods and/or services are received by the registered person. In the given case, Sigma Consultants has paid IGST of ₹ 18,000, in the month of October, on advance for IT services intended to be used in the course or furtherance of business. However, it cannot avail ITC of such tax in the month of October as the services in relation to which the advance payment has been made have not been received in that month.

10. A taxable person is in the business of information technology. He buys a car (maximum seating capacity – 5 persons) for use of his Executive Directors. Can he avail the ITC in respect of GST paid on purchase of such car?

Answer:

No. ITC on motor vehicles for transportation of persons with seating capacity of up to 13 persons (including driver), can be availed only if the taxable person is in the business of transport of passengers or is providing the services of imparting training on driving such motor vehicles or is in the business of supply of such motor vehicles.

11. A technical testing agency tests and certifies each batch of machine tools before dispatch by BMT Ltd. Some of these tools are dispatched to a unit in a SEZ without payment of GST as these supplies are not taxable. The finance personnel of BMT Ltd. want to know whether they need to carry out reversal of ITC on the testing agency's services to the extent attributable to the SEZ supplies. Give your comments.

Answer:

ITC is disallowed only to the extent it pertains to supplies used for non-business purposes or supplies other than taxable and zero-rated supplies. Supplies to SEZ units are zero rated supplies in terms of

section 16(1) of the IGST Act. Thus, full ITC is allowed on inward supplies of BMT Ltd. used for effecting supplies to the unit in the SEZ.

12. AB', a registered person, was paying tax under composition scheme up to 30th July. However, w.e.f. 31st July, 'AB' becomes liable to pay tax under regular scheme. Is 'AB' eligible for any ITC?

Answer:

AB' is eligible for ITC on inputs held in stock and inputs contained in semi-finished or finished goods held in stock and capital goods as on 30th July. ITC on capital goods will be reduced by 5% per quarter or part thereof from the date of invoice.

13. Babla Enterprises is exclusively engaged in making exempt supply of goods and is thus, not registered under GST. On 1st October, the exemption available on its goods gets withdrawn. On that day, the turnover of Babla Enterprises was ₹ 50 lakh. Examine the eligibility of Babla Enterprises for availing ITC, if any.

Answer:

Since the exemption available on goods being supplied by Babla Enterprises gets withdrawn, it becomes liable to registration as its turnover has crossed the threshold limit on the day when the exemption is withdrawn. Assuming that Babla Enterprises applies for registration within 30 days of 1st October and it obtains such registration, it will be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which it becomes liable to pay tax, i.e. 30th September [Section 18(1)(a)]. Input tax paid on capital goods will not be available as ITC in this case.

14. Mamta Trade Links trades in exempt goods and provides taxable services. It is registered under GST. On 1st October, the exemption available on its goods gets withdrawn. Analyze the scenario and determine the eligibility of Mamta Trade Links for availing ITC, if any, on inputs and/or capital goods used in the supply of exempt goods.

Answer:

If the exempt supply made by a registered person becomes a taxable supply, provisions of section 18(1)(d) become applicable. In the given case, since Mamta Trade Links is a registered person, section 18(1)(d) will be applicable. As per section 18(1)(d), Mamta Trade Links will be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semifinished or finished goods held in stock relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable, i.e. 30th September. ITC on capital goods will be reduced by 5% per quarter or part thereof from the date of invoice.

15. Harshgeet Pvt. Ltd., a registered supplier, is engaged in the manufacture of taxable goods. The company provides the following information pertaining to purchases made/services availed by it during the month of July:

S. No	Particulars	GST (₹)
(1)	Raw material (to be received in the month of September)	2,50,000
(2)	Membership of a club availed for employees working in the factory	1,45,000
(3)	Inputs to be received in 5 lots, out of which 3 rd lot was received during the month	80,000
(4)	Trucks used for transport of raw material	40,000
(5)	Capital goods (out of 3 items, invoice for 2 items is missing and GST paid on those items is ₹ 80,000)	1,50,000

Determine the amount of ITC available with Harshgeet Pvt. Ltd. for the month of July by giving the necessary explanation for treatment of various items. Subject to the information given above, all the other conditions necessary for availing ITC have been fulfilled.

Answer:

Computation of ITC available with Harshgeet Pvt. Ltd. for the month of July

Particulars	ITC (₹)
Raw Material [ITC not available as raw material is not received in July]	Nil
Membership of a club availed for employees working in the factory [Blocked credit in terms of section 17(5)]	Nil
Inputs to be received in 5 lots, out of which 3 rd lot was received during the month [In case of goods received in lots, ITC can be taken only upon receipt of the last lot]	Nil
Trucks used for transport of raw material [ITC of GST paid on motor vehicles used for transportation of goods is allowed unconditionally]	40,000
Capital goods [ITC can be availed only on the basis of a valid document (invoice). Thus, GST paid on items for which invoice is missing, i.e. ₹ 80,000, is not available.]	70,000
Total ITC	1,10,000

16. Jamku Ltd., a registered person, is engaged in the business of spices. It provides following details in relation to GST paid on inward supplies procured by it during the month of October.

S. No.	Particulars	GST (₹)
1	Raw spices purchase	
	Raw spices sold to customers	50,000
	Raw spices used for personal use of directors	20,000
2	Electric machinery purchased for being used in the manufacturing process	25,000

3	Motor vehicle used for transportation of the employee	55,000
4	Payment made to contractor for construction of staff quarter	1,25,000

Determine the amount of ITC available with Jamku Ltd. for the month October by giving the necessary explanation for treatment of various items. Subject to the information given above, all the other conditions necessary for availing ITC have been fulfilled.

Answer:

Computation of ITC available with Jamku Ltd. for the month of October

Particulars	ITC (?)
Purchase of raw spices which are sold to customers [Every registered person is entitled to take credit of input tax charged on any supply of goods to him which are used or intended to be used in the course or furtherance of his business.]	50,000
Purchase of raw spices for personal use of directors [ITC is not available on goods used for personal consumption.]	Nil
Electric machinery purchased for being used in the manufacturing process [Every registered person is entitled to take credit of input tax charged on any supply of goods to him which are used or intended to be used in the course or furtherance of his business.]	25,000
Motor vehicle used for transportation of employee [ITC on motor vehicles for transportation of persons with seating capacity < 13 persons (including the driver) is blocked except when the same are used for (i) making further taxable supply of such motor vehicles (ii) making taxable supply of transportation of passengers (iii) making taxable supply of imparting training on driving such motor vehicles. In the given case, since the supplier is in the business of spices, ITC on motor vehicle used for transportation of the employee is blocked credit.]	Nil
Payment made to contractor for construction of staff quarter [ITC is not available on goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.]	Nil
Total ITC	75,000

17. Dina Ltd., a registered supplier from Maharashtra, is engaged in the manufacture of passenger autos. The company provides the following details of purchases made/services availed by it during the month of March:

S. No.	Particulars	GST (₹)
(1)	Purchase of iron which is used as a raw material [Goods were received in two instalments - first in March and the second in April]	2,50,000

(2)	Purchase of accessories which were delivered directly to the dealers of the company on the direction of Dina Ltd. [Only invoice was received by Dina Ltd.]	90,000
(3)	Purchase of bus (seating capacity 15) for the transportation of employees from their residence to company and back	1,97,000
(4)	General insurance taken on a car used by executives of the company for official purposes	5,200

You are required to determine the ITC available with Dina Ltd. for the month of March, by giving brief explanations for treatment of various items. Subject to the information given above, all the other conditions necessary for availing ITC have been fulfilled.

Answer:

Computation of ITC available with Dina Ltd. for the month of March

Particulars	ITC (₹)
Purchase of iron used as a raw material [When inputs are received in instalments, ITC can be availed only on the receipt of last instalment. Hence, since last instalment is received in April, ITC cannot be availed in March.]	Nil
Purchase of accessories delivered directly to the dealers of the company [Goods delivered to another person on the direction of the registered person by way of transfer of documents of title or otherwise, either before or during the movement, are deemed to have been received by such registered person. Thus, ITC is available to the registered person, on whose order/direction the goods are delivered to a third person.]	90,000
Bus for the transportation of employees [ITC on motor vehicles for transportation of persons with seating capacity > 13 persons (including the driver) used for any purpose is allowed.]	1,97,000
General insurance taken on car used by executives of the company for official purpose [ITC on motor vehicles for transportation of persons with seating capacity ≤ 13 persons (including the driver) is blocked except when the same are used for (i) making further taxable supply of such motor vehicles (ii) making taxable supply of transportation of passengers (iii) making taxable supply of imparting training on driving such motor vehicles. Further, ITC is not allowed on services of general insurance relating to such ineligible motor vehicles. Since, the car is not used for any of the eligible purposes, ITC thereon is blocked and thus, ITC on general insurance taken on such car is also blocked.]	Nil
Total ITC	2,87,000

18. Comfortable (P) Ltd. is registered under GST in the State of Odisha. It is engaged in the business of manufacturing of iron and steel products. It has received IT engineering services from High-Fi Infotech (P) Ltd. for ₹ 11,00,000/- (excluding GST @ 18%) on 28th October. Invoice for service rendered was issued on 5th November. Comfortable (P) Ltd. made part payment of ₹ 4,20,000/-

on 30th November. Being unhappy with service provided by High-fi Infotech (P) Ltd., it did not make the balance payment. Deficiency in service rendered was made good by High-Fi Infotech (P) Ltd. by 15th April of next year. Comfortable (P) Ltd. made the balance payment on 6th July of next year. Examine the availability of ITC with Comfortable (P) Ltd. in respect of IT engineering services received by it from High-Fi Infotech (P) Ltd.

Answer:

Every registered person is entitled to take credit of input tax charged on any supply of goods and/or services which are used or intended to be used in the course or furtherance of his business if, inter alia, he is in possession of a tax invoice issued by a supplier and he has received the goods and/or services.

The registered person must pay to the supplier, the value of the goods and/or services along with the tax within 180 days from the date of issue of invoice. In the event of failure to do so, the corresponding credits availed by the registered person would be added to his output tax liability, with interest. However, once the recipient makes the payment of value of goods and/or services along with tax, he will be entitled to avail the credit again without any time limit. In case part-payment has been made, proportionate credit would be allowed.

In the given case, High-fi Infotech (P) Ltd. provides the service in the month of October and Comfortable (P) Ltd. receives the invoice in the month of November. Therefore, in view of the above provisions and assuming all other conditions required for availing ITC having been fulfilled, ITC of ₹ 1,98,000 ($₹ 11,00,000 \times 18\%$) will be availed by Comfortable (P) Ltd. in the month of November when it receives the invoice issued by High-fi Infotech (P) Ltd.

However, proportionate ITC amounting to ₹ 1,33,932 $\Rightarrow [(₹ 12,98,000 - ₹ 4,20,000)/118] \times 18$ will be added to the output tax liability of Comfortable (P) Ltd. as full payment has not been made within 180 days of issuance of the invoice, i.e. by 4th May of next year. ITC of ₹ 1,33,932 can, however, be availed again by Comfortable (P) Ltd. in the month of July next year when it makes the balance payment.

19. M/s. Diwan & Sons of New Delhi, has placed an order for 250 kg of plastic granules @ ₹ 50 per kg (exclusive of GST) on M/s. Karim & Bros. of Noida, U.P. M/s. Karim & Bros. has agreed to deliver the goods at the warehouse of M/s. Diwan & Sons at New Delhi. While the order was getting packed at the factory of M/s. Karim & Bros., M/s. Diwan & Sons got an order from Shubhkamna Sales of Hapur, U.P. for 250 kg of plastic granules @ ₹ 60 per kg (exclusive of GST). In order to save on transportation cost, M/s. Diwan & Sons asks M/s. Karim & Bros. to directly deliver the plastic granules to Shubhkamna Sales at its godown located in Hapur. Accordingly, M/s. Karim & Bros. has delivered the plastic granules at the godown of Shubhkamna Sales at Hapur. Examine the availability of ITC with M/s. Diwan & Sons & M/s. Karim & Bros. Note: All the parties are registered under GST and rate of GST is 18%.

Answer:

One of the conditions for availing ITC is that the registered person taking the ITC must have received the goods and / or services. However, goods delivered to a third person on the direction of the registered person by way of transfer of documents of title or otherwise, either before or during the

movement, are deemed to have been received by such registered person. So, ITC is available to the registered person, on whose order the goods are delivered to a third person even though the registered person does not receive the goods.

In the given case, goods have been delivered by M/s. Karim & Bros. (supplier) to Shubhkamna Sales (third person) on the direction of M/s. Diwan & Sons (registered person). Therefore, in view of the above provisions, ITC of ₹ 2,250 ($₹ 50 \times 250 \times 18\%$) will be available to M/s. Diwan & Sons (registered person) on the purchase of 250 kg of plastic granules @ 50 per kg.

Further, in this case there is another supply between Diwan & Sons (supplier) and Shubhkamna Sales (recipient). Therefore, Shubhkamna Sales can avail ITC of ₹ 2,700 ($₹ 60 \times 250 \times 18\%$) on the purchase of 250 kg of plastic granules @ 60 per kg.

SHRESHTA

10. TAX INVOICE, CREDIT AND DEBIT NOTES

INTRODUCTION: An invoice is a commercial instrument issued by a supplier of goods/services to a recipient. It identifies both the parties involved, and lists, describes the goods sold/services supplied, quantifies the items sold, shows the date of shipment and mode of transport, prices and discounts, if any, and the delivery and payment terms (in case of supply of goods).

Invoicing is very crucial aspect for ensuring tax compliance under any indirect taxation system. In order to ensure transparency, issuance of invoice for every taxable transaction is a pre-requisite. In case of supply of goods or provision of services, an invoice is raised by the supplier of such goods or services to the recipient of the same. Tax invoice acts as a document evidencing the payment of the value of the goods or services or both as also the tax portion in the same. In certain cases, an invoice serves as a demand for payment and becomes a document of title when paid in full.

DEFINITIONS:

Quarter [Section 2(92)]: shall mean a period comprising three consecutive calendar months, ending on the last day of March, June, September and December of a calendar year.

SECTION 31 – TAX INVOICE

- I. **SECTION 31(1) – Tax invoice in case of supply of goods:** A registered person supplying taxable goods shall, before or at the time of, —
- removal of goods for supply to the recipient, where the supply involves movement of goods; or
 - delivery of goods or making available thereof to the recipient, in any other case
- issue a tax invoice showing the
- description,
 - quantity and value of goods,
 - the tax charged thereon and
 - such other particulars as may be prescribed (Rule 46/46A).

Provided that the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.

➤ **"Removal" in relation to goods, means [Sec 2(96)]-**

- dispatch of the goods for delivery by the supplier thereof or by any other person acting on behalf of such supplier; or
- collection of the goods by the recipient thereof or by any other person acting on behalf of such recipient;

II. SECTION 31(2) - Tax invoice in case of supply of Services: A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period (Rule 47 – 30/45 days), issue a tax invoice, showing the

- description,
- value,
- tax charged thereon and
- such other particulars as may be prescribed (Rule 46/46A).

Provided that the Government may, on the recommendations of the Council, by notification—

- a. specify the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed;
- b. subject to the condition mentioned therein, specify the categories of services in respect of which—
 - (i) any other document issued in relation to the supply shall be deemed to be a tax invoice; or
 - (ii) tax invoice may not be issued.

➤ **Rule 47 - Time limit for issuing tax invoice.:** The invoice referred to in rule 46, in the case of the taxable supply of services, shall be issued within a period of thirty days from the date of the supply of service.

Proviso 1: Provided that where the supplier of services is an insurer or a banking company or a financial institution, including a non-banking financial company, the period within which the invoice or any document in lieu thereof is to be issued shall be forty five days from the date of the supply of service.

Proviso 2: Provided further that an insurer or a banking company or a financial institution, including a non-banking financial company, or a telecom operator, or any other class of supplier of services as may be notified by the Government on the recommendations of the Council,

- making taxable supplies of services between distinct persons as specified in section 25,
- may issue the invoice 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.

III. SECTION 31(3): Notwithstanding anything contained in sub-sections (1) and (2)–

- a. **Revised Invoice:** a registered person may, within one month from the date of issuance of certificate of registration and in such manner as may be prescribed (Rule 53), issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him;

Example: Sarabhai Private Ltd. commenced business of supply of goods on 1st April in Delhi. Its turnover exceeded the applicable threshold limit on 3rd September. Thus, it became liable to registration on 3rd September. It applied for registration on 29th September and was granted registration certificate on 5th October. Since it applied for registration within 30 days

of becoming liable to registration, registration granted is effective from 3rd September. Sarabhai Private Ltd. may issue Revised Tax Invoices on or before 5th November in respect of taxable supplies effected between 3rd September and 5th October.

- b. Value of Supply < 200:** A registered person may not issue a tax invoice if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed (**Rule 46**);

- **Relevant extract of Rule 46:** A registered person other than the supplier engaged in making supply of services by way of admission to exhibition of cinematograph films in multiplex screens, may not issue a tax invoice in accordance with the provisions of clause (b) of section 31(3) subject to the following conditions, namely,-
- a. the recipient is not a registered person; and
 - b. the recipient does not require such invoice, and shall issue a consolidated tax invoice for such supplies at the close of each day in respect of all such supplies

- c. Composition Scheme:** A registered person supplying exempted goods or services or both or paying tax under the provisions of section 10 shall issue, instead of a tax invoice, a bill of supply containing such particulars and, in such manner, as may be prescribed (Rule 49).

Provided that the registered person may not issue a bill of supply if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;

- d. Receipt voucher on receipt of advance payment:** A registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a receipt voucher or any other document, containing such particulars as may be prescribed (Rule 50), evidencing receipt of such payment.

- **Proviso to Rule 50:** Provided that where at the time of receipt of advance,-
- (iii) the rate of tax is not determinable, the tax shall be paid at the rate of eighteen per cent.;
 - (iv) the nature of supply is not determinable, the same shall be treated as inter State supply.

- e. Refund Voucher:** where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a refund voucher against such payment (Rule 51).

- f. **Supply under RCM - Self receipt:** A registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both;
- g. **Supply under RCM – Issue a payment voucher:** A registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue a payment voucher at the time of making payment to the supplier.

IV. SECTION 31(4) – Tax Invoice in case of continuous supply of service: In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.

Continuous supply of goods [Sec 2(32)]: "Continuous supply of goods" means a supply of goods

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

V. SECTION 31(5) – Tax invoice in case of continuous supply of services: Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,—

- a. where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;
- b. where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;
- c. where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

Continuous supply of services Sec 2(33): "Continuous supply of services" means a supply of services

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

VI. SECTION 31(6) – Service ceases before completion of supply: In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.

VII. SECTION 31(7) - Goods sent or taken on approval for sale or return: Notwithstanding anything contained in sub-section (1), where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued

- a. before or at the time of supply or
 - b. six months from the date of removal,
- whichever is earlier.

Explanation: For the purposes of this section, the expression "tax invoice" shall include any revised invoice issued by the supplier in respect of a supply made earlier.

SECTION 31A – FACILITY OF DIGITAL PAYMENT TO RECIPIENT

The Government may, on the recommendations of the Council, prescribe a class of registered persons who shall provide prescribed modes of electronic payment to the recipient of supply of goods or services or both made by him and give option to such recipient to make payment accordingly, in such manner and subject to such conditions and restrictions, as may be prescribed.

SECTION 32 – PROHIBITION OF UNAUTHORISED COLLECTION OF TAX

- (1) A person who is not a registered person shall not collect in respect of any supply of goods or services or both any amount by way of tax under this Act.
- (2) No registered person shall collect tax except in accordance with the provisions of this Act or the rules made thereunder.

Example: *Rujuta is engaged in providing grooming services. She is not registered under GST law as her turnover is below the threshold limit. Rujuta cannot collect tax on the grooming services provided by her as a person who is not a registered person cannot collect any amount by way of tax under this Act in respect of any supply of goods or services or both.*

SECTION 33 – AMOUNT OF TAX TO BE INDICATED IN TAX INVOICE AND OTHER DOCUMENTS

Notwithstanding anything contained in this Act or any other law for the time being in force, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made.

SECTION 34 – CREDIT AND DEBIT NOTES

- I. **SECTION 34(1) – Credit note:** Where one or more tax invoices have been issued for supply of any goods or services or both

- and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or
- where the goods supplied are returned by the recipient, or
- where goods or services or both supplied are found to be deficient,
- the registered person, who has supplied such goods or services or both, may issue to the recipient one or more credit notes for supplies made in a financial year containing such particulars as may be prescribed (Rule 53).

II. SECTION 34(2) – Credit note to be disclosed in the return: Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than

- 30th of November following the end of the financial year in which such supply was made, or
 - the date of furnishing of the relevant annual return,
- whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed.

Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

- **Circular 92/11/2019 GST dated 07.03.2019:** It is important to note that credit note(s) are not permitted to be issued in case secondary discounts are allowed by the supplier since the tax liability of the supplier does not get reduced in such case. However, supplier can issue financial/ commercial credit note(s) to reduce the value of supply payable by the recipient to the supplier.

III. SECTION 34(3) – DEBIT NOTE: Where one or more tax invoices have been issued for supply of any goods or services or both

- and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply,
- the registered person, who has supplied such goods or services or both, shall issue to the recipient one or more debit notes for supplies made in a financial year containing such particulars as may be prescribed (Rule 53).

IV. SECTION 34(4) – Debit note to be disclosed in the return: Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.

RULES

I. Rule 46 – Tax Invoice:

Subject to rule 54, a tax invoice referred to in section 31 shall be issued by the registered person containing the following particulars, namely,-

- (a) name, address and Goods and Services Tax Identification Number of the supplier;
- (b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters- hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;
- (c) date of its issue;
- (d) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;
- (e) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is fifty thousand rupees or more;
- (f) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is less than fifty thousand rupees and the recipient requests that such details be recorded in the tax invoice

Provided that where any taxable service is supplied by or through an electronic commerce operator or by a supplier of online information and database access or retrieval services to a recipient who is un-registered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the name and address of the recipient along with its PIN code and the name of the State and the said address shall be deemed to be the address on record of the recipient;

- (g) Harmonised System of Nomenclature code for goods or services;
- (h) description of goods or services;
- (i) quantity in case of goods and unit or Unique Quantity Code thereof;
- (j) total value of supply of goods or services or both;
- (k) taxable value of the supply of goods or services or both taking into account discount or abatement, if any;
- (l) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
- (m) amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
- (n) place of supply along with the name of the State, in the case of a supply in the course of inter-State trade or commerce;
- (o) address of delivery where the same is different from the place of supply;
- (p) whether the tax is payable on reverse charge basis; and
- (q) signature or digital signature of the supplier or his authorised representative; and
- (r) Quick Response code, having embedded Invoice Reference Number (IRN) in it, in case invoice has been issued in the manner prescribed under sub-rule (4) of rule 48
- (s) a declaration as below, that invoice is not required to be issued in the manner specified under sub-rule (4) of rule 48, in all cases where an invoice is issued, other than in the manner so specified under the said sub-rule (4) of rule 48, by the taxpayer having aggregate turnover in

any preceding financial year from 2017-18 onwards more than the aggregate turnover as notified under the said sub-rule (4) of rule 48-

"I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, we are not required to prepare an invoice in terms of the provisions of the said sub-rule."

Provided that the Board may, on the recommendations of the Council, by notification, specify-

- (i) the number of digits of Harmonised System of Nomenclature code for goods or services that a class of registered persons shall be required to mention; or
- (ii) a class of supply of goods or services for which specified number of digits of Harmonised System of Nomenclature code shall be required to be mentioned by all registered taxpayers; and
- (iii) the class of registered persons that would not be required to mention the Harmonised System of Nomenclature code for goods or services.

➤ **Notification No. 78/2020 - CT/ [NNo. 06/2020 IT]- dated 15.1Q-2Q20 [w.e.f. 01.04.21]**

In exercise of the powers conferred by the first proviso to rule 46 of the CGST Rules, 2017, the CBIC, on the recommendations of the Council, hereby makes the following amendment in the above notification (No.12/2017 - CT).

Annual Turnover (AT) in the preceding FY	Number of Digits of HSN Code
AT ≤ ₹ 5 crores	For B2B supply - 4 For B2C supply – 4 (optional)*
AT > ₹ 5 crores	For B2B supply and B2C supply – 6

*As mentioned above, a registered person having aggregate turnover up to ₹ 5 crores in the previous financial year has been exempted from the requirement of mentioning the HSN Code in the manner specified in above table in a tax invoice issued by him under the said rules in respect of supplies made to unregistered persons.

Provided also that the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of an electronic invoice in accordance with the provisions of the Information Technology Act,2000 (21 of 2000):]

Provided also that the Government may, by notification, on the recommendations of the Council, and subject to such conditions and restrictions as mentioned therein, specify that the tax invoice shall have Quick Response (QR) code.

DYNAMIC QR CODE:

Notification No. 14/2020 CT dated 21.03.2020 – Class of registered persons to capture Dynamic QR Code:

- With effect from 01.12.2020, **all B2C invoices** issued by a registered person whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds ₹ 500 crores are mandatorily required to have a Dynamic QR code.
- **Non-applicability of requirement of Dynamic QR code:**
Dynamic QR code is not applicable to an invoice issued to an unregistered person by following suppliers:
 - (i) Insurer or banking company or financial institution including NBFC
 - (ii) Goods transport agency supplying services in relation to transportation of goods by road in a goods carriage
 - (iii) Supplier of passenger transportation service
 - (iv) Person supplying services by way of admission to exhibition of cinematograph films in multiplex screens
 - (v) Supplier of online information and database access or retrieval (OIDAR) services
- **Parameters/ details to be captured in the Dynamic QR Code:** Dynamic QR Code, inter-alia, shall contain the following information: -
 - a. Supplier GSTIN number
 - b. Supplier UPI ID
 - c. Payee's Bank A/c number and IFSC
 - d. Invoice number & invoice date,
 - e. Total invoice value and
 - f. GST amount along with breakup i.e. CGST, SGST, IGST, Cess, etc. Further, Dynamic QR Code should be such that it can be scanned to make a digital payment.
- **Deemed QR Code:** Where such registered person makes a Dynamic Quick Response (QR) code available to the recipient through a digital display, such B2C invoice issued by such registered person containing cross-reference of the payment using a Dynamic Quick Response (QR) code, shall be deemed to be having Quick Response (QR) code.
- **In this regard, Circular No. 156/12/2021 GST dated 21.06.2021 and Circular No. 165/21/2021 GST dated 17.11.2021 have clarified that:**
Dynamic QR Code required to be provided on invoice issued to a person having a UIN: Any person who has obtained a Unique Identity Number (UIN), is not a "registered person" as per the definition of 'registered person' provided under section 2(94). Therefore, any invoice, issued to such person having a UIN, shall be considered as invoice issued for a B2C supply and shall be required to comply with the requirement of Dynamic QR Code.

II. RULE 46A- Invoice-cum-bill of supply:

Notwithstanding anything contained in rule 46 or rule 49 or rule 54, where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single "invoice-cum-bill of supply" may be issued for all such supplies.

Provided that the said single “invoice-cum-bill of supply” shall contain the particulars as specified under rule 46 or rule 54, as the case may be, and rule 49.

III. Rule 48 - Manner of issuing invoice-

- (1) The invoice shall be prepared in triplicate, in the case of supply of goods, in the following manner, namely,-
 - a. the original copy being marked as ORIGINAL FOR RECIPIENT;
 - b. the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and
 - c. the triplicate copy being marked as TRIPPLICATE FOR SUPPLIER.
- (2) The invoice shall be prepared in duplicate, in the case of the supply of services, in the following manner, namely,-
 - a. the original copy being marked as ORIGINAL FOR RECIPIENT; and
 - b. the duplicate copy being marked as DUPLICATE FOR SUPPLIER.
- (3) The serial number of invoices issued during a tax period shall be furnished electronically through the common portal in FORM GSTR-1.
- (4) The invoice shall be prepared by such class of registered persons as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in FORM GST INV-01 after obtaining an Invoice Reference Number by uploading information contained therein on the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.

Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt a person or a class of registered persons from issuance of invoice under this sub-rule for a specified period, subject to such conditions and restrictions as may be specified in the said notification.

- (5) Every invoice issued by a person to whom sub-rule (4) applies in any manner other than the manner specified in the said sub-rule shall not be treated as an invoice.
- (6) The provisions of sub-rules (1) and (2) shall not apply to an invoice prepared in the manner specified in sub-rule (4).

E -INVOICE (Invoice under Rule 48(4)):

• What is e-invoice?

- a. Businesses use various accounting/billing software, each generating and storing invoices in their own electronic formats. These different formats are neither understood by GST System nor by the systems of suppliers and receivers.

Example: An invoice generated by SAP system cannot be read by a machine which is using ‘Tally’ system, unless a connector is used. With more than 300 accounting/billing software products, there was no way to have connectors for all.

- b. In this scenario, ‘e-invoicing’ was introduced aiming at machine-readability and uniform interpretation. To ensure this complete ‘inter-operability’ of e-invoices across the entire GST eco-system, an invoice standard is a must.

c. The invoice standard is notified as form **GST INV-1**.

- **Class of persons notified to mandatorily issue e-invoice:**

a. E-invoicing was made mandatory for all registered businesses with an aggregate turnover (based on PAN) in any preceding financial year from 2017-18 onwards greater than ₹ 10 crore for issue of all **B2B invoices**.

- **Exemptions from issuing e-invoice:** Following entities are exempt from the mandatory requirement of e-invoicing:-

- Special Economic Zone units
- Insurer or banking company or financial institution including NBFC
- GTA supplying services in relation to transportation of goods by road in a goods carriage
- Supplier of passenger transportation service
- Person supplying services by way of admission to exhibition of cinematograph films in multiplex screens.
- Government Department and
- Local authority

Note: It is important to note here that only SEZ units and not SEZ developers are exempt from issuing e-invoices. Thus, SEZ developers whose turnover exceeds ₹ 10 crores in any preceding financial year from 2017-18 onwards are mandatorily required to issue e-invoices

Further, such taxpayers are now required to provide a declaration on the tax invoice stating that though their aggregate turnover exceeds the notified aggregate turnover for e-invoicing, they are not required to prepare an e-invoice (as per Rule 46).

- **Generating e-invoice:**

- Following IRPs have been notified for the purpose of preparation of the e-invoice:

www.einvoice1.gst.gov.in	www.einvoice2.gst.gov.in	www.einvoice3.gst.gov.in
www.einvoice4.gst.gov.in	www.einvoice5.gst.gov.in	www.einvoice6.gst.gov.in
www.einvoice7.gst.gov.in	www.einvoice8.gst.gov.in	www.einvoice9.gst.gov.in
www.einvoice10.gst.gov.in		
- The taxpayer first prepares and generates his invoice using his own ERP/ accounting/ billing system or manual system.
- The invoice must conform to the e-invoice schema (GST INV-1) and must have the mandatory parameters.
- The details of this invoice are uploaded/reported by the taxpayer to the Invoice Registration Portal (IRP).
- This way taxpayer registers his supply transaction on IRP. On uploading, IRP returns the e-invoice with a unique 'Invoice Reference Number (IRN)' after digitally signing the e-invoice and adding a QR Code (Quick Response Code).

- f. IRN is embedded in the QR Code which shall be extracted and printed on the invoice. The digitally signed QR code will have a unique IRN which can be verified on the central portal as well as by an offline app by the officer.
 - g. The QR code consists of the following e-invoice parameters: ☐ GSTIN of supplier ☐ GSTIN of recipient
 - i. Invoice number as given by supplier
 - ii. Date of generation of invoice
 - iii. Invoice value (taxable value and gross tax)
 - iv. Number of line items
 - v. HSN code of main item (the line item having highest taxable value)
 - vi. Unique Invoice Reference Number (hash)
 - vii. Date of generation of IRN
 - h. Then, the supplier shares the e-invoice with the receiver (along with QR Code).
- **E-invoice has many advantages for businesses, which have been given as under: -**
 - i. **Auto-reporting of invoices into GST return and auto-generation of e-way bill (wherever required):** Under e-invoicing, business has to report the B2B invoice data only once in the e-invoice form and the same is reported in multiple forms (GSTR-1, e-way bill etc.). E-way bill can be auto-generated using e-invoice data. GSTR-1 can also be auto-populated with the e-invoice data. It will become part of the business process of the taxpayer.
 - ii. **Accuracy/Reconciliation:** Since same data is reported to tax department as well as to the buyer to prepare his inward supplies (purchase) register, transcription errors are reduced. On receipt of information through GST System, buyer can do reconciliation with his Purchase Order.
 - iii. **Early payment:** E-invoicing facilitates standardization and inter-operability leading to reduction of disputes among transacting parties and thus, improving payment cycles.
 - iv. **Cost reduction:** E-invoicing helps in reducing processing costs and thus, leads to improvement of overall business efficiency.
 - v. **Reduction of tax evasion:** Since a complete trail of B2B invoices is available with the Department, it will enable the system-level matching of input tax credit and output tax thereby reducing the tax evasion.
 - vi. **Elimination of fake invoices:** E-invoicing eliminates the fake invoices. Claiming fictitious input tax credit (ITC) by raising fake invoices is also one of the biggest challenges currently faced by tax- authorities. The e-invoice system helps to curb the actions of unscrupulous taxpayers and reduce the number of fraud cases as the tax authorities have access to data in real-time.
 - vii. **Paper Elimination:** E-invoicing helps in paper elimination and thereby it is eco-friendly.
 - **In case of issuance of e-invoice, no requirement to carry the physical copy of tax invoice:** It is clarified that there is no requirement to carry the physical copy of tax invoice in cases where e-invoice has been generated by the supplier. Whenever e-invoice has been generated, production of the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.

IV. Rule 49 - Bill of supply: A bill of supply referred to in clause(c) of section 31(3) shall be issued by the supplier containing the following details, namely,-

- a. name, address and Goods and Services Tax Identification Number of the supplier;
- b. a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters - hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;
- c. date of its issue;
- d. name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;
- e. Harmonised System of Nomenclature Code for goods or services;
- f. description of goods or services or both;
- g. value of supply of goods or services or both taking into account discount or abatement, if any; and
- h. signature or digital signature of the supplier or his authorised representative:

Provided that the provisos to rule 46 shall, mutatis mutandis, apply to the bill of supply issued under this rule.

Provided further that any tax invoice or any other similar document issued under any other Act for the time being in force in respect of any non-taxable supply shall be treated as a bill of supply for the purposes of the Act.

Provided also that the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of an electronic bill of supply in accordance with the provisions of the Information Technology Act, 2000 (21 of 2000).]

Provided also that the Government may, by notification, on the recommendations of the Council, and subject to such conditions and restrictions as mentioned therein, specify that the bill of supply shall have Quick Response (QR) code.

V. Rule 50 - Receipt voucher: A receipt voucher referred to in clause (d) of sub-section (3) of section 31 shall contain the following particulars, namely,-

- a. name, address and Goods and Services Tax Identification Number of the supplier;
- b. a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters-hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;
- c. date of its issue;
- d. name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;
- e. description of goods or services;
- f. amount of advance taken;
- g. rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);

- h. amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
- i. place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce;
- j. whether the tax is payable on reverse charge basis; and
- k. signature or digital signature of the supplier or his authorised representative.

Provided that where at the time of receipt of advance, -

- (i) the rate of tax is not determinable, the tax shall be paid at the rate of eighteen per cent.;
- (ii) the nature of supply is not determinable, the same shall be treated as inter State supply.

VI. Rule 51- Refund voucher: A refund voucher referred to in clause (e) of sub-section (3) of section 31 shall contain the following particulars, namely:-

- a. name, address and Goods and Services Tax Identification Number of the supplier;
- b. a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters-hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;
- c. date of its issue;
- d. name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;
- e. number and date of receipt voucher issued in accordance with the provisions of rule 50;
- f. description of goods or services in respect of which refund is made;
- g. amount of refund made;
- h. rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
- i. amount of tax paid in respect of such goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
- j. whether the tax is payable on reverse charge basis; and
- k. signature or digital signature of the supplier or his authorised representative.

VII. Rule 52 - Payment voucher: A payment voucher referred to in clause (g) of sub-section (3) of section 31 shall contain the following particulars, namely:-

- a. name, address and Goods and Services Tax Identification Number of the supplier if registered;
- b. a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters-hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;
- c. date of its issue;
- d. name, address and Goods and Services Tax Identification Number of the recipient;
- e. description of goods or services;
- f. amount paid;
- g. rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
- h. amount of tax payable in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);

- i. place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce; and
- j. signature or digital signature of the supplier or his authorised representative.

VIII. Rule 53 - Revised tax invoice and credit or debit notes:

(1) A revised tax invoice referred to in section 31 shall contain the following particulars, namely:-

- a. the word "Revised Invoice", wherever applicable, indicated prominently;
- b. name, address and Goods and Services Tax Identification Number of the supplier; 16
- ~~c. Nature of document~~
- d. a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters-hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;
- e. date of issue of the document;
- f. name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;
- g. name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un- registered;
- h. serial number and date of the corresponding tax invoice or, as the case may be, bill of supply; and 17
- i. signature or digital signature of the supplier or his authorised representative.

(1A) A credit or debit note referred to in section 34 shall contain the following particulars, namely:-

- a. name, address and Goods and Services Tax Identification Number of the supplier;
- b. nature of the document;
- c. a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters-hyphen or dash and slash symbolised as " - " and " / " respectively, and any combination thereof, unique for a financial year;
- d. date of issue of the document;
- e. name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;
- f. name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un- registered;
- g. serial number(s) and date(s) of the corresponding tax invoice(s) or, as the case may be, bill(s) of supply;
- h. value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient; and
- i. signature or digital signature of the supplier or his authorised representative.

(2) Every registered person who has been granted registration with effect from a date earlier than the date of issuance of certificate of registration to him, may issue revised tax

invoices in respect of taxable supplies effected during the period starting from the effective date of registration till the date of the issuance of the certificate of registration.

Provided that the registered person may issue a consolidated revised tax invoice in respect of all taxable supplies made to a recipient who is not registered under the Act during such period.

Provided further that in the case of inter-State supplies, where the value of a supply does not exceed two lakh and fifty thousand rupees, a consolidated revised invoice may be issued separately in respect of all the recipients located in a State, who are not registered under the Act.

- (3) Any invoice or debit note issued in pursuance of any tax payable in accordance with the provisions of section 74 or section 129 or section 130 shall prominently contain the words "INPUT TAX CREDIT NOT ADMISSIBLE".

IX. Rule 54 - Tax invoice in special cases:

- (1) Input Service Distributor invoice (will be discussed at CA final)
- (2) **In case of insurer or a banking company or a financial institution:** Where the supplier of taxable service is an insurer or a banking company or a financial institution, including a non-banking financial company, the said supplier
- may issue consolidated tax invoice or any other document in lieu thereof, by whatever name called for the supply of services
 - made during a month at the end of the month,
 - whether issued or made available, physically or electronically
 - whether or not serially numbered, and
 - whether or not containing the address of the recipient of taxable service
 - but containing other information as mentioned under rule 46.

Provided that the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of a consolidated tax invoice or any other document in lieu thereof in accordance with the provisions of the Information Technology Act, 2000 (21 of 2000).

- (3) **In case of GTA:** Where the supplier of taxable service is a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage,
- the said supplier shall issue a tax invoice or any other document in lieu thereof, by whatever name called,
 - containing the gross weight of the consignment,
 - name of the consigner and the consignee,
 - registration number of goods carriage in which the goods are transported,
 - details of goods transported,
 - details of place of origin and destination,

- Goods and Services Tax Identification Number of the person liable for paying tax whether as consigner, consignee or goods transport agency,
- and also containing other information as mentioned under rule 46.

(4) **In case of transportation of passengers:** Where the supplier of taxable service is supplying passenger transportation service,

- a tax invoice shall include ticket in any form, by whatever name called,
- whether or not serially numbered, and
- whether or not containing the address of the recipient of service
- but containing other information as mentioned under rule 46.

Provided that the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of ticket in accordance with the provisions of the Information Technology Act, 2000 (21 of 2000).

(5) **In case of Admission to exhibition of cinematograph films in multiplex screens:** A registered person supplying services by way of admission to exhibition of cinematograph films in multiplex screens

- shall be required to issue an electronic ticket and the said electronic ticket shall be deemed to be a tax invoice for all purposes of the Act,
- even if such ticket does not contain the details of the recipient of service but contains the other information as mentioned under rule 46

Provided that the supplier of such service in a screen other than multiplex screens may, at his option, follow the above procedure.

(6) The provisions of sub-rule (2) or sub-rule (4) shall apply, mutatis mutandis, to the documents issued under rule 49 or rule 50 or rule 51 or rule 52 or rule 53.

X. Rule 55 - Transportation of goods without issue of invoice:

(1) **Issue of Delivery challan:** For the purposes of-

- supply of liquid gas where the quantity at the time of removal from the place of business of the supplier is not known,
- transportation of goods for job work,
- transportation of goods for reasons other than by way of supply, or
- such other supplies as may be notified by the Board,

the consigner may issue a delivery challan, serially numbered not exceeding sixteen characters, in one or multiple series, in lieu of invoice at the time of removal of goods for transportation, containing the following details, namely:-

- date and number of the delivery challan;
- name, address and Goods and Services Tax Identification Number of the consigner, if registered;

- (iii) name, address and Goods and Services Tax Identification Number or Unique Identity Number of the consignee, if registered;
- (iv) Harmonised System of Nomenclature code and description of goods;
- (v) quantity (provisional, where the exact quantity being supplied is not known);
- (vi) taxable value;
- (vii) tax rate and tax amount - central tax, State tax, integrated tax, Union territory tax or cess, where the transportation is for supply to the consignee;
- (viii) place of supply, in case of inter-State movement; and
- (ix) signature.

- (2) **Delivery challan shall be prepared in triplicate:** The delivery challan shall be prepared in triplicate, in case of supply of goods, in the following manner, namely:-
- a. the original copy being marked as ORIGINAL FOR CONSIGNEE;
 - b. the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and
 - c. the triplicate copy being marked as TRIPLICATE FOR CONSIGNER.

- (3) **Declaration in E-way bill:** Where goods are being transported on a delivery challan in lieu of invoice, the same shall be declared as specified in rule 138.

- (4) **Issue Tax invoice after delivery:** Where the goods being transported are for the purpose of supply to the recipient but the tax invoice could not be issued at the time of removal of goods for the purpose of supply, the supplier shall issue a tax invoice after delivery of goods.

- (5) **Transportation in a semi knocked down or completely knocked down:** Where the goods are being transported in a semi knocked down or completely knocked down condition or in batches or lots –
- a. the supplier shall issue the complete invoice before dispatch of the first consignment;
 - b. the supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice;
 - c. each consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice; and
 - d. the original copy of the invoice shall be sent along with the last consignment.

➤ **Clarification on Goods moved within the State/from the State of registration to another State for supply on approval basis [Circular No. 10/10/2017 GST dated 18.10.2017]:**

Suppliers of jewellery etc. who are registered in one State may have to visit other States (other than their State of registration) and need to carry the goods (such as jewellery) along for approval. In such cases if jewellery etc. is approved by the buyer, then the supplier issues a tax invoice only at the time of supply.

Since the suppliers are not able to ascertain their actual supplies beforehand and while ascertainment of tax liability in advance is a mandatory requirement for registration as a casual

taxable person, the supplier is not able to register as a casual taxable person. Such goods are also carried within the same State for the purposes of supply.

In view of relevant provisions of rule 55, it is clarified that the goods which are taken for supply on approval basis can be moved from the place of business of the registered supplier to another place within the same State or to a place outside the State on a delivery challan along with the e-way bill wherever applicable and the invoice may be issued at the time of delivery of goods.

For this purpose, the person carrying the goods for such supply can carry the invoice book with him so that he can issue the invoice once the supply is fructified.

➤ **Clarification on movement of art works by artists to galleries for exhibition [Circular No. 22/22/2017 GST dated 21.12.2017]:**

In case where artists supply art works in different States - other than the State in which they are registered as a taxable person and if the art work is selected by the buyer, then the supplier issues a tax invoice only at the time of supply, it is clarified that the art work for supply on approval basis can be moved from the place of business of the registered person (artist) to another place within the same State or to a place outside the State on a delivery challan along with the e-way bill wherever applicable and the invoice may be issued at the time of actual supply of art work.

QUESTIONS:

1. **Sultan Industries Ltd., Delhi, entered into a contract with Prakash Entrepreneurs, Delhi, for supply of spare parts of a machine on 7th September. The spare parts were to be delivered on 30th September. Sultan Industries Ltd. removed the finished spare parts from its factory on 29th September. Determine the date by which invoice must be issued by Sultan Industries Ltd. under GST law.**

Answer:

As per the provisions of section 31, invoice shall be issued before or at the time of removal of goods for supply to the recipient, where the supply involves movement of goods. Accordingly, in the given case, the invoice must be issued on or before 29th September.

2. **MBM Caretakers, a registered person, provides the services of repair and maintenance of electrical appliances. On April 1, it has entered into an annual maintenance contract with P for its Air Conditioner and Washing Machine. As per the terms of contract, maintenance services will be provided on the first day of each quarter of the relevant financial year and payment for the same will also be due on the date on which service is rendered. During the year, it provided the services on April 1, July 1, October 1, and January 1 in accordance with the terms of contract. When should MBM Caretakers issue the invoice for the services rendered?**

Answer

Continuous supply of service means, inter alia, supply of any service which is provided, or agreed to be provided continuously or on recurrent basis, under a contract, for a period exceeding 3 months with the periodic payment obligations.

Therefore, the given situation is a case of continuous supply of service as repair and maintenance services have been provided by MBM Caretakers on a quarterly basis, under a contract, for a period of one year with the obligation for quarterly payment.

In terms of section 31, in case of continuous supply of service, where due date of payment is ascertainable from the contract (as in the given case), invoice shall be issued on or before the due date of payment.

Therefore, in the given case, MBM Caretakers should issue quarterly invoices on or before April 1, July 1, October 1, and January 1.

3. **The aggregate turnover of Sangri Services Ltd., Delhi, exceeded ₹ 20 lakh on 12th August. He applied for registration on 3rd September and was granted the registration certificate on 6th September. You are required to advise Sangri Services Ltd. as to what is the effective date of registration in its case. It has also sought your advice regarding period for issuance of Revised Tax Invoices.**

Answer

As per section 25 read with CGST Rules, where an applicant submits application for registration within 30 days from the date he becomes liable to registration, effective date of registration is the date on which he becomes liable to registration. Since, Sangri Services Ltd.'s turnover exceeded ₹ 20 lakh on 12th August, it became liable to registration on same day. Further, it applied for registration within 30 days of so becoming liable to registration, the effective date of registration is the date on which he becomes liable to registration, i.e. 12th August.

As per section 31 read with CGST Rules, every registered person who has been granted registration with effect from a date earlier than the date of issuance of certificate of registration to him, may issue Revised Tax Invoices. Revised Tax Invoices shall be issued within 1 month from the date of issuance of certificate of registration. Revised Tax Invoices shall be issued within 1 month from the date of issuance of registration in respect of taxable supplies effected during the period starting from the effective date of registration till the date of issuance of certificate of registration.

Therefore, in the given case, Sangri Services Ltd. has to issue the Revised Tax Invoices in respect of taxable supplies effected during the period starting from the effective date of registration (12th August) till the date of issuance of certificate of registration (6 th September) within 1 month from the date of issuance of certificate of registration, i.e. on or before 6 th October

4. **Shyam Fabrics has opted for composition levy scheme in the current financial year. It has approached you for advice whether it is mandatory for it to issue a tax invoice. You are required to advise him regarding same.**

Answer:

A registered person paying tax under the provisions of section 10 [composition levy] shall issue, instead of a tax invoice, a bill of supply containing such particulars and in such manner as may be prescribed [Section 31(3)(c) read with CGST Rules, 2017]. Therefore, in the given case, Shyam Fabrics cannot issue tax invoice. Instead, it shall issue a Bill of Supply.

5. **Royal Fashions, a registered supplier of designer outfits in Delhi, decides to exhibit its products in a Fashion Show being organised at Hotel Park Royal, Delhi on 4th January. For the occasion, it gets the service by way of makeover of its models from Aura Beauty Services Ltd., Ashok Vihar, for which a consideration is ₹ 5,00,000 (excluding GST) has been charged. Aura Beauty Services Ltd. issued a duly signed tax invoice on 10th February showing the lumpsum amount of ₹ 5,90,000 inclusive of CGST and SGST @ 9% each for the services provided. Answer the following questions:**
- Examine whether the tax invoice has been issued within the time limit prescribed under law.**
 - Tax consultant of Royal Fashions objected to the invoice raised suggesting that the amount of tax charged in respect of the taxable supply should be shown separately in the invoice raised by Aura Beauty Services Ltd. However, Aura Beauty Services Ltd. contended that there is no mandatory requirement of showing tax component separately in the invoice.**

You are required to examine the validity of the objection raised by tax consultant of Royal Fashions.

Answer:

- (i) As per section 31 read with the CGST Rules, in case of taxable supply of services, invoices should be issued before or after the provision of service, but within a period of 30 days [45 days in case of insurer/ banking company or financial institutions including NBFCs] from the date of supply of service.

In view of said provisions, in the present case, the tax invoice should have been issued in the prescribed time limit of 30 days from the date of supply of service i.e. upto 3rd February. However, the invoice has been issued on 10th February.

- (ii) Section 31 read with the CGST Rules, inter alia, provides that tax invoice in addition to other mandatory details shall also contain the amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess). Further, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made.

The objection raised by the tax consultant of Royal Fashions suggesting that the amount of tax charged in respect of the taxable supply of makeover services should be shown separately in the invoice raised by Aura Beauty Services Ltd., is valid in law

6. **Kidzee Toys Ltd., a wholesaler of toys registered in Chandigarh, is renowned in the local market for the variety of toys and their reasonable prices. Kidzee Toys Ltd. makes supply of 100 pieces of baby's learning laptops and chat learning phones to Nancy General Store on 25th September by issuing a tax invoice amounting to ₹ 1,00,000. However, the said toys were returned by Nancy General Store on 30th September. Discuss which document Kidzee Toys Ltd. is required to issue in such a case?**

Answer:

Kidzee Ltd. is required to issue a credit note in such a case.

As per section 34, where one or more tax invoices have been issued for supply of any goods or services or both and the goods supplied are returned by the recipient the registered person, who has supplied such goods or services or both, may issue to the recipient one or more credit notes for supplies made in a financial year containing such particulars as may be prescribed. Therefore, Kidzee Ltd. is required to issue a credit note to Nancy General Store for the good returned.

7. **Rana Sanga Ltd., a registered supplier, has made following taxable supplies to its customer Babur in the quarter ending 30th June.**

Date	Bill No	Particulars	Invoice value (including GST)
5 th April	102	Notebooks [10 in numbers]	1200
10 th May	197	Chart Paper [4 in number]	600
20 th May	230	Crayon colors [2 packets]	500
2 nd June	254	Poster colors [5 packets]	900
22 nd June	304	Pencil box [4 sets]	700

Goods in respect of bill no. 102, 230 and 254 have been returned by Babur. You are required to advise Rana Sanga Ltd. whether it can issue a consolidated credit note against all the three invoices?

Answer:

Where one or more tax invoices have been issued for supply of any goods and/or services and (a) the taxable value/tax charged in that tax invoice is found to exceed the taxable value/tax payable in respect of such supply, or

(b) where the goods supplied are returned by the recipient, or

(c) where goods and/or services supplied are found to be deficient, the registered person, who has supplied such goods and/or services, may issue to the recipient one or more credit notes for supplies made in a financial year containing prescribed particulars.

Thus, one (consolidated) or more credit notes can be issued in respect of multiple invoices issued in a financial year without linking the same to individual invoices.

Hence, in view of the above-mentioned provisions, Rana Sanga Ltd. can issue a consolidated credit note for the goods returned in respect of all the three invoices.

8. Chidanand Products Pvt. Ltd. is a registered supplier who has opted for composition levy in the current financial year. He wishes to know whether the issue of a bill of supply can be dispensed with under any circumstances. You are required to advise him.

Answer

Yes. Chidanand Products Pvt. Ltd. may not issue a bill of supply if the value of the goods or services or both supplied is less than ₹ 200 subject to the condition that:

(a) the recipient is not a registered person; and

(b) the recipient does not require such bill of supply, and he shall issue a consolidated bill of supply for such supplies at the close of each day in respect of all such supplies.

9. **A registered person has to mandatorily issue separate invoices for taxable and exempted goods when supplying both taxable as well as exempted goods to an unregistered person. Examine the validity of the statement.**

Answer:

The statement is not valid in law. As per the CGST Rules, where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single “invoice-cum-bill of supply” may be issued for all such supplies.

10. **A non-banking financial company can issue a consolidated tax invoice at the end of every month for the supply made during that month. Examine the validity of the statement.**

Answer

The said statement is valid in law. A customer may avail numerous services from a non-banking financial company in a given tax period. It may issue a consolidated tax invoice/ statement/ advice, any other document in lieu thereof, by whatever name called may be issued/ made available, physically/ electronically, for supply of services made during a month at the end of the month.

11. **Sakthi Enterprises, Kolkata entered into a contract with Suraj Enterprises, Surat for supply of goods and the delivery shall be made on or before 31st October. The goods were removed from the factory at Kolkata on 11th October. As per the agreement, the goods were to be delivered on or before 31st October. Suraj Enterprises has received the goods on 14th October. Determine the time of issue of invoice as per the provisions of CGST Act.**

Answer:

A registered person supplying taxable goods shall issue a tax invoice, before or at the time of removal of goods for supply to the recipient, where the supply involves movement of goods. Therefore, in the given case, invoice has to be issued on or before, 11th October (the time of removal of goods).

12. **Trust and Fun Ltd., an event management company, has provided its services for an event at Kapoor Film Agencies, Mumbai on 5th June. Payment for the event was made on 19th June. Determine the time of issue of invoice as per the provisions of CGST Act**

Answer:

A registered person [other than an insurer/banking company/financial institution, including an NBFC] supplying taxable services shall 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.

Thus, in the given case, invoice has to be issued within 30 days of 5th June (date of supply of service), i.e. on or before, 5th July.

13. Udai Singh, a registered supplier, has received advance payment with respect to services to be supplied to Sujamal. His accountant asked him to issue the receipt voucher with respect to such services to be supplied. However, he is apprehensive as to what would happen in case a receipt voucher is issued, but subsequently no services are supplied. You are required to advise Udai Singh regarding the same.

Answer:

Udai Singh is required to issue a receipt voucher at the time of receipt of advance payment with respect to services to be supplied to Sujamal. A receipt voucher is a document evidencing receipt of advance money towards a supply of goods and/or services or both. A registered person, on receipt of advance payment with respect to any supply of goods or services or both, shall issue a receipt voucher or any other document, evidencing receipt of such payment.

Where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a refund voucher against such payment. Therefore, in case subsequently no services are supplied by Udai Singh, and no tax invoice is issued in pursuance thereof, Udai Singh may issue a refund voucher against such payment to Sujamal

14. Bhoj Raj, a registered person, has availed GTA services on which he is liable to pay tax under reverse charge. He wishes to know whether he is required to issue an invoice. Please advise him discussing the relevant provisions under CGST Act and rules thereunder.

Answer:

Bhoj Raj is required to issue an invoice with regard to the GTA services availed by him. A registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 (i.e., where the recipient is liable to discharge GST on reverse charge basis) shall issue an invoice in respect of goods or services or both received by him from the supplier on the date of receipt of goods or services or both.

15. Sitaram Textiles has to send cloth for dyeing to its job-worker. It wishes to know whether it needs to issue a tax invoice at the time of sending the goods to job-worker. Please advise him with reference to the provisions of the CGST Act.

Answer:

Sitaram Textiles has to issue a delivery challan and not the tax invoice at the time of sending the goods to job-worker. Rule 55, inter alia, stipulates that for the purposes of transportation of goods for job work, the consignor may issue a delivery challan, serially numbered, in one or multiple series, in lieu of invoice at the time of removal of goods for transportation, containing the following details, namely:-

(iii) date and number of the delivery challan;

- (iv) name, address and Goods and Services Tax Identification Number of the consigner, if registered;
- (v) name, address and Goods and Services Tax Identification Number or Unique Identity Number of the consignee, if registered;
- (vi) Harmonised System of Nomenclature code and description of goods;
- (vii) quantity (provisional, where the exact quantity being supplied is not known);
- (viii) taxable value;
- (ix) tax rate and tax amount – central tax, State tax, integrated tax, Union territory tax or cess, where the transportation is for supply to the consignee;
- (x) place of supply, in case of inter-State movement; and
- (xi) signature.

The delivery challan shall be prepared in triplicate, in case of supply of goods, in the following manner, namely:–

- (a) the original copy being marked as ORIGINAL FOR CONSIGNEE;
- (b) the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and
- (c) the triplicate copy being marked as TRIPLICATE FOR CONSIGNER

16. Luv & Kush Pvt. Ltd. of Meghalaya engaged in the supply of gifts items and repair services, provides you the following details:-

S. No.	Particulars	Date
1.	Commencement of the business of supplying goods and services	01 st August
2.	Turnover exceeds ₹ 10,00,000 on	15 th August
3.	Turnover exceeds ₹ 20,00,000 on	05 th September
4.	Application for registration made on	28 th September
5.	Registration certificate granted on	06 th October

The company seeks your advice as to how it should raise revised tax invoices for supplies made. Is there any specific provision for issuance of revised tax invoices to unregistered customers? Explain.

Answer:

A supplier of both goods and services whose aggregate turnover in a financial year exceeds ₹ 20 lakh in a State/UT [₹ 10 lakh in specified Special Category States] is liable to apply for registration within 30 days from the date of becoming liable to registration (i.e., the date of crossing the threshold limit of ₹ 20 lakh/ ₹ 10 lakh) in terms of section 22. Since Meghalaya is not a specified Special Category State, applicable threshold limit is ₹ 20 lakh.

Further, where the application is submitted within said period, the effective date of registration is the date on which the person becomes liable to registration; otherwise it is the date of grant of registration.

Every registered person who has been granted registration with effect from a date earlier than the date of issuance of registration certificate to him, may issue revised tax invoices within 1 month from the date of issuance of registration certificate in respect of taxable supplies effected during this period i.e. from the effective date of registration till the date of issuance of registration.

Since Luv & Kush Pvt. Ltd. has made the application for registration within 30 days of becoming liable for registration, the effective date of registration becomes the date on which the company becomes liable to registration i.e. 5 th September.

Thus, Luv & Kush Pvt. Ltd. may issue revised tax invoices against the invoices already issued during the period between effective date of registration (5 th September) and the date of issuance of registration certificate (6 th October), within 1 month from 6 th October.

Further, Luv & Kush Pvt. Ltd may issue a consolidated revised tax invoice in respect of all taxable supplies made to unregistered dealers during such period. However, in case of inter-State supplies made to unregistered dealers, a consolidated revised tax invoice cannot be issued in respect of all the recipients located in a State, if the value of a supply exceeds ₹ 2,50,000.

17. Jain & Sons is a trader dealing in stationery items. It is registered under GST and has undertaken following sales during the day:

S. No.	Recipient of supply	Amount (₹)
1.	Raghav Traders - a registered retail dealer	190
2.	Dhruv Enterprises - an unregistered trader	358
3.	Gaurav - a painter [unregistered]	500
4.	Oberoi Orphanage - an unregistered entity	188
5.	Aaradhya - a student [unregistered]	158

None of the recipients require a tax invoice [Raghav Traders being a composition dealer].

Determine in respect of which of the above supplies, Jain & Sons may issue a Consolidated Tax Invoice instead of Tax Invoice, at the end of the day.

Answer:

In the given illustration, Jain & Sons can issue a Consolidated Tax Invoice only with respect to supplies made to Oberoi Orphanage [worth ₹ 188] and Aaradhya [worth ₹ 158] as the value of goods supplied to these recipients is less than ₹ 200 as also these recipients are unregistered and don't require a tax invoice.

As regards the supply made to Raghav Traders, although the value of goods supplied to it is less than ₹ 200, Raghav Traders is registered under GST. So, Consolidated Tax Invoice cannot be issued.

Consolidated Tax Invoice can also not be issued for supplies of goods made to Dhruv Enterprises and Gaurav although both of them are unregistered. The reason for the same is that the value of goods supplied is not less than ₹ 200.

18. Kartik & Co., a registered supplier under GST, provides the following information regarding various tax invoices issued by it during the month of March:

- (i) Value of supply charged in invoice no. 1 was ₹ 2,50,000 against the actual taxable value of ₹ 2,30,000.
- (ii) Tax charged in invoice no. 4 was ₹ 32,000 against the actual tax liability of ₹ 68,000 due to wrong HSN code being chosen while issuing invoice.
- (iii) Value charged in invoice no. 8 was ₹ 3,20,000 as against the actual value of ₹ 4,20,000 due to wrong quantity considered while billing.

Kartik & Co. asks you to answer the following:

- (1) Who shall issue a debit/credit note under CGST Act?
- (2) Whether debit note or credit note has to be issued in each of the above circumstances?
- (3) What is the maximum time-limit available for declaring the credit note in the GST Return?

Answer:

- 1. The debit/credit note shall be issued by the registered person who has supplied the goods and/or services, i.e. Kartik & Co.
- 2. Yes, debit/credit note need to be issued in each of the circumstances as under:
 - (i) A credit note is required to be issued as the taxable value in invoice no. 1 exceeds the actual taxable value.
 - (ii) A debit note is required to be issued as the tax charged in the invoice no. 4 is less than the actual tax payable.
 - (iii) A debit note is required to be issued as the value of supply charged in the invoice no. 8 is less than the actual value.
- 3. The details of the credit note cannot be declared later than the return for the month of September following the end of the financial year in which such supply was made or the date of furnishing of the relevant annual return, whichever is earlier.

11. E-WAY BILL

A. What is E-way Bill? Electronic Way Bill (E-Way Bill) is a compliance mechanism wherein by way of a digital interface the person causing the movement of goods uploads the relevant information prior to the commencement of movement of goods and generates e-way bill on the GST portal.

In other words, E-way bill is an electronic document generated on the GST portal evidencing movement of goods.

B. What are the benefits of e-way bill?

Following are the benefits of e-way bill mechanism:

- (i) Elimination of state boundary check-posts.
- (ii) It will facilitate faster movement of goods
- (iii) It will improve the turnaround time of trucks and help the logistics industry by increasing the average distances travelled, reducing the travel time as well as costs.

C. When is e-way bill required to be generated? [Rule 138(1)]

Whenever there is a movement of goods of consignment value exceeding ₹ 50,000:

- (i) in relation to a supply; or
- (ii) for reasons other than supply; or
- (iii) due to inward supply from an unregistered person,
the registered person who causes such movement of goods shall furnish the information relating to the said goods as specified in Part A of Form GST EWB-01 before commencement of such movement.

It is important to note that “information is to be furnished prior to the commencement of movement of goods” and “is to be issued whether the movement is in relation to a supply or for reasons other than supply”.

D. Who causes movement of goods?

- a. If supplier is registered and undertakes to transport the goods, movement of goods is caused by the supplier.
- b. If recipient arranges transport, movement is caused by him (recipient).
- c. If goods are supplied by an unregistered supplier to a registered known recipient, movement shall said to be caused by such recipient.

➤ **E-way Bill in case of ‘Bill To Ship To’ Model**

In a “Bill To Ship To” model of supply, there are three persons involved in a transaction, namely:

‘A’ is the person who has ordered ‘B’ to send goods directly to ‘C’.

‘B’ is the person who is sending goods directly to ‘C’ on behalf of ‘A’.

‘C’ is the recipient of goods.

In this complete scenario. two supplies are involved and accordingly two tax invoices are required to be issued:

Invoice -1: which would be issued by 'B' to 'A'.

Invoice -2: which would be issued by 'A' to 'C'.

It is clarified that as per the CGST Rules, 2017, for the movement of goods which is taking place from "B" to "C" on behalf of "A", either A or B can generate the e-Way Bill, but it may be noted that only one e-Way Bill is required to be generated.

E. Meaning of consignment value of goods: Consignment value of goods shall be the value:

- determined in accordance with the provisions of section 15,
- declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and
- also includes the Central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document and
- shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

Example:

1. *Bhanupratap Shoe Manufacturers, registered in Punjab, sold shoes to a retail seller in Gujarat, at a value of ₹ 48,000 (excluding GST leviable @ 18%) and wants to send the consignment of such shoes to Gujarat. The consignment value will be ₹ 56,640 [₹ 48,000 × 118%]. Since the movement of goods is in relation to supply of goods and the consignment value exceeds ₹ 50,000, e-way bill is mandatorily required to be issued in the given case.*
2. *Sindhi Textiles of Ludhiana, registered in Punjab, sends cloth to a job worker in Jalandhar, Punjab on a delivery challan. The value of cloth mentioned in the delivery challan is ₹ 48,000. Since the movement of goods is for reasons other than supply, the value given in the delivery challan is adopted for the purposes of the e-way bill. Such value does not exceed ₹ 50,000. Consequently, e-way bill is not required to be issued in this case.*

F. Special situations where e-way bill needs to be issued even if the value of the consignment is less than ₹ 50,000:

- (i) **Inter-State transfer of goods by principal to job-worker:** Where goods are sent by a principal located in one State or Union territory to a job worker located in any other State or Union territory, the e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment [Third proviso to rule 138(1)].
- (ii) **Inter-State transfer of handicraft goods by a person exempted from obtaining registration:** Where handicraft goods are transported from one State or Union territory to another State or Union territory by a person who has been exempted from the requirement of obtaining registration [under clauses (i) and (ii) of section 24], the e-way bill shall be generated by the said person irrespective of the value of the consignment [Fourth proviso to rule 138].

G. PROCEDURE FOR ISSUING E-WAY BILL:

1. An e-way bill Form GST EWB-01 contains two parts:

A. Part A:

➤ It contains the details of

- GSTIN of supplier & recipient,
- 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, etc.

to be furnished by the registered person who is causing movement of goods of consignment value exceeding ₹ 50,000.

➤ However, information in Part-A may be furnished:

- by the transporter, on an authorization received from such registered person [First proviso to rule 138(1)] or
- by the e-commerce operator or courier agency, where the goods to be transported are supplied through such an e-commerce operator or a courier agency, on an authorization received from the consignor [Second proviso to rule 138(1)].

➤ Once the consignor/consignee enters all the details in Part-A of e-way bill, a Part-A slip is generated which contains a temporary number. This slip can be shared with the transporter or used by the supplier himself later to enter the details in Part-B of e-way bill and generate the e-way bill.

➤ Once the goods are ready for movement from the business premises and transportation details are known, the user can enter the Part-B details and generate the e-way bill for movement of goods.

B. PARTB

It contains transport details like

- Transporter document number (Goods Receipt Number or Railway Receipt Number or Airway Bill Number or Bill of Lading Number) and
 - Vehicle number, in case of transport by road
- to be furnished by the person who is transporting the goods.

2. Who is mandatorily required to generate e-way bill?

- a. Where the goods are transported by a registered person, whether as consignor or recipient as the consignee, whether **in his own conveyance or a hired one or a public conveyance, by road**, the said person shall have to generate the e-way bill [Rule 138(2)].
- b. Where the e-way bill is not generated by the 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 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 [Rule 138(3)].

- c. Where the goods are **transported by railways or by air or by vessel**, the e-way bill shall be generated by the registered person, being the supplier or the recipient, who shall, either before or after the commencement of movement, furnish, information in part B on the common portal [Rule 138(2A)]
- d. Some other important points:
 - **Where the goods are transported by railways:** There is no requirement to carry e-way bill along with the goods, but railways has to carry invoice or delivery challan or bill of supply, as the case may be along with goods.

Further, e-way bill generated for the movement is required to be produced at the time of delivery of the goods. Railways shall not deliver goods unless the e-way bill required under rules is produced at the time of delivery [Proviso to rule 138(2A)].

- **Voluntary e-way bill:** The registered person or, the transporter may, at his option, generate and carry the e-way bill even if the value of the consignment is less than ₹ 50,000 [First proviso to rule 138(3)].
- **Movement is caused by unregistered person:** Where the movement is caused by an unregistered person either in his own conveyance or a hired one or through a transporter, he or the transporter may, at their option, generate the e-way bill [Second proviso to rule 138(3)].
- **Movement caused by unregistered person to registered person:** Where the goods are supplied by an unregistered supplier to a recipient who is registered, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods [Explanation 1 to rule 138(3)].

3. When is it not mandatory to furnish the details of conveyance in Part-B?

E-way bill is valid for movement of goods by road only when the information in Part-B is furnished.

Exceptions: However, details of conveyance may not be furnished in Part-B of the e-way bill where the goods are transported for a distance of upto 50 km within the State/Union territory:

- from the place of business of the consignor to the place of business of the transporter for further transportation or
- from the place of business of the transporter finally to the place of business of the consignee.

4. Unique e-way bill number (EBN):

Upon generation of the e-way bill on the common portal, a unique e-way bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal [Rule 138(4)].

5. Transfer of goods from one conveyance to another:

- a. **Update the details of conveyance in Part B:** Where the goods are transferred from one conveyance to another, the consignor or the recipient, who has provided information in Part

A, or the transporter shall, before such transfer and further movement of goods, update the details of conveyance in Part B of the e-way bill on the common portal [Rule 138(5)].

- b. **In case of breakdown of the vehicle:** Consignment of goods may be required to be transferred from the original conveyance to due to unforeseen exigencies like break down of the vehicle. In such case, the 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.
- c. **Transshipment using multiple vehicles:** In some cases, consignments are transported by the transporter through transshipment using multiple vehicles (same mode of transportation) for carrying the same consignment before it is delivered to the recipient at the place of destination. Hence for each movement from one place to another, the transporter needs to update the vehicle number in which he is transporting that consignment in part B of the e-way bill.
- d. The user can update Part-B (Vehicle details) as many times as he wants for movement of goods to the destination. However, the updating should be done within the validity period.
- e. **Multiple modes of transportation:** There can also be a case where one e-way bill can go through multiple modes of transportation before reaching destination. As per the mode of transportation, the EWB can be updated with new mode of transportation by using the option of 'Update Vehicle Number'.

Example: Babbal Associates is moving the goods from Cochin to Chandigarh through road, ship, air and road again. First, Babbal Associates generates the EWB by entering first stage of movement (by road) from its place to shipyard and enters the vehicle number. Next, it will submit the goods to shipyard and update the mode of transportation as ship and transport document number on the e-way bill system.

After reaching Mumbai, Babbal Associates or concerned transporter updates movement as road from shipyard to airport with vehicle number. Thereafter, Babbal Associates or transporter updates using 'update vehicle number' option on the portal, the Airway Bill number.

Again, after reaching Delhi, Babbal Associates updates movement through road with vehicle number. This way, the e-way bill will be updated with multiple modes of transportation.

- f. **Assigning the e-way bill number to another transporter:**
 - The consignor/recipient, who has furnished the information in Part A, or the transporter, may assign the e-way bill number to another registered/enrolled transporter for updating the information in Part B for further movement of the consignment [Rule 138(5A)].
 - However, once the details of the conveyance have been updated by the transporter in Part B, the consignor or recipient, as the case may be, who has furnished the information in Part A shall not be allowed to assign the e-way bill number to another transporter [Proviso to rule 138(5A)].

Example: A consignor is required to move goods from City X to City Z. He appoints Transporter A for movement of his goods. Transporter A moves the goods from City X to City Y. For

completing the movement of goods i.e., from City Y to City Z, Transporter A now hands over the goods to Transporter B. Thereafter, the goods are moved to the destination i.e. from City Y to City Z by Transporter B.

In such a scenario, only one e-way bill would be required. Part A can be filled by the consignor and then the e-way bill will be assigned by the consignor to Transporter A. Transporter A will fill the vehicle details, etc. in Part B and will move the goods from City X to City Y. On reaching City Y, Transporter A will assign the said e-way bill to the Transporter B.

Thereafter, Transporter B will be able to update the details of Part B. Transporter B will fill the details of his vehicle and move the goods from City Y to City Z [Press Release No. 144/2018 dated 31.03.2018].

6. Consolidated E-way bill:

- a. After e-way bill has been generated, where 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 said common portal prior to the movement of goods [Rule 138(6)].
- b. Consolidated EWB is like a trip sheet and it contains details of different e-way bills in respect of various consignments being transported in one vehicle and these e-way bills will have different validity periods.
- c. Hence, Consolidated EWB does not have any independent validity period.
- d. Further, individual consignment specified in the Consolidated EWB should reach the destination as per the validity period of the individual EWB.
- e. Further, where the consignor/consignee has not generated the e-way bill in Form GST EWB-01 and
 - the aggregate of the consignment value of goods carried in the conveyance is more than ₹ 50,000,
 - the transporter, except in case of transportation of goods by railways, air and vessel,
 - shall, in respect of inter-State supply,
 - generate the e-way bill in Form GST EWB-01 on the basis of invoice or bill of supply or delivery challan, as the case may be,
 - and may also generate a consolidated e-way bill in Form GST EWB-02 on the common portal prior to the movement of goods [Rule 138(7)].
- f. However, where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in Part A of Form GST EWB-01 may be furnished by such e-commerce operator or courier agency [Proviso to rule 138(7)].

- ## 7. Information submitted for e-way bill can be used for filing GST Returns:
- The information furnished in Part A of the e-way bill shall be made available to the registered supplier on the common portal who may utilize the same for furnishing the details in Form GSTR-1 [Rule 138(8)].

However, when the information has been furnished by an unregistered supplier/unregistered recipient, he shall be informed electronically, if the mobile number or the e-mail is available [Proviso to rule 138(8)].

8. Cancellation of e-way bill:

- a. Where an e-way bill has been generated, but goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill may be cancelled electronically on the common portal within 24 hours of generation of the e-way bill [Rule 138(9)].
- b. However, an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B [First proviso to rule 138(9)].
- c. Further, unique EWB number generated is valid for a period of 15 days for updation of Part B [Second proviso to rule 138(9)].

9. Validity period of e-way bill/consolidated e-way bill [Rule 138(10)]: The validity of e-way bill depends on the distance to be travelled by the goods.

Sl. No	Distance	Validity period from the relevant date
(1)	(2)	(3)
1.	Up to 200 km.	One day in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship
2.	For every 200 km. or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship
3.	Upto 20 km	One day in case of Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship
4.	For every 20 km. or part thereof thereafter	One additional day in case of Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship

- **Relevant date:** Relevant date means the date on which the e-way bill has been generated and the period of validity shall be counted from the time at which the e-way bill has been generated and each day shall be counted as the period expiring at midnight of the day immediately following the date of generation of e-way bill.

This can be explained by following examples –

- (i) Suppose an e-way bill is generated at 00:04 hrs. on 14th March. Then first day would end on 12:00 midnight of 15 -16 March. Second day will end on 12:00 midnight of 16 -17 March and so on.

(ii) Suppose an e-way bill is generated at 23:58 hrs. on 14th March. Then first day would end on 12:00 midnight of 15 -16 March. Second day will end on 12:00 midnight of 16 -17 March and so on.

- The validity of the e-way bill starts when first entry is made in Part-B i.e. vehicle entry is made first time in case of road transportation or first transport document number entry in case of rail/air/ship transportation, whichever is the first entry. It may be noted that validity is not re-calculated for subsequent entries in Part-B.

Examples:

1. A consignor hands over his goods for transportation on Friday to transporter. However, the assigned transporter starts the movement of goods on Monday. The validity period of e-way bill starts only after the details in Part B are updated by the transporter for the first time. In the given situation, consignor can fill the details in Part A on Friday and handover his goods to the transporter. When the transporter is ready to move the goods, he can fill Part B i.e. the assigned transporter can fill the details in Part B on Monday and the validity period of the e-way bill will start from Monday [CBIC Press Release dated 31.03.2018].
2. A registered person has to transport goods from its warehouse to its depot located at a distance of 500 km. In the given case, if e-way bill is generated, it will be valid for 3 days

10. Extension of validity period: If validity of the e-way bill expires, the goods are not supposed to be moved. In general, the validity of the e-way bill cannot be extended However, the validity of the e-way bill can be extended in following cases:

- a. **Extension by Commissioner for certain categories of goods:** Commissioner may, on the recommendations of the Council, by notification, extend the validity period of an e-way bill for certain categories of goods as may be specified therein.
- b. **Extension by transporter in exceptional circumstances:**
 - Under circumstances of an exceptional nature, including trans-shipment, the goods cannot be transported within the validity period of the e-way bill, the transporter may extend the validity period after updating the details in Part B, if required.
 - Thus, the transporter, who is carrying the consignment as per the e-way bill system at the time of expiry of validity period, can extend the validity period.
 - Such transporter can extend the validity of the e-way bill, if the consignment is not being reached the destination within the validity period due to exceptional circumstance like natural calamity, law and order issues, trans-shipment delay, accident of conveyance, etc.
 - He needs to explain this reason in details while extending the validity period.
 - The validity of the e-way bill may be extended within 8 hours from the time of its expiry.

11. Acceptance of e-way bill:

- a. The details of the e-way bill generated shall be made available to the –

- supplier, if registered, where the information in Part A has been furnished by the recipient/transporter; or
 - recipient, if registered, where the information in Part A has been furnished by the supplier/transporter,
on the common portal, and the supplier/recipient, as the case may be, shall communicate his acceptance or rejection of the consignment covered by the e-way bill [Rule 138(11)].
- b. In case, the person to whom the information in Part-A is made available, does not communicate his acceptance or rejection within the specified time, it shall be deemed that he has accepted the said details.
- c. The time-limit specified for this purpose is:
- (i) 72 hours of the details being made available to him on the common portal or
 - (ii) the time of delivery of goods,
whichever is earlier [Rule 138(12)].

12. E-way bill generated in one State is valid in another State: The e-way bill generated under this rule or under rule 138 of the Goods and Services Tax Rules of any State or Union territory shall be valid in every State and Union territory [Rule 138(13)].

13. Situations where e-way bill is not required to be generated: Notwithstanding anything explained above, no e-way bill is required to be generated in the following cases:

- a. where the goods being transported are the ones given below:
 - Liquefied petroleum gas for supply to household and non-domestic exempted category (NDEC) customers
 - Kerosene oil sold under PDS
 - Postal baggage transported by Department of Posts
 - Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71)
 - Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71)
 - Currency
 - Used personal and household effects
 - Coral, unworked (0508) and worked coral (9601)]
- b. where the goods are being transported by a non-motorised conveyance
- c. where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs
- d. in respect of movement of goods within such areas as are notified under of rule 138(14)(d) of the State or Union territory GST Rules in that particular State or Union territory
- e. where the goods [other than de-oiled cake], being transported, are exempt from tax
- f. where 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. where the supply of goods being transported is treated as no supply under Schedule III of the CGST Act

- h. where the goods are being transported –
 - 1. 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
 - 2. under customs supervision or under customs seal
- i. where the goods being transported are transit cargo from or to Nepal or Bhutan
- j. where the goods being transported are exempt from tax under
 - Notification No. 7/2017 CT (R) 28.06.2017 - Supply of goods by the CSD to the Unit Run Canteens or to the authorized customers and supply of goods by the Unit Run Canteens to the authorized customers and
 - Notification No. 26/2017 CT (R) 21.09.2017 - Supply of heavy water and nuclear fuels by Department of Atomic Energy to Nuclear Power Corporation of India Ltd. (NPCIL)]
- k. any movement of goods caused by defence formation under Ministry of defence as a consignor or consignee
- l. where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail
- m. where empty cargo containers are being transported
- n. where the goods are being transported upto a distance of 20 km 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 issued in accordance with rule 55.
- o. where empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than supply.

14. Documents and devices to be carried by a person-in-charge of a conveyance [Rule 138A]:

The person-in-charge of a conveyance shall carry –

- a. the invoice or bill of supply or delivery challan, as the case may be; and
- b. a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a RFID embedded on to the conveyance [except in case of movement of goods by rail or by air or vessel] in such manner as may be notified by the Commissioner

Note:

- 1. Carrying e-way bill number in electronic form implies that person-in-charge of conveyance can merely quote the e-way bill number to the proper tax officer. Tax officer will do all the requisite verifications, based on that number.
- 2. RFIDs are Radio Frequency Identification Device used for identification

➤ Invoice Reference Number in lieu of tax invoice

- In case, e-invoice is issued, the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice.
- In such a case, the registered person will not have to upload the information in Part A of e-way bill for generation of e-way bill and the same shall be auto-populated by the common portal on the basis of the information furnished in the prescribed form.
- The Commissioner may, by notification, require a class of transporters to obtain a unique RFID and get the said device embedded on to the conveyance and map the e-way bill to the RFID prior to the movement of goods.

➤ **Documents in lieu of e-way bill:** Where circumstances so warrant, the Commissioner may, by notification, require the person-in-charge of the conveyance to carry the following documents instead of the e-way bill:

- a. tax invoice or bill of supply or bill of entry; or
- b. a delivery challan, where the goods are transported for reasons other than by way of supply.

15. Verification of documents and conveyances [Rule 138B]:

- a. The Commissioner or an officer empowered by him in this behalf may authorize the proper officer to intercept any conveyance to verify the e-way bill in physical or electronic form for all inter-State and intra-State movement of goods.
- b. The Commissioner shall get RFID readers installed at places where the verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the e-way bill has been mapped with the said device.
- c. The physical verification of conveyances shall be carried out by the proper officer as authorised by the Commissioner or an officer empowered by him in this behalf.
- d. However, on receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any other officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.

16. Inspection and verification of goods [Rule 138C]:

- a. A summary report of every inspection of goods in transit shall be recorded online by the proper officer in Part A of a prescribed form within 24 hours of inspection and the final report in Part B of said form shall be recorded within 3 days of such inspection.
- b. However, where the circumstances so warrant, the Commissioner, or any other officer authorised by him, may, on sufficient cause being shown, extend the time for recording of the final report in Part B of said form, for a further period not exceeding 3 days.
- c. The period of 24 hours or, as the case may be, 3 days shall be counted from the midnight of the date on which the vehicle was intercepted.
- d. Where the physical verification of goods being transported on any conveyance has been done during transit at one place within the State/Union territory or in any other State/Union

territory, no further physical verification of the said conveyance shall be carried out again in the State/Union territory, unless a specific information relating to evasion of tax is made available subsequently.

17. Facility for uploading information regarding detention of vehicle [Rule 138D]: Where a vehicle has been intercepted and detained for a period exceeding 30 minutes, the transporter may upload the said information in specified form on the common portal.

18. Blocking of e-waybill generation facility [Rule 138E]

- a. Blocking of e-waybill generation facility means disabling a taxpayer from generating the e-way bill.
 - b. A user will not be able to generate e-way bill for a GSTIN if the said GSTIN is not eligible for e-way bill generation as per rule 138E.
 - c. The GSTINs of such blocked taxpayers cannot be used to generate the e-way bills either as consignor or consignee.
 - d. As per rule 138E, no person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall not be allowed to furnish the information in Part A of Form GST EWB-01 in respect of following registered persons, whether as a supplier or a recipient:
 - (i) A person paying tax under composition scheme has not furnished the statement for payment of self-assessed tax for 2 consecutive quarters, or
 - (ii) A person paying tax under regular scheme has not furnished the returns for a consecutive period of 2 tax periods, or
 - (iii) A person paying tax under regular scheme has not furnished GSTR-1 (Statement of outward supplies) for any 2 months or quarters, as the case may be.
 - (iv) A person whose registration has been suspended under the provisions of rule 21A of the CGST Rules.
- However, Commissioner (jurisdictional commissioner) may, on receipt of an application from a registered person in prescribed form, on sufficient cause being shown and for reasons to be recorded in writing, by order, in prescribed form allow furnishing of the said information in Part A of Form GST EWB-01, subject to prescribed conditions and restrictions.
- An order rejecting said request shall not be passed without giving the said person a reasonable opportunity of being heard.
- The permission granted or rejected by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be granted or, as the case may be, rejected by the Commissioner.

19. It may be noted that the expressions ‘transported by railways’, ‘transportation of goods by railways’, ‘transport of goods by rail’ and ‘movement of goods by rail’ used in the provisions discussed above does not include cases where leasing of parcel space by railways takes place.

20. Tax invoice or bill of supply to accompany transport of goods [Rule 55A]: Person-in-charge of the conveyance shall carry a copy of the tax invoice or the bill of supply issued in accordance with the provisions of rules 46, 46A or 49 in a case where such person is not required to carry an e-way bill under these rules.

SHRESHTA

12. RETURNS

INTRODUCTION: The term “return” ordinarily means statement of information (facts) furnished by the taxpayer, to tax administrators, at regular intervals.

The information to be furnished in the return generally comprises of the details pertaining to

- the nature of activities/business operations forming the subject matter of taxation;
- the measure of taxation such as sale price, turnover, or value;
- deductions and exemptions; and
- determination and discharge of tax liability for a given period.

SOME DEFINITIONS:

1. **B2B** means business to business transaction. In such type of transactions, the recipient is also a registered supplier and hence, is eligible to avail ITC subject to conditions.
2. **B2C** means business to consumer transaction. In such type of transactions, the recipient is consumer or unregistered and hence, will not be able to avail any ITC.

SECTION 37: FURNISHING DETAILS OF OUTWARD SUPPLIES

I. **Who is required to furnish the details of outward supplies?** The details of outward supplies of both goods and services are required to be furnished by every registered person including casual registered person except the following:

- input service distributor (ISD)
- non-resident taxable person
- person paying tax under composition scheme
- person deducting tax at source
- person collecting tax at source i.e., e-commerce operator (ECO), not being an agent
- supplier of online information and database access or retrieval services (OIDAR) located in non-taxable territory and providing such services to non-taxable online recipient.

II. **What is the form for submission of details of outward supplies?**

- The details of outward supplies are required to be furnished, electronically, in Form GSTR-1 for the month or quarter.
- Such details can be furnished through the common portal, either directly or from a Facilitation Centre notified by the Commissioner.
- Further, a Nil GSTR-1 can be filed through an SMS using the registered mobile number of the taxpayer.

III. **What is the due date of submission of GSTR-1?**

1. **Monthly filing of GSTR-1:**

- a. GSTR-1 for a particular month is filed on or before the 10th day of the immediately succeeding month.
- b. In other words, GSTR-1 of a month can be filed any time between 1st and 10th day of the succeeding month.

- c. The due date of filing GSTR-1 may be extended by the Commissioner/Commissioner of State GST/Commissioner of UTGST for a class of taxable persons by way of a notification.

2. Quarterly filing of GSTR-1:

- a. As a measure of easing the compliance requirement for small taxpayers, GSTR-1 has been allowed to be filed quarterly by small taxpayers with aggregate annual turnover up to ₹ 5 crore in the preceding financial year under Quarterly Return Monthly Payment Scheme [QRMP Scheme].
- b. The facility has been given from the quarter starting from January 2021.

3. **Extension of time limit [Notification No. 83/2020 CT dated 10.11.2020]:** The time limit for furnishing the details of outward supplies in Form GSTR-1 has been extended vide Notification No. 83/2020 CT dated 10.11.2020 in the following manner:

Class of registered person	Time limit for furnishing the details of outward supplies in Form GSTR-1 for each quarter/tax period
Registered persons opting for QRMP scheme	13th day of the month succeeding such tax period
Others	11th day of the month succeeding such tax period

IV. Invoice Furnishing Facility [IFF] for taxpayers opting for QRMP Scheme?

1. Invoice Furnishing Facility (IFF) is a facility provided to quarterly taxpayers who are in QRMP scheme, to file their details of outward supplies in first two months of the quarter, to pass on the credit to their recipients.
2. Invoice furnishing facility (IFF) is not mandatory, but an optional facility made available to the registered persons under the QRMP scheme.
3. At his option, a registered person may choose to furnish the details of outward supplies made during a quarter in Form GSTR-1 only, without using the IFF.
4. The facility of furnishing details of invoices in IFF has been provided so as to allow details of such supplies to be duly reflected in the Form GSTR 2A and Form GSTR-2B of the concerned recipient.
5. In case where a buyer has made purchases from a person opting for QRMP scheme, he could not have claimed full ITC but due to introduction of IFF, such delay will not occur as the details submitted using IFF will be reflected in the GSTR-2A, GSTR-2B, GSTR-4A or GSTR-6A of the recipients, as the case may be.
6. Taxpayers opting for QRMP Scheme may furnish the details of such outward supplies to a registered person, as he may consider necessary, for the 1st and 2nd months of a quarter, upto a cumulative value of ₹ 50 lakh in each of the first 2 months of the quarter using IFF electronically on the common portal.
7. However, invoices pertaining to last month of a quarter are to be uploaded in GSTR-1 only.
8. The invoices are to be furnished in IFF between the 1st day of the succeeding month till the 13th day of the succeeding month.
9. After 13th of the month, this facility for furnishing IFF for previous month would not be available.

- 10.** The details of invoices furnished using IFF in the first 2 months of the quarter are not required to be furnished again in GSTR-1 for the said quarter.

Example: A registered person who has availed the QRMP scheme wants to declare 2 invoices out of the total 10 invoices issued in the 1st month of quarter since the recipient of supplies covered by those 2 invoices desires to avail ITC in that month itself. Details of these 2 invoices may be furnished using IFF. The details of the remaining 8 invoices shall be furnished in Form GSTR-1 of the said quarter. The two invoices furnished in IFF shall be reflected in Form GSTR-2B of the concerned recipient of the 1st month of the quarter and remaining 8 invoices furnished in Form GSTR-1 shall be reflected in Form GSTR-2B of the concerned recipient of the last month of the quarter.

- 11. Details of outward supplies required to be furnished in IFF:** In the IFF, the taxpayer has to submit the B2B (business to business) invoice details of both inter-State and intra-State supply transactions along with debit and credit notes of the B2B invoices issued during the month. The details of outward supplies furnished using IFF shall include the –
- invoice wise details of inter-State and intra-State supplies made to the registered persons;
 - debit and credit notes, if any, issued during the month for such invoices issued previously.

However, if a registered person does not opt to upload invoices using IFF, then he has to upload invoice details for all the 3 months of the quarter in Form GSTR-1.

V. What are the cases where a registered person is debarred from furnishing details of outward supplies in GSTR-1/IFF ?

A registered person shall not be allowed to furnish the details of outward supplies for a tax period, if the details of outward supplies for any of the previous tax periods has not been furnished by him.

However, the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies, even if he has not furnished the details of outward supplies for one or more previous tax periods [Section 37(3)].

In this regard, rule 59(6) stipulates that:

- A registered person shall not be allowed to furnish the details of outward supplies in Form GSTR-1, if he has not furnished the return in Form GSTR-3B for preceding months.
- A registered person, opting for QRMP scheme shall not be allowed to furnish the details of outward supplies in Form GSTR-1 or using IFF, if he has not furnished the return in Form GSTR-3B for preceding tax period.

VI. What are the contents of GSTR-1?

1. Basic details:

- a. GSTIN
- b. Legal name
- c. Trade name, if any
- d. Aggregate turnover in previous year
- e. Year and Month
- f. HSN-wise summary of outward supplies
- g. Details of documents issued

2. Details of Outward supplies:

- a. B2B including UIN holders
- b. B2C inter-State supplies where invoice value > ₹ 2.5 lakh
- c. Consolidated details of other B2C supplies
- d. Zero rated and Deemed exports
- e. Debit/ Credit notes issued
- f. Nil rated/ Exempted/ Non-GST
- g. Amendments for prior period
- h. Advances received/advances adjusted

VII. What kind of details of outward supplies are required to be furnished in GSTR-1?

1. The registered person is required to furnish details of invoices and revised invoices issued in relation to supplies made by him to registered and unregistered persons during a month and debit notes and credit notes in GSTR-1 in the following manner:

a. Invoice-wise details:

- (iii) Inter-State and Intra-State supplies made to registered persons
- (iv) Inter-State supplies made to unregistered persons with invoice value exceeding ₹ 2,50,000

b. Consolidated details:

- (i) Intra-State supplies made to unregistered persons for each rate of tax
- (ii) Inter-State supplies made to unregistered persons with invoice value upto ₹ 2,50,000 for each rate of tax separately for each State.

c. Debit and credit notes: Issued during the month for invoices issued previously

Example: Mr. XY makes intra-State taxable supplies for ₹ 10,000 and ₹ 50,000 to Mr. AB, a registered person and ₹ 1,00,000 to Mr. DE, an unregistered person. He also makes inter-State taxable supplies for ₹ 2,60,000 and ₹ 45,000 to Mr. RS, a registered person and ₹ 1,50,000 to Mr. OP, an unregistered person. Mr. XY will report invoice-wise details of intra-State supplies made to Mr. AB and inter-State supplies made to Mr. RS, in GSTR-1 to be filed by him.

2. Invoices related details can be uploaded any time during the tax period and not just at the time of filing of GSTR-1. Details related to Invoices can be modified/deleted any number of times till the submission of GSTR-1 of a tax period. The uploaded invoice details are in a draft version till the time GSTR-1 is submitted and can be changed irrespective of due date.

3. Scanned copies of invoices are not required to be uploaded. Only certain prescribed fields of information from invoices need to be furnished e.g., invoice no., date, value, taxable value, rate of tax, amount of tax etc. In case there is no consideration, but the activity is a supply by virtue of Schedule 1 of CGST Act, the taxable value will have to be worked out as prescribed and furnished.
4. HSN (Harmonized System of Nomenclature) code in respect of supply of goods and accounting code in respect of supply of services need to be fed.

The minimum number of digits of HSN code that a filer has to upload depend on his turnover in the last year. The HSN would be disclosed as under:

Annual turnover in the preceding financial year	Number of Digits of HSN Code
Upto ₹ 5 crore	For B2B supply - 4 For B2C supply – 4 (optional)
More than ₹ 5 crore	6

Example: The turnovers of Yellow Lemon Pvt. Ltd., Red Pepper Pvt. Ltd. and Blue Berry Pvt. Ltd. in the previous financial year are ₹ 1.5 crore, ₹ 4.8 crore and ₹ 6 crore respectively. While Yellow Lemon Pvt. Ltd. and Red Pepper Pvt. Ltd. will be required to upload 4 digits of HSN code of the goods sold to registered persons, uploading of 4 digits HSN code will be optional for the two companies when the goods are sold to unregistered persons. Blue Berry Pvt. Ltd. will have to upload 6 digits of HSN code of goods sold by it

VIII. How are the details of outward supply furnished in prior periods amended? [Section 37(3)]

(a) Scope of amendment/ correction entries

- Tables 9, 10 and 11(II) of GSTR-1 provide for amendments in details of taxable outward supplies furnished in earlier periods (hereinafter referred to as "Amendment Table").
- The details of original debit notes/ credit notes / refund vouchers issued by the tax-payer in the current tax period as also the revision in the debit notes/ credit notes / refund vouchers issued in the earlier tax periods are required to be shown in Table 9 of the GSTR-1.
- Ordinarily, in Amendment Table, the supplier is required to give details of original invoice (No and Date), the particulars of which have been wrongly entered in GSTR-1 of the earlier months and are now sought to be amended.
- However, it may happen that, a supplier altogether forgets to include the entire original invoice while furnishing the GSTR-1 for a particular month. In such cases also, he would be required to furnish the details of the said missing invoice which was issued in earlier month in the Amendment Table only, as such type of errors would also be regarded as data entry error.

- (b) Rectification of errors:** If the supplier discovers any error or omission, he shall rectify the same in the tax period during which such error or omission is noticed, and pay the tax and

interest, if any, in case there is short payment, in the return to be furnished for such tax period.

Example: A supplier discovers a mistake in details of the invoice furnished in GSTR-1 for the month of August, in October. He can rectify the said mistake in the GSTR-1 for the month of October.

(c) Time limit for rectification: The maximum time limit within which such amendments are permissible is earlier of the following dates:

- 30th November following the end of the financial year to which such details pertain or
- Date of filing of the relevant annual return

IX. Nil GSTR-1:

- Filing of GSTR-1 is mandatory for all normal and casual taxpayers, even if there is no business activity in any particular tax period.
- For such tax period(s), a Nil GSTR-1 is required to be filed as prescribed under Rule 67A of the CGST Rules.
- A Nil GSTR-1 does not have any entry.
- For example, a Nil GSTR-1 for a tax period cannot be filed, if the taxpayer has made any outward supply (including exempt, nil rated or non-GST supplies), or it has received supplies on which tax is payable under reverse charge or an amendment needs to be made to any of the supplies declared in an earlier return or any credit or debit notes is to be declared / amended etc.
- A Nil GSTR-1 can be filed through an SMS using the registered mobile number of the taxpayer.
- GSTR-1 submitted through SMS is verified by registered mobile number-based OTP facility.
- A taxpayer can file Nil GSTR-1, anytime from 1st day of the month subsequent of the tax period. For example, GSTR-1 for the calendar month of April, can be filed from 1st May onwards. GSTR-1 for the quarter of April to June can be filed from 1st July onwards.

SECTION 38: COMMUNICATION OF DETAILS OF INWARD SUPPLIES AND INPUT TAX CREDIT

- SEC 38(1):** The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an auto-generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.
- SEC 38(2):** The auto-generated statement under sub-section (1) shall consist of
 - details of inward supplies in respect of which credit of input tax may be available to the recipient; and
 - details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37

- (i) by any registered person within such period of taking registration as may be prescribed; or
- (ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or
- (iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or
- (iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed;
- (v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or
- (vi) by such other class of persons as may be prescribed.

➤ **Rule 60 - Form and manner of ascertaining details of inward supplies:**

- (1) Details of outward supplies shown in PART A of FORM GSTR-2A:** The details of outward supplies furnished by the supplier in FORM GSTR-1 or using the IFF shall be made available electronically to the concerned registered persons (recipients) in Part A of FORM GSTR-2A, in FORM GSTR-4A and in FORM GSTR-6A through the common portal, as the case may be .
- (2) Details invoices furnished by NRTP:** The details of invoices furnished by a non-resident taxable person in his return in FORM GSTR-5 under rule 63 shall be made available to the recipient of credit in Part A of FORM GSTR 2A electronically through the common portal.
- (6) Details of Imports:** The details of the integrated tax paid on the import of goods or goods brought in domestic Tariff Area from Special Economic Zone unit or a Special Economic Zone developer on a bill of entry shall be made available in Part D of FORM GSTR-2A electronically through the common portal.
- (7) Details of ITC in FORM GSTR-2B:** An auto-generated statement containing the details of input tax credit shall be made available to the registered person in FORM GSTR-2B, for every month, electronically through the common portal, and shall consist of:
 - (i) the details of outward supplies furnished by his supplier, other than a supplier required to furnish return for every quarter under proviso to sub-section (1) of section 39, in FORM GSTR-1, between the day immediately after the due date of furnishing of FORM GSTR-1 for the previous month to the due date of furnishing of FORM GSTR-1 for the month;
 - (ii) the details of invoices furnished by a non-resident taxable person in FORM GSTR-5 and details of invoices furnished by an Input Service Distributor in his return in FORM GSTR-6 and details of outward supplies furnished by his supplier, required to furnish return for every quarter under proviso to sub - section (1) of section 39, in FORM GSTR-1 or using the IFF, as the case may be, -

- a. **for the first month of the quarter**, between the day immediately after the due date of furnishing of FORM GSTR-1 for the preceding quarter to the due date of furnishing details using the IFF for the first month of the quarter;
 - b. **for the second month of the quarter**, between the day immediately after the due date of furnishing details using the IFF for the first month of the quarter to the due date of furnishing details using the IFF for the second month of the quarter;
 - c. **for the third month of the quarter**, between the day immediately after the due date of furnishing of details using the IFF for the second month of the quarter to the due date of furnishing of FORM GSTR-1 for the quarter.
- (iii) the details of the integrated tax paid on the import of goods or goods brought in the domestic Tariff Area from Special Economic Zone unit or a Special Economic Zone developer on a bill of entry in the month.

(8) When GSTR-2B will be made available: The Statement in FORM GSTR-2B for every month shall be made available to the registered person,-

- (i) **for the first and second month of a quarter**, a day after the due date of furnishing of details of outward supplies for the said month, in the IFF by a registered person required to furnish return for every quarter under proviso to sub-section (1) of section 39, or in FORM GSTR-1 by a registered person, other than those required to furnish return for every quarter under proviso to sub-section (1) of section 39, whichever is later;
- (ii) **in the third month of the quarter**, a day after the due date of furnishing of details of outward supplies for the said month, in FORM GSTR-1 by a registered person required to furnish return for every quarter under proviso to sub-section (1) of section 39.

SECTION 39 : FURNISHING OF RETURNS

1. Person eligible to file return - Sec 39(1):

Every registered person, other than

- an Input Service Distributor or
- a non-resident taxable person or
- a person paying tax under the provisions of section 10 or
- section 51 or
- section 52

shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed.

Provided that the Government may, on the recommendations of the Council, notify certain class of registered persons who shall furnish a return for every quarter or part thereof, subject to such conditions and restrictions as may be specified therein.

2. Return to be filed in Form GSTR-3B:

- a. GSTR-3B is the form prescribed for filing return under section 39. It contains summary of outward supplies, inward supplies liable to reverse charge eligible ITC, payment of tax etc. Thus, GSTR-3B does not require invoice-wise data of outward supplies.
- b. GSTR-3B can be submitted electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.
- c. Further, a Nil GSTR-3B can be filed through an SMS using the registered mobile number of the taxpayer. GSTR-3B can be filed monthly or quarterly

3. Quarterly Return Monthly Payment (QRMP) Scheme

- Proviso to section 39(1) of the CGST Act, 2017 empowers the Government to notify certain class of registered persons who shall furnish return on quarterly basis.
- Further, section 39(7) provides that person so notified to furnish quarterly return shall pay taxes due during a month within prescribed time and manner.
- In terms of above provisions, with effect from 01.01.2021, a Quarterly Return Monthly Payment (QRMP) Scheme has been introduced as a trade facilitation measure and in order to further ease the process of doing business.
- **Eligibility for QRMP Scheme:** QRMP Scheme is an optional return filing scheme, introduced for small taxpayers having aggregate annual turnover (PAN based) of upto ₹ 5 crore in the preceding financial year to furnish their Form GSTR-1 and Form GSTR-3B on a quarterly basis while paying their tax on a monthly basis through a simple challan.
- **Conditions and restrictions:**
 - (i) Registered persons under QRMP scheme must have furnished the return for the preceding month, as due on the date of exercising such option. A registered person shall not be eligible to opt for QRMP scheme if he has not furnished the last return due on the date of exercising such option.

Example: If a registered person intending to avail of QRMP scheme for the quarter 'July to September' is exercising his option on 27th July for the said quarter, he must have furnished the return for the month of June which was due on 22nd/24th July.
 - (ii) Registered persons under QRMP scheme are not required to exercise the option every quarter. Where such option has been exercised once, they shall continue to furnish the return as per the selected option for future tax periods, unless they revise the said option.
- **Manner of exercising option of QRMP scheme:** A registered person intending to opt for QRMP scheme for any quarter shall indicate his preference for furnishing of return on a quarterly basis from 1st day of the 2nd month of the preceding quarter till the last day of the 1st month of the quarter for which the option is being exercised.

Example: A registered person intending to avail of QRMP scheme for the quarter 'July to September' can exercise his option from 1st May to 31st July.
- **Option of QRMP scheme to lapse:** In case where a registered person's aggregate turnover crosses ₹ 5 crore during a quarter in a financial year, he shall not be eligible for furnishing of return on quarterly basis from the first month of the succeeding quarter.

He shall opt for furnishing of return on a monthly basis, electronically, on the common portal, from the first month of the quarter, succeeding the quarter during which his aggregate turnover exceeds ₹ 5 crore.

The facility for opting out of the scheme for a quarter will be available from 1st day of 2nd month of preceding quarter to the last day of the 1st month of the quarter.

4. Due date for filing GSTR-3B:

- a. **Monthly GSTR-3B** - on or before 20th of the month succeeding the month for which return is furnished.
- b. **Quarterly GSTR-3B** - on or before 22nd or 24th of the month succeeding the quarter for which return is furnished in case of a taxpayer opting for QRMP scheme - (discussed below).

Due dates for taxpayers opting for QRMP scheme:

Class of registered persons	Due date
Registered persons whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, Union territories of Daman & Diu & Dadra & Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep.	22nd day of the month succeeding such quarter.
Registered persons whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.	24th day of the month succeeding such quarter.

5. Nil GSTR-3B:

- a. Filing of GSTR-3B is mandatory for all normal and casual taxpayers, even if there is no business activity in any particular tax period.
- b. For such tax period(s), a Nil GSTR-3B is required to be filed.
- c. A Nil GSTR-3B does not have any entry in any of its tables.
- d. For example, a Nil GSTR-3B for a tax period cannot be filed, if the taxpayer has made any outward supply (including nil-rated, exempt or non-GST supplies) or has received any supplies which are taxable under reverse charge or it intends to take ITC etc.
- e. A Nil GSTR-3B can be filed through an SMS using the registered mobile number of the taxpayer. GSTR-3B submitted through SMS is verified by registered mobile number-based OTP facility.
- f. A taxpayer may file Nil GSTR-3B, anytime on or after the 1st day of the subsequent month/quarter for which the return is being filed for.

RETURN FOR COMPOSITION SUPPLIER [GSTR - 4] - [Section 39(2) read with rule 62]

1. Person eligible to file return, periodicity and form of return:

- a. A registered person paying tax under composition levy (provisions of section 10), shall, for each financial year or part thereof, furnish a return, electronically, of turnover in the State or Union territory, inward supplies of goods and/or services, tax payable, tax paid and such other particulars in such form and manner, and within such time, as may be prescribed.
- b. **Return on yearly basis:**
 - Every registered person paying tax under section 10, i.e. a composition supplier is required to file a return on yearly basis in Form GSTR-4 by 30th day of April following the end of such financial year.
 - GSTR-4 for a financial year or part of a financial year should be filed electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.
- c. **Quarterly statement for payment of self-assessed tax**
 - Every composition supplier shall pay to the Government, the tax due taking into account turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, and such other particulars during a quarter, in such form and manner, and within such time, as may be prescribed.
 - The composition supplier are required to furnish a statement in the Form GST CMP-08 containing details of payment of self-assessed tax, for every quarter (or part of the quarter), by 18th day of the month succeeding such quarter.

2. What kind of details of outward supplies are required to be furnished in GSTR-4?

GSTR-4 shall include the—

- a. invoice-wise inter-State and intra-State inward supplies received from registered and unregistered persons; and
- b. consolidated details of outward supplies made.

3. Auto-population of inward supplies: The inward supplies of a composition supplier received from registered persons filing GSTR-1 will be auto populated in FORM GSTR-4A for viewing.

4. Nil GST CMP-08:

- a. Filing of GST CMP-08 is mandatory for all taxpayers who have opted to pay tax under composition scheme, even if there is no business activity in any particular tax period. For such tax period(s), a Nil GST CMP-08 is required to be filed.
- b. A Nil GST CMP-08 does not have any entry in any of its tables.
- c. For example, a Nil GST CMP-08 for a tax period cannot be filed, if the taxpayer has made any outward supplies or has received any supplies which are taxable under reverse charge.
- d. A Nil GST CMP-08 can be filed through an SMS using the registered mobile number of the taxpayer.

- e. A Nil GST CMP-08 submitted through SMS is verified by registered mobile number-based OTP facility.

5. Statements/ return for the period prior to opting for composition scheme:

- a. If a registered person opts to pay tax under composition scheme from the beginning of a financial year, he will, where required, furnish statements/return relating to the period prior to paying tax under composition scheme till the
- due date of furnishing the return for the month of September of the succeeding financial year, or
 - furnishing of annual return of the preceding financial year, whichever is earlier.
- b. The composition supplier will not be eligible to avail ITC on receipt of invoices or debit notes from the supplier for the period prior to their opting to pay tax under composition scheme.

6. GSTR-4 for the period prior to exiting from composition scheme

- a. A registered person opting to withdraw from the composition scheme at his own motion or where option is withdrawn at the instance of the proper officer will, where required, furnish-
- GST CMP-08 relating to the period prior to his exiting from composition scheme till 18th of the month succeeding the quarter in which the date of withdrawal falls
 - GSTR-4 relating to the period prior to his exiting from composition scheme till 30th April following the end of the financial year during which such withdrawal falls.

7. Proper officer to cancel registration: As per section 29(2), a proper officer is empowered to cancel the registration of a taxable person if, inter alia,:

- a. a person paying tax under composition scheme has not furnished his GSTR-4 for a financial year beyond 3 months from the due date of furnishing the said return
- b. any other taxable person has not furnished returns for such continuous tax period as may be prescribed.

GSTR-5 - Return for Non-Resident Taxable Persons [Section 39(5) read with rule 63]

1. Monthly return:

- a. A registered NRTP is not required to file the Statement of Outward Supplies and return which are otherwise applicable for a normal taxpayer.
- b. In place of the same, a simplified monthly tax return has been prescribed in Form GSTR-5 for a NRTP for every calendar month or part thereof.
- c. The details of outward supplies and inward supplies of a NRTP are incorporated in GSTR-5.

2. Last date of filing return: GSTR-5 should be furnished within

- a. 13 days after the end of the calendar month or
- b. within 7 days after the last day of validity period of the registration, whichever is earlier.

3. **Payment of interest, penalty, fees or any other amount payable:** An NRTP should pay the tax, interest, penalty, fees or any other amount payable under the CGST Act or the provisions of the Returns Chapter under CGST Rules till the last date of filing GSTR-5.

Due date for payment of tax [Section 39(7)]

1. Person who is required to furnish a monthly return:

- Every registered person who is required to furnish a monthly return,
- other than the person paying tax under QRMP scheme and composition scheme
- person required to deduct tax at source or registered non-resident taxable person,
- shall pay to the Government the tax due as per such return
- not later than the last date on which he is required to furnish such return.

2. Person furnishing return under QRMP scheme: However, every registered person furnishing return under QRMP scheme shall pay to the Government, in such form and manner, and within such time, as may be prescribed –

- a. an amount equal to the tax due taking into account inward and outward supplies of goods or services or both, ITC availed, tax payable and such other particulars during a month; or
- b. in lieu of the amount referred to in clause (a), an amount determined in such manner and subject to such conditions and restrictions as may be prescribed.

3. Monthly payment of tax under QRMP Scheme:

- a. The registered person under the QRMP Scheme would be required to pay the tax due in 1st month or 2nd month or both the months of the quarter by depositing the tax due in Form GST PMT-06. The payment is to be made by 25th day of the month succeeding such month.

However, the Commissioner may, on the recommendations of the Council, by notification, extend the due date for depositing the said amount in Form GST PMT-06, for specified class of taxable persons.

- b. While generating the challan, taxpayers should select “Monthly payment for quarterly taxpayer” as reason for generating the challan. The said person can use any of the following two options provided below for monthly payment of tax during the first 2 months:
 - Fixed Sum method
 - Self-assessment method

4. Fixed sum method:

- a. If a taxpayer chooses this option, a facility is available on the GST portal for generating an auto-generated/pre-filled challan in Form GST PMT-06.
- b. The challan amount is calculated by the system which cannot be edited.
- c. The amount is equal to:

- (i) 35% of the tax paid in cash in the return for the preceding quarter where the return was furnished quarterly; or
- (ii) tax liability paid in cash in the return for the last month of the immediately preceding quarter where the return was furnished monthly.

Examples:

1. In case the last return filed was on quarterly basis for quarter ending March:

Tax paid in cash in quarter (January - March)		Tax required to be paid in each of the months - April and May	
CGST	100	CGST	35
SGST	100	SGST	35
IGST	500	IGST	175
Cess	50	Cess	17.5

2. In case the last return filed was monthly for tax period March:

Tax paid in cash in March		Tax required to be paid in each of the months - April and May	
CGST	50	CGST	50
SGST	50	SGST	50
IGST	80	IGST	80
Cess	-	Cess	-

d. However, **no such amount may be required to be deposited-**

- **for the 1st month of the quarter**, where the balance in the electronic cash ledger/electronic credit ledger is adequate for the tax liability for the said month or where there is nil tax liability;
- **for the 2nd month of the quarter**, where the balance in the electronic cash ledger/electronic credit ledger is adequate for the cumulative tax liability for the 1st and the 2nd month of the quarter or where there is nil tax liability.

e. Monthly tax payment through this method would not be available to those registered persons who have not furnished the return for a complete tax period preceding such month.

5. **Self-Assessment Method:** The said persons, in any case, can pay the tax due by considering the tax liability on inward and outward supplies and the ITC available, in Form GST PMT-06. In order to facilitate ascertainment of the ITC available for the month, an auto-drafted input tax credit statement has been made available in Form GSTR-2B, for every month.
6. The registered person under QRMP is free to avail either of the two tax payment methods above in any of the two months of the quarter.

7. As already discussed earlier, at the time of filing the return for a quarter in Form GSTR-3B, the amount deposited by the registered person in the first 2 months of the quarter shall be debited. Further, any amount left after filing of that quarter's Form GSTR-3B may either be claimed as refund or may be used for any other purpose in subsequent quarters.

However, such refund claim shall be permitted only after the return in Form GSTR-3B for the said quarter has been furnished. Further, this deposit cannot be used by the taxpayer for any other purpose till the filing of return for the quarter.

8. Applicability of interest:

a. For registered person making payment of tax by opting Fixed Sum Method:

- No interest would be payable in case the tax due is paid in the first 2 months of the quarter by way of depositing auto-calculated fixed sum amount (as discussed above) by the due date.
- In case such payment of tax by depositing the system calculated amount in Form GST PMT-06 is not done by due date, interest would be payable at the applicable rate, from the due date of furnishing Form GST PMT-06 till the date of making such payment.
- Further, in case Form GSTR-3B for the quarter is furnished beyond the due date, interest would be payable as per the provisions of section 50 of the CGST Act for the tax liability net of ITC.

Examples

1. A registered person, who has opted for the QRMP Scheme, had paid a total amount of ₹ 100/- in cash as tax liability in the previous quarter of October to December. He opts to pay tax under fixed sum method. He therefore pays ₹ 35/- each on 25th February and 25th March for discharging tax liability for the first 2 months of quarter viz. January and February. In his return for the quarter, it is found that liability, based on the outward and inward supplies, for January was ₹ 40/- and for February it was ₹ 42/-. However, no interest would be payable for the lesser amount of tax (i.e. ₹ 5 and ₹ 7 respectively) discharged in these 2 months provided that he discharges his entire liability for the quarter in the Form GSTR-3B of the quarter by the due date.
2. A registered person, who has opted for the QRMP Scheme, had paid a total amount of ₹ 100/- in cash as tax liability in the previous quarter of October to December. He opts to pay tax under fixed sum method. He therefore pays ₹ 35/- each on 25th February and 25th March for discharging tax liability for the first 2 months of quarter viz. January and February. In his return for the quarter, it is found that total liability for the quarter net of available credit was ₹ 125, but he files the return on 30th April. Interest would be payable at applicable rate on ₹ 55 [₹ 125 – ₹ 70 (deposit made in cash ledger in first and second month)] for the period between due date of quarterly GSTR 3B and 30th April.

b. For registered person making payment of tax by opting Self-assessment method

- Interest amount would be payable as per the provision of section 50 of the CGST Act for tax or any part thereof (net of ITC) which remains unpaid / paid beyond the due date for the first 2 months of the quarter.
- Interest payable, if any, shall be paid through Form GSTR-3B.

Note: It is clarified that no late fee is applicable for delay in payment of tax in first 2 months of the quarter.

9. Every registered person required to furnish return shall, discharge their liability towards tax, interest, penalty, fees or any other amount payable under GST law by debiting the electronic cash ledger or electronic credit ledger and include the details in the return.
10. While making a deposit in Form GST PMT-06, such a registered person may –
 - a. for the 1st month of the quarter, take into account the balance in the electronic cash ledger.
 - b. for the 2nd month of the quarter, take into account the balance in the electronic cash ledger excluding the tax due for the 1st month.

Rectification of errors/omissions [Section 39(9)]

1. In GST since the returns are built from details of individual transactions, there is no requirement for having a revised return.
2. Any need to revise a return may arise due to the need to change a set of invoices or debit/ credit notes.
3. Instead of revising the return already submitted, the system allows changing the details of those transactions (invoices or debit/credit notes) that are required to be amended. They can be amended in any of the future GSTR- 1 in the tables specifically provided therein for the purposes of amending previously declared details
4. **Rectification of errors:**
 - a. Omission or incorrect particulars discovered in the returns filed u/s 39 can be rectified in the return to be filed for the tax period during which such omission or incorrect particulars are noticed.
 - b. Any tax payable as a result of such error or omission will be required to be paid along with interest.
 - c. **Exception:** It is important to note that section 39(9) does not permit rectification of error or omission discovered on account of scrutiny, audit, inspection or enforcement activities by tax authorities.

Hence, assessee may not be able to pass on the ITC to the receiver in respect of tax payments made by him in pursuance of any of the aforementioned situations.

- d. **Time limit for making rectification:** The maximum time limit within which the rectification of errors/omissions is permissible is earlier of the following dates:

- 30th day of November following the end of the financial year or
- Actual date of filing of the relevant annual return

First return [Section 40]

1. When a person becomes liable to registration after his turnover crosses the threshold limit, he may apply for registration within 30 days of so becoming liable.
2. Thus, there might be a time lag between a person becoming liable to registration and grant of registration certificate.
3. During the intervening period, such person might have made the outward supplies, i.e. after becoming liable to registration but before grant of the certificate of registration.
4. Now, in order to enable such registered person to declare the taxable supplies made by him for the period between the date on which he became liable to registration till the date on which registration has been granted so that ITC can be availed by the recipient on such supplies, firstly,
 - a. the registered person may issue revised tax invoices against the invoices already issued during said period within 1 month from the date of issuance of certificate of registration
 - b. Further, section 40 provides that registered person shall declare his outward supplies made during said period in the first return furnished by him after grant of registration.
 - c. The format for this return is the same as that for regular return.

GSTR – 9/9A and GSTR-9B - Annual Return & Annual Statement [Sections 44, 52 read with rule 80]

1. Who is required to furnish the annual return and what is the due date for the same?

All registered persons are required to file an annual return. However, following persons are not required to file annual return:

- (i) Casual taxable persons
- (ii) Non-resident taxable person
- (iii) Input service distributors
- (iv) Persons authorized to deduct/collect tax at source under section 51/52, and

The Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section.

The annual return for a financial year needs to be filed by 31st December of the next financial year.

2. What is the prescribed form for annual return/statement?

- a. The annual return is to be filed electronically in **Form GSTR-9** through the common portal.
- b. **Person registered under composition levy:** A person paying tax under composition scheme is required to file the annual return in **Form GSTR-9A.**

3. Who is required to furnish a self-certified reconciliation statement?

- a. All registered persons are required to file furnish a self-certified reconciliation statement along with annual return if their aggregate turnover during a financial year exceeds ₹ 5 crores. However, following persons are not required to file self-certified reconciliation statement:
 - Casual taxable persons
 - Non-resident taxable person (c)
 - Input service distributors
 - Persons authorized to deduct/collect tax at source under section 51/52
- b. Such registered person should furnish, electronically, the annual return along with a copy of self-certified reconciliation statement, duly certified, in Form GSTR-9C.

Note: Self-certified reconciliation statement will reconcile the value of supplies declared in the return furnished for the financial year with the audited annual financial statement.

4. The department of the Central/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 for auditing the accounts of local authorities under any law for the time being in force, are exempt from the requirement of furnishing an annual return including self-certified reconciliation statement.

GSTR - 10 - Final Return [Section 45 read with rule 81]

1. **Who is required to furnish final return?** Every registered person who is required to furnish return u/s 39(1) and whose registration has been surrendered or cancelled is required to file a final return electronically in Form GSTR-10 through the common portal.
2. **What is the time-limit for furnishing final return?** The final return has to be filed within 3 months of the:
 - (i) date of cancellation or
 - (ii) date of order of cancellationwhichever is later.

GSTR – 11 - Details of inward supplies of persons having UIN [Rule 82]

1. When UIN is issued for claiming refund of taxes paid on inward supplies Such person shall furnish the details of those inward supplies of taxable goods and/or services on which refund of taxes has been claimed in Form GSTR-11, along with application for such refund claim.
2. When UIN is issued for purposes other than refund of taxes paid Such person shall furnish the details of inward supplies of taxable goods and/or services as may be required by the proper officer in Form GSTR-11.

DEFAULT/DELAY IN FURNISHING RETURN [SECTIONS 46 & 47]

1. Notice to return defaulters [Section 46 read with rule 68]: A notice in prescribed form is issued, electronically, to a registered person who fails to furnish return under section 39 [Normal Return] or section 44 [Annual Return] or section 45 [Final Return] or section 52 [TCS Statement].

The notice requires the registered person to furnish the return within 15 days, failing which the tax liability will be assessed under section 62, based on the relevant material available with the proper officer. In addition to tax so assessed, applicable interest and penalty will also be payable.

2. Late fees for delay in filing return [Section 47]: Late fee is applicable for delay in furnishing of return / details of outward supply as per the provision of section 47.

a. Delay in filing any of the following by their respective due dates, attracts late fee as given hereunder:

(A) Statement of Outward Supplies [Section 37]

(B) Returns (including returns under QRMP Scheme) [Section 39]

(C) Final Return [Section 45]

Quantum of late fees:

- ₹ 100 for every day during which such failure continues
- ₹ 5,000

Whichever is lower.

b. **Late fees for delay in filing annual return under section 44:** A registered person who fails to furnish the annual return under section 44 by the due date is required to pay a late fee as under:

- ₹ 100 for every day during which such failure continues.
- 0.25% of the turnover of the registered person in the State/Union Territory

Whichever is lower.

Note: It may be noted that the late fee payable by a registered person for delayed filing of a return and/or annual return, as mentioned above, is with reference to only the CGST Act. An equal amount of late fee would be payable by such person under the respective SGST/UTGST Act as well.

GOODS AND SERVICES TAX PRACTITIONER

Section 48 provides for the authorisation of an eligible person to act as approved Goods and Services Tax Practitioner (GSTP). A registered person may authorise an approved GSTP to furnish information, on his behalf, to the Government. The manner of approval of GSTPs, their eligibility conditions, duties and obligations, manner of removal and other conditions relevant for their functioning have been prescribed in the rules 83, 83A and 84.

GSTN provides separate user ID and Password to GSTP to enable him to work on behalf of his clients without asking for their user ID and passwords. They can do all the work on behalf of taxpayers as allowed under GST Law. A taxpayer may choose a different GSTP by simply unselecting the previous one and then choosing a new GSTP on the GST portal.

1. **What is the eligibility criteria for GSTP?** A person is eligible for enrolment as GSTP, who,

- (i) is a citizen of India;
- (ii) is a person of sound mind;
- (iii) is not adjudicated as insolvent;
- (iv) has not been convicted by a competent court;

and satisfies any of the following conditions, namely:-

- a. that he is a retired officer of the Commercial Tax Department of any State Government or of the Central Board of Indirect Taxes and Customs, Department of Revenue, Government of India, who, during his service under the Government, had worked in a post not lower than the rank of a Group-B gazetted officer for a period of not less than two years; or
- b. that he has enrolled as a sales tax practitioner or tax return preparer under the existing law for a period of not less than five years;
- c. he has passed,
 - (i) a graduate or postgraduate degree or its equivalent examination having a degree in Commerce, Law, Banking including Higher Auditing, or Business Administration or Business Management from any Indian University established by any law for the time being in force; or
 - (ii) a degree examination of any Foreign University recognised by any Indian University as equivalent to the degree examination mentioned in sub-clause (i); or
 - (iii) any other examination notified by the Government, on the recommendation of the Council, for this purpose; or
 - (iv) has passed any of the following examinations, namely:-
 - a. final examination of the Institute of Chartered Accountants of India; or
 - b. final examination of the Institute of Cost Accountants of India; or
 - c. final examination of the Institute of Company Secretaries of India.

2. **What are the activities which can be undertaken by a GSTP?** A GSTP can undertake any/all of the following activities on behalf of a registered person, if so authorised by him:

- a. Furnish details of outward supplies
- b. Furnish monthly, annual or final return
- c. Make deposit for credit into electronic cash ledger
- d. Furnish information for generation of e-way bill
- e. Furnish details of challan in the prescribed form
- f. File an application for amendment or cancellation of enrolment under rule 58
- g. File an intimation to pay tax under the composition scheme or withdraw from the said scheme
- h. File a claim for refund (Confirmation from the registered person shall be sought)
- i. File an application for registration amendment/ cancellation Confirmation from the registered person shall be sought)

- j. Also allowed to appear as authorised representative before any officer of Department, Appellate Authority or Appellate Tribunal, on behalf of such a registered person provided he is enrolled as GSTP under rule 83.

Note:

When a registered person opts to furnish his return through GSTP, such registered person:

- Gives his consent in prescribed form to any GSTP to prepare and furnish his return
- Before confirming submission of any statement prepared by GSTP, ensures that the facts mentioned in the return are true and correct.

Thus, the responsibility for correctness of any particulars furnished in the return or other details filed by the GSTP continues to rest with the registered person on whose behalf such return and details are furnished. The registered person before confirming, should ensure that the facts mentioned in the return are true and correct before signature. However, failure to respond to request for confirmation is treated as deemed confirmation.

3. Other points:

- a. A registered person gives his consent and authorises a GSTP in the prescribed form by listing the authorised activities in which he intends to authorise the GSTP. The GSTP accepts the authorisation in Part B of the same form.
- b. The GSTP can undertake only such tasks as indicated in the prescribed form. The registered person may, at any time, withdraw such authorization.
- c. Any statement furnished by the GSTP is made available to the registered person on the common portal. For every statement furnished by the GSTP, a confirmation is sought from the registered person over email or SMS.
- d. The GSTP should prepare all statements with due diligence and affix his digital signature on the statements prepared by him or electronically verify using his credentials.
- e. If the GSTP is found guilty of misconduct, his enrolment will be liable to be cancelled and a show cause notice would be issued to him.

4. What is the procedure for enrolment as GSTP? The following is the procedure for enrolment of GSTP:

- a. An application in prescribed form may be made electronically through the common portal for enrolment as GSTP.
- b. An application in prescribed form may be made electronically through the common portal for enrolment as GSTP.
- c. In case, the application is rejected, proper reasons shall have to be given.
- d. The enrolment once done remains valid till it is cancelled.
- e. No person enrolled as a GSTP is eligible to remain enrolled unless he passes such examination conducted at such periods by NACIN.
- f. Any person who has been enrolled as GSTP by virtue of him being enrolled as a Sales Tax Practitioner or Tax Return Preparer under the earlier Indirect Tax law shall remain enrolled

only for a period of 30 months from the appointed date unless he passes the said examination within the said period of 30 months.

SHRESHTA

QUESTIONS

1. Mr. X, a registered taxpayer under regular scheme, did not make any taxable supply during the month of July. Is he required to file a GSTR-3B?

Answer:

A registered taxpayer is required to furnish a return u/s 39 for every month even if no supplies have been effected during such period. In other words, filing of Nil GSTR-3B is also mandatory. Therefore, Mr. X is required to file GSTR-3B even if he did not make any taxable supply during the month of July.

2. If a return has been filed, how can it be revised if some changes are required to be made?

Answer:

1. In GST since the returns are built from details of individual transactions, there is no requirement for having a revised return.
2. Any need to revise a return may arise due to the need to change a set of invoices or debit/ credit notes.
3. Instead of revising the return already submitted, the system allows changing the details of those transactions (invoices or debit/credit notes) that are required to be amended. They can be amended in any of the future GSTR- 1 in the tables specifically provided therein for the purposes of amending previously declared details
4. **Rectification of errors:**
 - a. Omission or incorrect particulars discovered in the returns filed u/s 39 can be rectified in the return to be filed for the tax period during which such omission or incorrect particulars are noticed.
 - b. Any tax payable as a result of such error or omission will be required to be paid along with interest.
 - c. **Exception:** It is important to note that section 39(9) does not permit rectification of error or omission discovered on account of scrutiny, audit, inspection or enforcement activities by tax authorities.

Hence, assessee may not be able to pass on the ITC to the receiver in respect of tax payments made by him in pursuance of any of the aforementioned situations.

- d. **Time limit for making rectification:** The maximum time limit within which the rectification of errors/omissions is permissible is earlier of the following dates:
 - 30th day of November following the end of the financial year or
 - Actual date of filing of the relevant annual return

3. Ms. Pragya, a taxpayer registered under regular scheme (Section 9), files GSTR-3B for the month of October on 20th November. After filing the return, she discovers that the value of a taxable supply has been under-reported therein. Ms. Pragya now wants to file a revised GSTR-3B. Examine the scenario and give your comments.

Answer:

1. In GST since the returns are built from details of individual transactions, there is no requirement for having a revised return.
2. Any need to revise a return may arise due to the need to change a set of invoices or debit/ credit notes.
3. Instead of revising the return already submitted, the system allows changing the details of those transactions (invoices or debit/credit notes) that are required to be amended. They can be amended in any of the future GSTR- 1 in the tables specifically provided therein for the purposes of amending previously declared details
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Hence, assessee may not be able to pass on the ITC to the receiver in respect of tax payments made by him in pursuance of any of the aforementioned situations.

- d. **Time limit for making rectification:** The maximum time limit within which the rectification of errors/omissions is permissible is earlier of the following dates:
 - 30th day of November following the end of the financial year or
 - Actual date of filing of the relevant annual return

4. **M/s Cavenon Enterprises, a registered supplier of designer wedding dresses under regular scheme, has aggregate annual turnover of ₹ 30 lakh in the preceding financial year. It is of the view that in the current financial year, it is permitted to file its statement of outward supplies (GSTR-1) on a quarterly basis while its accountant advises it to file the same on a monthly basis. You are required to advise M/s Cavenon Enterprises on the same.**

Answer

Section 37 stipulates that GSTR-1 for a particular month is required to be filed on or before the 10th day of the immediately succeeding month, i.e. on a monthly basis.

However, presently, as a measure of easing the compliance requirement for small taxpayers, the details of outward supplies of goods or services or both to a registered person can be furnished, for the first and second months of a quarter, up to a cumulative value of fifty lakh rupees in each of the months, using invoice furnishing facility (IFF) electronically on the common portal, from the 1st day of the month succeeding such month till the 13th day of the said month. The taxpayers opting for furnishing details of outward supply on quarterly basis can file GSTR 1 on quarterly basis. The option

to file return on quarterly basis is available for taxpayers having aggregate turnover up to ₹ 5 crores in preceding financial year.

In view of the same, M/s Cavenon Enterprises can file its GSTR-1 on quarterly basis if it has opted to furnish the outward supply related details on quarterly basis and filing IFF on monthly basis as its aggregate turnover does not exceed ₹ 5 crore in the preceding financial year.

- 5. Mr. Kohli is a registered supplier in the State of Gujarat. He is filing GSTR-1 every month. During the month of February, he went out of India and thus, could not do any business transaction during that month. He believes that as there is no transaction, there is no need to file GSTR-1 for the month of February. Is he correct? Explain.**

Answer:

No, Mr. Kohli is not correct. GSTR-1 needs to be filed even if there is no business activity in the tax period. Therefore, in the given case, even though Mr. Kohli was out of India and thus, could not do any business transaction during the month of February, he is still required to file GSTR-1 for that month.

- 6. Mr. Kalpesh is a registered dealer in Kerala paying tax under composition levy from 1st April. However, he opts to pay tax under regular scheme from 1st December. Is he liable to file GSTR-4 for the month of November? Discuss.**

Answer:

Where a taxpayer opts to withdraw from the composition scheme, he has to file GSTR-4 for the period prior to his opting for payment of tax under regular scheme. Therefore, in the given case, Mr. Kalpesh is liable to file GSTR-4 for the month of November since he was paying tax under composition scheme during the month of November.

- 7. Mrs. Zarina, a registered dealer in Rajasthan, did not file GSTR-3B for the month of June but she wants to file GSTR-3B for the month of July. Is it possible? Answer with reference to section 39 of the CGST Act.**

Answer:

As per section 39(10), a registered person is not allowed to furnish a return for a tax period if the return for any of the previous tax periods has not been furnished by him. Therefore, in the given case, Mrs. Zarina cannot file GSTR-3B for July if she has not filed GSTR-3B for the preceding month, i.e., June.

- 8. X has not made any outward supply during the month of September. However, X has procured certain input services during the month. X is of the opinion that he can file Nil GSTR-3B for the month of September through SMS. Whether the understanding of X is correct? Explain**

Answer:

Nil GSTR-3B means that the return has nil or no entry in all its Tables. Since in the present case X has received certain input services, he cannot file Nil GSTR-3B through SMS as the said input services will need to be disclosed in the Table for Eligible ITC in GSTR-3B.

- 9. A is a chartered accountant in practice and is registered under GST. On a query regarding return filing process by a potential client, A has represented him as a GST practitioner. A is of the view that since he is a qualified chartered accountant with a GST registration in the name of his proprietorship firm, he also qualifies as GST practitioner. Is the understanding of A correct? Discuss.**

Answer:

The understanding of A is not correct.

A chartered accountant can become a GST practitioner (GSTP). However, holding a certificate of practice as a chartered accountant and having GST registration does not imply that such chartered accountant is a GST practitioner as well. For becoming a GSTP, even a chartered accountant in practice has to follow the enrolment process of GSTP as provided under the GST law and only upon approval of such enrolment can a chartered accountant represent himself as a GSTP.

- 10. Quicktax, a GST return filing service provider, has asked its clients to provide the scanned copies of the tax invoices issued to B2B customers for uploading on the GST portal and filing the return. Whether the process followed by Quicktax is correct?**

Answer:

No, the process followed by Quick tax is not correct.

The registered persons supplying goods or services to B2B customers are required to upload the invoice wise details of supplies made during the tax period. However, there is no requirement to upload the scanned copies of the invoices issued to the customers on the GST portal at the time of filing returns. Only information required as per GST returns is to be captured in the return filing utility and the same is to be uploaded on the GST portal and not the scanned copies of the actual invoices.

- 11. X Ltd. is winding up its business in Rajasthan. The Tax Consultant of X Ltd. has suggested that X Ltd. will have to file either the annual return or the final return at the time of voluntary cancellation of registration in the state of Rajasthan. Do you agree with the stand taken by Tax Consultant of X Ltd.? Offer your comments.**

Answer:

No, the stand taken by Tax Consultant of X Ltd. is not correct.

Annual return is required to be filed by every registered person paying tax as a normal taxpayer. Final return is filed by the registered persons who have applied for cancellation of registration within three months of the date of cancellation or the date of cancellation order. In the given case, X Ltd., a registered person, is winding up its business and has thus, applied for cancellation of registration. Therefore, it is required to file both annual return and final return.

13. PAYMENT OF TAXES

SECTION 49 - PAYMENT OF TAX, INTEREST, PENALTY AND OTHER AMOUNTS

I. SEC 49(1) – Amount deposited should be credited to electronic cash ledger:

Every deposit made towards tax, interest, penalty, fee or any other amount by a person

- by internet banking or
- by using credit or debit cards or
- National Electronic Fund Transfer or
- Real Time Gross Settlement or
- by such other mode and

subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed (Rule 87).

II. SEC 49(2) – Input tax credit shall be credited to electronic credit ledger: The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed (Rule 86).

III. SEC 49(3) – Utilization of amount available in 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 under the provisions of this Act or the rules made there under in such manner and subject to such conditions and within such time as may be prescribed (Rule 87).

IV. SEC 49(4) – Utilization of amount available in Electronic credit ledger: The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed (Rule 86).

V. SEC 49(5) – Utilisation of Input Tax Credit: The amount of input tax credit available in the electronic credit ledger of the registered person on account of—

- a. 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 as the case may be, Union territory tax, in that order;
- b. the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;
- c. the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;

- d. the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax
Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax
- e. the central tax shall not be utilised towards payment of State tax or Union territory tax; and
- f. the State tax or Union territory tax shall not be utilised towards payment of central tax.

VI. SEC 49(6) – Refund of Balance: The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54.

VII. SEC 49(7) – Electronic Liability Register: All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed (Rule 85).

VIII. SEC 49(8) – Order of discharge: Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:–

- a. self-assessed tax, and other dues related to returns of previous tax periods;
- b. self-assessed tax, and other dues related to the return of the current tax period;
- c. any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74;

IX. SEC 49(9) – Deemed passing of incidence of tax: Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.

X. SEC 49(10): A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for

- a. integrated tax, central tax, State tax, Union territory tax or cess; or
- b. integrated tax or central tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25,

in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act.

Provided that no such transfer under clause (b) shall be allowed if the said registered person has any unpaid liability in his electronic liability register.

XI. SEC 49(11): Where any amount has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger as provided in subsection (1).

XII. SEC 49(12): Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, subject to such conditions and restrictions, specify such maximum proportion of output tax liability under this Act or under the Integrated Goods and Services Tax Act, 2017 which may be discharged through the electronic credit ledger by a registered person or a class of registered persons, as may be prescribed.

Explanation: For the purposes of this section,-

- a. the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;
- b. the expression,-
 - (i) "tax dues" means the tax payable under this Act and does not include interest, fee and penalty; and
 - (ii) "other dues" means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder.

SECTION 49A - UTILISATION OF INPUT TAX CREDIT SUBJECT TO CERTAIN CONDITIONS

Notwithstanding anything contained in section 49,

- the input tax credit on account of central tax, State tax or Union territory tax
- shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be,
- only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.

SECTION 49B. ORDER OF UTILISATION OF INPUT TAX CREDIT

Notwithstanding anything contained in this Chapter and subject to the provisions of clause (e) and clause (f) of sub section (5) of section 49, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the input tax credit on account of integrated tax, central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax.

➤ **Rule 88A - Order of utilization of input tax credit.**

Input tax credit on account of 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 Union territory tax, as the case may be, in any order.

Provided that the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the

case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.

The above rule provides as follows:

1. Available IGST credit in the credit ledger should first be utilized towards payment of IGST.
2. Remaining amount if any, can be utilized towards the payment of CGST and SGST/UTGST in any order and in any proportion, i.e. ITC of IGST can be utilized either against CGST or SGST.
3. Entire ITC of IGST is to be fully utilised first before the ITC of CGST or SGST/UTGST can be utilized.
4. Available CGST Credit in the credit ledger shall first be utilized for payment of CGST.
5. Remaining amount if any, will be utilized for payment of IGST
6. Available SGST /UTGST credit in the credit ledger shall first be utilized for payment of SGST/UTGST.
7. Remaining amount if any, will be utilized for payment of IGST, only when credit of CGST is not available for payment of IGST

Note: CGST credit cannot be utilized for payment of SGST/UTGST. Similarly, SGST/UTGST credit cannot be utilized for payment of CGST

➤ **Rule 85 - Electronic Liability Register**

- (1) The electronic liability register specified under sub-section (7) of section 49 shall be maintained in FORM GST PMT-01 for each person liable to pay tax, interest, penalty, late fee or any other amount on the common portal and all amounts payable by him shall be debited to the said register.
- (2) **Debits to liability register:** The electronic liability register of the person shall be debited by-
 - a. the amount payable towards tax, interest, late fee or any other amount payable as per the return furnished by the said person;
 - b. the amount of tax, interest, penalty or any other amount payable as determined by a proper officer in pursuance of any proceedings under the Act or as ascertained by the said person; or
 - c. **Omitted
 - d. any amount of interest that may accrue from time to time.
- (3) Subject to the provisions of section 49, section 49A and section 49B payment of every liability by a registered person as per his return shall be made by debiting
 - the electronic credit ledger maintained as per rule 86 or
 - the electronic cash ledger maintained as per rule 87and the electronic liability register shall be credited accordingly.
- (4) **Amounts to be paid only by debiting Electronic cash ledger:** The following amounts should be paid only by debiting the electronic cash ledger
 - the amount deducted under section 51, or
 - the amount collected under section 52, or
 - the amount payable on reverse charge basis, or

- the amount payable under section 10,
 - any amount payable towards interest, penalty, fee or any other amount under the Act and the electronic liability register shall be credited accordingly.
- (5) Any amount of demand debited in the electronic liability register shall stand reduced to the extent of relief given by the appellate authority or Appellate Tribunal or court and the electronic tax liability register shall be credited accordingly.
- (6) The amount of penalty imposed or liable to be imposed shall stand reduced partly or fully, as the case may be, if the taxable person makes the payment of tax, interest and penalty specified in the show cause notice or demand order and the electronic liability register shall be credited accordingly.
- (7) A registered person shall, upon noticing any discrepancy in his electronic liability ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in FORM GST PMT-04.

➤ **Rule 86 - Electronic Credit Ledger (Relevant extract):**

- (1) The electronic credit ledger shall be maintained in FORM GST PMT-02 for each registered person eligible for input tax credit under the Act on the common portal and every claim of input tax credit under the Act shall be credited to the said ledger.
- (2) The electronic credit ledger shall be debited to the extent of discharge of any liability in accordance with the provisions of section 49 or section 49A or section 49B
- (3) Where a registered person has claimed refund of any unutilized amount from the electronic credit ledger in accordance with the provisions of section 54, the amount to the extent of the claim shall be debited in the said ledger.
- (4) If the refund so filed is rejected, either fully or partly, the amount debited under sub rule (3), to the extent of rejection, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03.
- (4A) Where a registered person has claimed refund of any amount paid as 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.
- (6) A registered person shall, upon noticing any discrepancy in his electronic credit ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in FORM GST PMT-04.

➤ **Rule 86A - Conditions of use of amount available in electronic credit ledger:**

- (1) The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as-
- a. the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36-
 - i. issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or
 - ii. without receipt of goods or services or both; or

- b. the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or
 - c. the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or
 - d. the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36, may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.
- (2) The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.
- (3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.

➤ **Rule 86B - Restrictions on use of amount available in electronic credit ledger:**

- a. **Applicability of Rule 86B:** Rule 86B is applicable to the registered person having value of taxable supply (other than exempt supply and zero-rated supply) in a month exceeding ₹ 50 lakh.

Therefore, in cases wherein value of taxable supply in a month is less than ₹ 50 lakh, then this restriction would not be applicable.

- b. **Nature of restriction imposed:** The registered person to whom the said rule is applicable cannot utilize input tax credit in excess of 99% of the output tax liability. In other words, input tax liability shall be utilized only to the extent of 99% of the output tax liability while discharging output tax liability. The above restriction can be explained with the help of numerical example:

The total value of inter-State supply of Raman & Sons for the month of February 2021 is of ₹ 100 lakh. Said supply is taxable @ 18% IGST. Thus, total output tax liability of Raman & Sons is ₹ 18 lakh. Amount available in electronic credit ledger is ₹ 20 lakh (IGST). In terms of restriction imposed by rule 86B, Raman & Sons can discharge 99% of its output tax liability, i.e. ₹ 17,82,000 (99% of ₹ 18,00,000) from the amount available in electronic credit ledger. However, it has to mandatorily discharge the balance 1% of the output tax liability i.e. ₹ 18,000 (1% of ₹ 18,00,000) through electronic cash ledger only.

- c. **Exceptions to the Rule 86B:**

- i. **Payment of Income Tax more than ₹ 1 lakh:**

Rule 86B may not apply in cases whereby person mentioned below have deposited sum of more than ₹ 1 lakh as income tax under the Income - tax Act, 1961) in each of the last 2 financial years for which the time limit to file return of income under section 139(1) of the said Act has expired

- The registered person or
- The karta/proprietor/the managing director of the registered person;
- Any of the two partners, whole-time directors, members of Managing Committee of Associations or Board of Trustees of the registered person, as the case may be.

ii. **Receipt of refund of input tax credit of more than ₹ 1 lakh:**

Rule 86B may not apply whereby registered person has received a refund amount of more than ₹ 1 lakh on account of unutilized input tax credit under the following:

- zero-rated supplies made without payment of tax
- Inverted duty structure

It is pertinent to note that refund should have been received in the preceding financial year.

iii. **Payment of total output tax liability through electronic cash ledger in excess of 1% of total output tax liability**

- If the registered person has paid more than 1% of total output tax liability using electronic cash ledger upto the said month in the current financial year, the restrictions as specified in Rule 86B shall not apply.

Assuming a scenario wherein in the FY 2021-22 upto August 2021, the total output tax liability payable is ₹ 30 lakh and such registered person has deposited ₹ 1 lakh through electronic cash ledger and balance through electronic credit ledger, rule 86B would not be applicable in September 2021 [if the turnover during this month exceeds ₹ 50 lakh], since payment made in cash is more than 1% of total output tax liability. (1% of ₹ 30 lakhs is ₹ 30,000).

- Interestingly, the aforesaid exception needs to be evaluated in 'current financial year', and hence, for the month of April of any financial year, the said exception will not be applicable. Accordingly, registered person would be required to pay minimum 1% of output liability through electronic cash ledger unless the registered person is covered under any of the other exceptions or if the taxable turnover in a month is less than ₹ 50 lakh.
- It is pertinent to note that GST liability paid under reverse charge mechanism should not be taken into account while calculating the total output liability paid through electronic cash ledger.

iv. **Specified registered person:** Rule 86B would not be applicable in case of below-mentioned registered person:

- a. Government Department; or
- b. a public sector undertaking; or
- c. a local authority; or a statutory body.

However, Commissioner or an officer authorised by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit

➤ **Rule 87 - Electronic Cash Ledger:**

(1) The electronic cash ledger under sub-section (1) of section 49 shall be maintained in FORM GST PMT-05 for each person, liable to pay tax, interest, penalty, late fee or any other amount, on the common portal for crediting the amount deposited and debiting the payment therefrom towards tax, interest, penalty, fee or any other amount.

(2) Any person, or a person on his behalf, shall generate a challan in FORM GST PMT-06 on the common portal and enter the details of the amount to be deposited by him towards tax, interest, penalty, fees or any other amount.

Provided that the challan in FORM GST PMT-06 generated at the common portal shall be valid for a period of fifteen days.

(3) **Accepted modes of payment:** The deposit under sub-rule (2) shall be made through any of the following modes, namely:-

- Internet Banking through authorised banks;
- **Unified Payment Interface (UPI) from any bank;**
- **Immediate Payment Services (IMPS) from any bank**
- Credit card or Debit card through the authorised bank;
- National Electronic Fund Transfer or Real Time Gross Settlement from any bank; or
- Over the Counter payment through authorised banks for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft

Provided that the restriction for deposit up to ten thousand rupees per challan in case of an Over the Counter payment shall not apply to deposit to be made by –

- a. Government Departments or any other deposit to be made by persons as may be notified by the Commissioner in this behalf;
- b. Proper officer or any other officer authorised to recover outstanding dues from any person, whether registered or not, including recovery made through attachment or sale of movable or immovable properties;
- c. Proper officer or any other officer authorised for the amounts collected by way of cash, cheque or demand draft during any investigation or enforcement activity or any ad hoc deposit.

Explanation: For the purposes of this sub-rule, it is hereby clarified that for making payment of any amount indicated in the challan, the commission, if any, payable in respect of such payment shall be borne by the person making such payment.

(4) 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.

(5) Where the payment is made by way of National Electronic Fund Transfer or Real Time Gross Settlement, or Immediate Payment Service mode from any bank, the mandate form shall be

generated along with the challan on the common portal and the same shall be submitted to the bank from where the payment is to be made.

Provided that the mandate form shall be valid for a period of fifteen days from the date of generation of challan.

(6) **Generation of CIN:** On successful credit of the amount to the concerned government account maintained in the authorised bank, a Challan Identification Number shall be generated by the collecting bank and the same shall be indicated in the challan.

(7) On receipt of the Challan Identification Number from the collecting bank, the said amount shall be credited to the electronic cash ledger of the person on whose behalf the deposit has been made and the common portal shall make available a receipt to this effect.

(8) Where the bank account of the person concerned, or the person making the deposit on his behalf, is debited but no Challan Identification Number is generated or generated but not communicated to the common portal, the said person may represent electronically in FORM GST PMT-07 through the common portal to the bank or electronic gateway through which the deposit was initiated.

Provided that where the bank fails to communicate details of Challan Identification Number to the Common Portal, the Electronic Cash Ledger may be updated on the basis of e-Scroll of the Reserve Bank of India in cases where the details of the said e-Scroll are in conformity with the details in challan generated in FORM GST PMT-06 on the Common Portal.

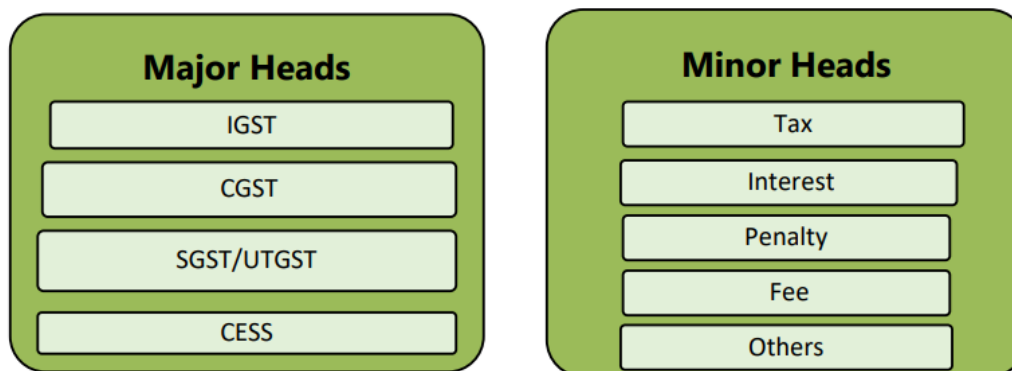
(10) Where a person has claimed refund of any amount from the electronic cash ledger, the said amount shall be debited to the electronic cash ledger.

(11) If the refund so claimed is rejected, either fully or partly, the amount debited under sub-rule (10), to the extent of rejection, shall be credited to the electronic cash ledger by the proper officer by an order made in FORM GST PMT-03.

(12) A registered person shall, upon noticing any discrepancy in his electronic cash ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in FORM GST PMT-04.

(13) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for integrated tax, central tax, State tax or Union territory tax or cess in FORM GST PMT-09.

➤ The amount available in the electronic cash ledger can be utilised for payment of any liability for the major and minor heads.



- The amount available in the electronic cash ledger can be utilised for payment of any liability for the major and minor heads. For instance, if the registered person has made a deposit of tax erroneously i.e. by virtue of human error, under a particular head instead of a specific head, the same can be transferred to the respective intended head vide Form GST PMT-09
- *For instance, a registered person has deposited a sum of ₹ 1,000 under the head of “Interest” column of CGST & ₹ 1,000 under the head of “Interest” column of SGST, instead of the head “Fee”. Such amount can be transferred using Form GST PMT-09 for making a transfer to the head “Fee”.*

(14) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for central tax or integrated tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25, in FORM GST PMT-09.

Provided that no such transfer shall be allowed if the said registered person has any unpaid liability in his electronic liability register.

Some other important points:

- **Are manual Challans applicable as allowed earlier under the VAT regimes?** Manual or physical Challans are not allowed under the GST regime. It is mandatory to generate Challans online on the GST Portal.
- **How many types of Challans are prescribed for various taxes and payments to be paid under the GST regime?** There is single Challan prescribed for all taxes, fees, penalty, interest, and other payments to be made under the GST regime.
- **How do the new payment systems benefit the taxpayer and the Commercial Tax Department?**
 - No more queues and waiting for making payments as payments can be made online 24 X 7.
 - Instant online receipts for payments made online.
 - Tax Consultants can make payments on behalf of the clients.
 - Single Challan form to be created online, replacing the three or four copy Challan.
 - Revenue will come earlier into the Government Treasury as compared to the old system.
 - Greater transparency.
 - Online payments made after 8 pm will be credited to the taxpayer’s account on the same day.

SECTION 50: INTEREST ON DELAYED PAYMENT OF TAX

- (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent, as may be notified by the Government on the recommendations of the Council:

Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.

- (2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed (Rule 88B), from the day succeeding the day on which such tax was due to be paid.
- (3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.

Notification No. 13/2017 CT dated 28.06.2017 has been amended by the Finance Act, 2022 retrospectively with effect from 01.07.2017, to reduce the rate of interest under section 50(3) from 24% to 18% per annum.

➤ Rule 88B - Manner of calculating interest on delayed payment of tax

- (1) In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and
- the said return is furnished after the due date in accordance with provisions of section 39,
 - except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period,
 - the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger,
 - for the period of delay in filing the said return beyond the due date, at such rate as may be notified under sub-section (1) of section 50.
- (2) In all other cases, where interest is payable in accordance with sub section (1) of section 50, the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid, at such rate as may be notified under sub-section (1) of section 50.
- (3) In case, where interest is payable on the amount of input tax credit wrongly availed and utilised in accordance with sub-section (3) of section 50,
- the interest shall be calculated on the amount of input tax credit wrongly availed and utilised,

- for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount,
- at such rate as may be notified under said sub-section (3) of section 50.

Explanation: For the purposes of this sub-rule,

- (1) **input tax credit wrongly availed shall be construed to have been utilised**, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.
- (2) **the date of utilisation of such input tax credit** shall be taken to be, -
 - a. **If tax is paid through return:**
 - the date, on which the return is due to be furnished under section 39 or
 - the actual date of filing of the said return,

whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or
 - b. **In other cases:** the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases.

Clarifications regarding utilization of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities [Circular No. 172/04/2022 GST dated 06.07.2022]

Issue 1: Whether the amount available in the electronic credit ledger can be used for making payment of any tax under the GST Laws?

Clarification: In terms of section 49(4), the amount available in the electronic credit ledger may be used for making any payment towards output tax under the CGST Act or the IGST Act, subject to the provisions relating to the order of utilisation of ITC as laid down in section 49B read with rule 88A. Rule 86(2) provides for debiting of the electronic credit ledger to the extent of discharge of any liability in accordance with the provisions of section 49/49A/49B.

Further, output tax in relation to a taxable person (i.e. a person who is registered or liable to be registered under section 22 or section 24) is defined in section 2(82) as the tax chargeable on taxable supply of goods or services or both but excludes tax payable on reverse charge mechanism.

Accordingly, it is clarified that any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person.

It is further reiterated that as output tax does not include tax payable under reverse charge mechanism, implying thereby that the electronic credit ledger cannot be used for making payment of any tax which is payable under reverse charge mechanism.

Issue 2: Whether the amount available in the electronic credit ledger can be used for making payment of any liability other than tax under the GST laws?

Clarification: As per section 49(4), the electronic credit ledger can be used for making payment of output tax only under the CGST Act or the IGST Act. It cannot be used for making payment of any interest, penalty, fees or any other amount payable under the said Acts. Similarly, electronic credit ledger cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash.

Issue 3: Whether the amount available in the electronic cash ledger can be used for making payment of any liability under the GST laws?

Clarification: As per section 49(3), the amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the GST laws.

SHRESHTA

QUESTIONS

1. XT Pvt. Ltd., a supplier of goods, pays GST under regular scheme. It has made the following outward taxable supplies in a tax period:

Particulars	Amount
Intra-State supply of goods	8,00,000
Inter-State supply of goods	3,00,000

It has also furnished the following information in respect of purchases made by it in that tax period:

Particulars	Amount
Intra-State purchases of goods	2,00,000
Inter-State purchases of goods	50,000

The company has following ITCs with it at the beginning of the tax period:

Particulars	Amount
CGST	57,000
SGST	Nil
IGST	70,000

Note:

- (i) Rates of CGST, SGST and IGST are 9%, 9% and 18% respectively.
- (ii) Both inward and outward supplies are exclusive of taxes, wherever applicable.
- (iii) All the conditions necessary for availing the ITC have been fulfilled.

Compute the minimum GST, payable in cash, by XT Pvt. Ltd. for the tax period. Make suitable assumptions as required.

Answer:

Computation of GST payable on outward supplies

s. No.	Particulars	CGST @ 9%	SGST @ 9%	IGST @ 18%	Total
(i)	Intra-State supply of goods for ₹ 8,00,000	72,000	72,000		1,44,000
(ii)	Inter-State supply of goods for ₹ 3,00,000			54,000	54,000
	Total GST payable				1,98,000

Computation of total ITC

Particulars	CGST @ 9%	SGST @ 9%	IGST @ 18%
Opening ITC	57,000	Nil	70,000

Add: ITC on Intra-State purchases of goods valuing ₹ 2,00,000	18,000	18,000	Nil
Add: ITC on Inter-State purchases of goods valuing ₹ 50,000	Nil	Nil	9,000
Total ITC	75,000	18,000	79,000

Computation of minimum GST payable from electronic cash ledger

Particulars	CGST @ 9%	SGST @ 9%	IGST @ 18%	Total
GST payable	72,000	72,000	54,000	1,98,000
Less: ITC [First ITC of IGST should be utilized in full - first against IGST liability and then against CGST and SGST liabilities in a manner to minimize cash outflow]	(Nil) IGST	(25,000) IGST	(54,000) IGST	79,000
	(72,000) CGST	(18,000) SGST		90,000
Minimum GST payable in cash	Nil	29,000	Nil	29,000

Note : Since sufficient balance of ITC of CGST is available for paying CGST liability and cross utilization of ITC of CGST and SGST is not allowed, ITC of IGST has been used to pay SGST (after paying IGST liability) to minimize cash outflow.

2. Paritosh & Co., a supplier of goods, pays GST under regular scheme. It has made the following outward taxable supplies in a tax period:

Particulars	Amount
Intra-State supply of goods	10,00,000
Inter-State supply of goods	8,00,000

It has also furnished the following information in respect of purchases made by it in that tax period:

Particulars	Amount
Intra-State purchases of goods	3,00,000
Inter-State purchases of goods	2,50,000

The company has following ITCs with it at the beginning of the tax period:

Particulars	Amount
CGST	57,000
SGST	60,000
IGST	1,40,000

Note:

- (i) Rates of CGST, SGST and IGST are 9%, 9% and 18% respectively.
- (ii) Both inward and outward supplies are exclusive of taxes, wherever applicable.
- (iii) All the conditions necessary for availing the ITC have been fulfilled.

Compute the minimum GST, payable in cash, by Paritosh & Co. for the tax period. Make suitable assumptions as required.

Answer:

Computation of GST payable on outward supplies

s. No.	Particulars	CGST @ 9%	SGST @ 9%	IGST @ 18%	Total
(i)	Intra-State supply of goods for ₹ 10,00,000	90,000	90,000		1,80,000
(ii)	Inter-State supply of goods for ₹ 8,00,000			1,44,000	1,44,000
	Total GST payable				3,24,000

Computation of total ITC

Particulars	CGST @ 9%	SGST @ 9%	IGST @ 18%
Opening ITC	57,000	60,000	1,40,000
Add: ITC on Intra-State purchases of goods valuing ₹ 3,00,000	27,000	27,000	Nil
Add: ITC on Inter-State purchases of goods valuing ₹ 2,50,000	Nil	Nil	45,000
Total ITC	84,000	87,000	1,85,000

Computation of minimum GST payable from electronic cash ledger

Particulars	CGST @ 9%	SGST @ 9%	IGST @ 18%	Total
GST payable	90,000	90,000	1,44,000	3,24,000
Less: ITC [First ITC of IGST should be utilized in full - first against IGST liability and then against CGST and SGST liabilities in a manner to minimize cash outflow]	(38,000) IGST	(3,000) IGST	(1,44,000) IGST	1,85,000
	(52,000) CGST	(87,000) SGST		1,39,000
Minimum GST payable in cash	Nil	Nil	Nil	Nil
ITC balance to be carried forward next month	32,000	Nil	Nil	32,000

Note : The above computation is one of the many ways to set off the ITC of IGST (₹ 41,000-after set off against IGST liability) against CGST and SGST liability to compute minimum GST payable in cash. To illustrate, IGST of ₹ 10,000 can be set off against SGST payable and IGST of ₹ 31,000 can be set off against CGST payable. In this situation also, the net GST payable will be nil but the ITC of CGST and SGST to be carried forward will be ₹ 25,000 and ₹ 7,000 (totaling to ₹ 32,000) respectively. However, if the entire ITC of ₹ 41,000 is set off against CGST payable, then SGST of ₹ 3,000 will be payable in cash thus, increasing the cash outflow. Therefore, such a set off would not be advisable for computing the minimum GST payable.

3. Examine the authority vested under CGST Act, 2017 for preventing a registered person from utilising the input tax credit availed in a fraudulent manner?

Answer:

Every registered person, shall avail the input tax credit through a return filed under Section 39 of CGST Act, 2017. Input Tax credit availed shall be credited to electronic credit ledger under section 41 of the CGST Act, 2017 on a provisional basis. As per provisions contained in Rule 86A, In case the Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, has reasons to believe that ITC available in the electronic credit ledger has been fraudulently availed or is ineligible, he may prohibit use of ITC for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.

4. Mr. A has deposited a sum of ₹ 30,000 under minor head of "Interest" column for the major head "IGST". At the time of filing GSTR-3B for a particular tax period, he noticed that there is no sufficient amount under the minor head 'Tax' towards payment of ₹ 30,000. When approached with the Jurisdictional Tax officer, Mr. A was guided to deposit the tax amount under proper head of account and claim a refund for the remittance of amount deposited under head "interest". Examine the relevant provisions of CGST Act, 2017 towards payment of tax and compliance with the law.

Answer:

Provisions of Section 49(10) of CGST Act, 2017 permit a registered person for transferring the amount deposited under any of the minor head i.e. tax, interest, penalty, fees or others to any of the heads under IGST/CGST/SGST/UTGS and make the payment of taxes there upon. Accordingly, Mr. A need not deposit the tax amount under head " tax" and claim a refund for the remittance of amount deposited under head "interest. Rather, using the Form GST PMT 09, such amount can be transferred suo-moto on the common portal from "interest" to "tax" head and tax liability be paid.

5. PPC Ltd., has availed Input Tax credit for ₹ 54,000/- IGST during February 2021 on a particular purchase. Accounting records for the above purchase, indicate that IGST paid to the supplier is ₹ 45,000/- as per the bill received. GSTR1 uploaded by the supplier for the above supply indicates ₹ 45,000/- as tax paid. Examine as per GST provisions, what value shall be updated in the ledgers maintained on behalf of PPC Ltd., on the common portal?

Answer:

PPC Ltd., have accounted and paid ₹ 45,000/- as IGST to the supplier concerned. However, availment of input tax credit has been made for ₹ 54,000/-. As per Section 49(2) of CGST Act, 2017 "The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed."

Accordingly, electronic credit ledger of PPC Ltd., shall be updated with a value of ₹ 54,000/- as per self-assessed return to be filed for February 2021, though the input tax credit shown by the supplier is only for ₹ 45,000/-.

6. M/s ABC & Co., have defaulted in filing the return under Section 39 of CGST Act, 2017 i.e. GSTR-3B for the month of March, 2021 within the specified due date . Reason for such delay is attributable to delay in closure of Books for March 2021, which have been finalised during May 2021. The GST Common portal prompted for payment of late fees payable under Section 47 of CGST Act, 2017 for a sum of ₹ 2,000 under CGST and SGST each. Accountant, of M/s ABC & Co., sought your confirmation for payment of such late fees through the balance available in Electronic Credit Ledger for the late fees. Give your guidance in this regard.

Answer:

Section 49(3) of the CGST Act, 2017 provides that the amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made there under in prescribed manner. Further, section 49(4) provides that the amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in prescribed manner.

Accordingly, as per the combined reading of the above provisions, late fees shall be paid only through electronic cash ledger and not possible through electronic credit ledger. Thus, contention of the accountant of M/s ABC & Co., is not correct and the above amount shown on the common portal has to be deposited in Electronic Cash Ledger under appropriate minor head, through any of the specified modes .

7. How many types of electronic ledger/register are there?

Answer:

- (a) Electronic cash ledger
- (b) Electronic credit ledger
- (c) Electronic liability register

8. What are the main features of GST payment process?

Answer:

The main features of GST payment process are as follows:-

- a. Electronically generated challan from GSTN common portal in all modes of payment and no use of manually prepared challan;
- b. Facilitation for the tax payer by providing hassle free, anytime, anywhere mode of payment of tax;
- c. Convenience of making payment online;
- d. Realtime data for tax collection in electronic format;

- e. Faster remittance of tax revenue to the Government Account;
- f. Paperless transactions;
- g. Speedy Accounting and reporting;
- h. Electronic reconciliation of all receipts;
- i. Simplified procedure for banks;
- j. Warehousing of Digital Challan.

9. Are principles of unjust enrichment applicable for payment made under GST?

Answer:

Yes, as per Section 49(9) of the CGST Act, 2017 every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.

10. State the name of output tax under GST, where any of the input tax credit under GST can be availed?

Answer:

IGST.

IGST, CGST, SGST, UTGST i.e. all input tax credit can be availed against output tax liability known as IGST.

11. Sahil is a supplier of taxable goods in Karnataka. He got registered under GST in the month of September, 2021 and wishes to pay his IGST liability for the month. Since he is making the GST payment for the first time, he is of the view that he needs to mandatorily have the online banking facility to make payment of GST; offline payment is not permitted under GST. You are required to apprise Sahil regarding the various modes of deposit in the electronic cash ledger. Further, advise him with regard to following issues:

(a) Are manual challans allowed under GST?

(b) What is the validity period of the challan?

(c) Is cross utilization among Major and Minor heads of the electronic cash ledger permitted

Answer:

As per the provisions of CGST Act, 2017 read with relevant rules, the deposit in electronic cash ledger can be made through any of the following modes, namely:-

- (i) Internet Banking through authorised banks;
- (ii) Unified payment interface
- (iii) Immediate payment service
- (iv) Credit card or Debit card through the authorised bank;
- (v) National Electronic Fund Transfer or Real Time Gross Settlement from any bank; or
- (vi) Over the Counter payment through authorised banks for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft.

Thus, offline mode is also permitted under GST subject to specified conditions.

(a) Manual or physical Challans are not allowed under the GST regime. It is mandatory to generate Challans online on the GST Portal.

(b) Challan is valid for a period of 15 days.

(c) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the CGST Act, 2017 to the electronic cash ledger for integrated tax, central tax, State tax or Union territory tax or cess.

12. Suhasini is a registered software consultant. On account of her ill health, she could not provide any services during the month of October. However, she had to incur all the expenses relating to her office. She paid ₹ 75,000 to various vendors. The total input tax involved on the goods and services procured by her is ₹ 13,500. Out of the total bills paid by her, one bill for ₹ 15,000 relates to security services availed for security of her office, tax on which is payable under reverse charge. Input tax involved in such bill is ₹ 2,700.

Suhasini is of the opinion that for the month of October, no GST is payable from electronic cash ledger as she has sufficient balance of ITC for payment of GST under reverse charge on security services.

Do you think Suhasini is right? Explain with reasons.

Answer:

The amount available in the electronic credit ledger, i.e. ITC may be used for making any payment towards output tax [Section 49(4)]. Output tax in relation to a taxable person, means the tax chargeable on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis [Section 2(82)]. Therefore, ITC cannot be used to pay the tax liability under reverse charge. The same is always required to be paid through electronic cash ledger and not electronic credit ledger. Thus, Suhasini is wrong and she will need to pay the GST of ₹ 2,700 on security service through electronic cash ledger.

14. PLACE OF SUPPLY

INTRODUCTION

GST is a destination-based tax, i.e. the tax is levied at the place where the goods or services are consumed, rather than the place where they are produced.

The determination of 'place of supply' and the 'location of the supplier' is essential to ascertain the nature of supply, i.e. whether a supply is intra-State or inter-State. In other words, these two factors are required to determine whether a supply is subject to SGST/UTGST plus CGST in a given State/ Union territory or else would attract IGST if it is an inter-State supply.

The various elements used for determining the place of supply of a service are:

1. Location of service provider
2. Location of service receiver
3. Place where the activity takes place/ place of performance
4. Place where the service is consumed
5. Place/person to which/whom actual benefit flows

DEFINITIONS:

- 1. Continuous journey [Section 2(3)]:** Continuous journey means a journey for which
 - a. a single or more than one ticket or invoice is issued at the same time,
 - b. either by a single supplier of service or through an agent acting on behalf of more than one supplier of service,
 - c. and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued.
- 2. Location of the recipient of services:** Location of the recipient of services means:
 - a. Where a supply is received at a place of business for which registration has been obtained, the location of such place of business;
 - b. Where a supply is received at a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;
 - c. Where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
 - d. In absence of such places, the location of the usual place of residence of the recipient.
- 3. Location of the supplier of services:** Location of the supplier of services means:
 - a. Where a supply is made from a place of business for which registration has been obtained, the location of such place of business;

- b. Where a supply is made from a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;
- c. Where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and
- d. In absence of such places, the location of the usual place of residence of the supplier.

4. Place of business: Place of business includes

- a. A place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
- b. A place where a taxable person maintains his books of account; or
- c. A place where a taxable person is engaged in business through an agent, by whatever name called.

SECTION 10 OF IGST ACT: PLACE OF SUPPLY OF GOODS OTHER THAN SUPPLY OF GOODS IMPORTED INTO, OR EXPORTED FROM INDIA

A. SECTION 10(1): The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under:

- a. **Supply involves movement of goods:** Where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;

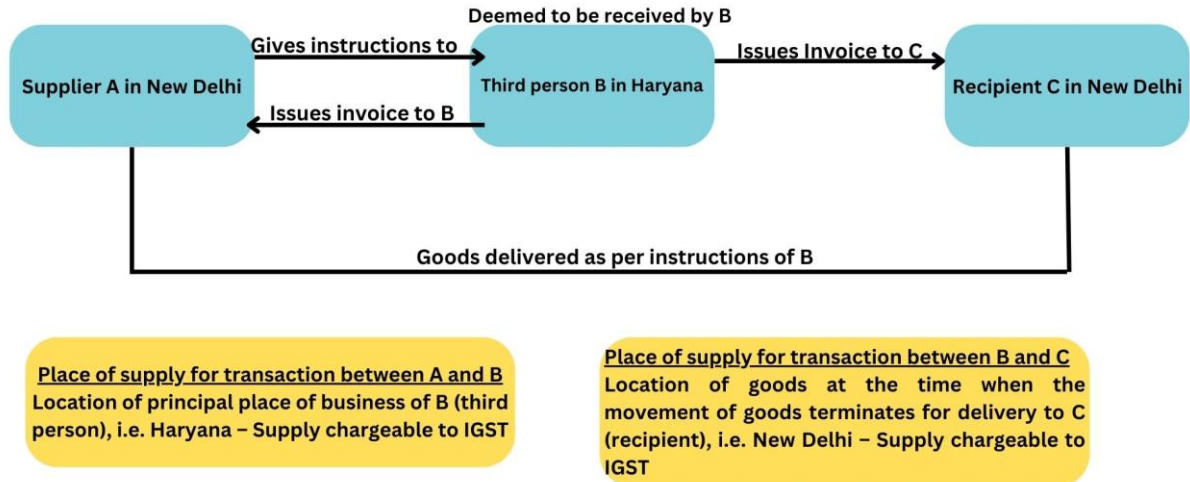
Examples

1. Babban Pvt. Ltd. of Nasik, Maharashtra sells 10 refrigerators to Chaggan Pvt. Ltd. of Pune, Maharashtra for delivery at place of business of Chaggan Pvt. Ltd. in Pune. The place of supply is Pune in Maharashtra.
2. Babban Pvt. Ltd. of Nasik, Maharashtra sells 20 refrigerators to Dhakkan Pvt. Ltd. of Ahmedabad, Gujarat for delivery at place of business of Dhakkan Pvt. Ltd. in Ahmedabad. The place of supply is Ahmedabad.

b. Goods delivered to the recipient at the instruction of the third person [‘Bill To’ ‘Ship To’ Transaction]:

- Where the goods are delivered by the supplier to a recipient or any other person
- On the direction of a third person (Original buyer), whether acting as an agent or otherwise,
- before or during movement of goods (but not after the movement terminates),

- either by way of transfer of documents of title to the goods or otherwise,
- it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such third person.



- c. **Supply not involving movement of goods:** If the supply does not involve movement of goods, the place of supply is the location of goods at the time of delivery to the recipient.

Examples:

1. Newton Pvt. Ltd. (New Delhi) has leased its machine (cost ₹ 8,00,000) to Gravity Pvt. Ltd. (Noida, Uttar Pradesh) for production of goods on a monthly rent of ₹ 35,000. After 12 months Gravity Pvt. Ltd. requested Newton Pvt. Ltd. to sell the machine to it for ₹ 5,00,000, which is agreed to by Newton Pvt. Ltd. In this case, there will be no movement of goods and the same will be sold on as is where is basis. Thus, the location of the machine at the time of such sale will be the place of supply, i.e. Noida.
2. Gangadhar Ltd. (Mumbai, Maharashtra) opens a new branch office at Gurugram, Haryana. It purchases a building for office from Gajodhar Builders (Gurugram). It also enters into a separate contract with Gajodhar Builders for purchase of pre-installed office furniture and fixtures in the building. Though there will be no GST liability on purchase of building (as sale of building is covered under Schedule III to CGST Act), office furniture and fixtures will be liable to GST. Since there is no movement of office furniture and fixtures, the place of supply of such goods is their location at the time of delivery to the recipient (Gangadhar Ltd.), i.e. Gurugram.

- d. **Supply involving installation or assembly of goods:** If the supply involves goods which are to be installed or assembled at site, the place of supply is the place of such installation or assembly.

Note: This is a case of composite supply of goods wherein two supplies are involved, supply of goods and ancillary supply of installation/assembling service. The principal supply is supply of goods which are being installed.

Example:

1. *Ghoomghoom Pvt. Ltd. (New Delhi) purchases a machine from Dhoom Pvt. Ltd. (New Delhi) for being installed in its factory at Noida, Uttar Pradesh. The place of supply is the site at which the machine is installed, i.e. Noida.*
2. *Pure Refineries (Mumbai, Maharashtra) gives a contract to Mowgli Ltd. (Ranchi, Jharkhand) to supply a machine which is required to be assembled in a power plant in its refinery located in Kutch, Gujarat. The place of supply is the site of assembly of machine, i.e. Kutch even though Pure refineries is located in Maharashtra.*

- e. **Goods supplied on board a conveyance:** Place of supply of goods supplied on a board a conveyance like aircraft, train, vessel, motor vehicle is the location where such goods have been taken on board.

Note: Place of supply of goods supplied on board a conveyance is determined under this provision even if the supply has been made by any of the passenger on board the conveyance and not by the carrier of the conveyance.

Example: Maurya (New Delhi) boards the New Delhi-Kota train at New Delhi. He sells the goods taken on board by him (at New Delhi), in the train, at Jaipur during the journey. The place of supply of goods is the location at which the goods are taken on board, i.e. New Delhi and not Jaipur where they have been sold.

- B. SECTION 10(2):** Where the place of supply of goods cannot be determined, the place of supply shall be determined in such manner as may be prescribed.

SECTION 12 IGST ACT - PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER OF SERVICE AND THE LOCATION OF THE RECIPIENT OF SERVICE IS IN INDIA

- A. SECTION 12(1):** The provisions of this section shall apply to determine the place of supply of services where the location of supplier of services and the location of the recipient of services is in India.
- B. SECTION 12(2):** The place of supply of services, except the services specified in sub-sections (3) to (14):

Nature of Supply	Place of Supply	
	Recipient is registered	Recipient is unregistered

Supply of services other than the ones specified in sub-sections (3) to (14) of section 12	Location of recipient	<p>a. If the address of the unregistered person is available in the records of the supplier, the location of such unregistered person.</p> <p>b. In other cases, the location of the supplier of services</p>
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Example:

1. Mr. Aryabhatt (a Chartered Accountant registered in New Delhi) makes a supply of service to his client Champak Pvt. Ltd. of Noida, Uttar Pradesh (registered in Uttar Pradesh). In this case, since the supply is made to a registered person, the place of supply is the location of the registered recipient, i.e. Noida.
2. Mr. Heeralal, a Chartered Accountant in Gurugram, Haryana, (registered in Haryana) provides consultancy services to his client Mr. Pannalal who is a resident of New Delhi but is not registered under GST. If the address of Mr. Pannalal is available in the records of Mr. Heeralal, location of Mr. Pannalal, i.e. New Delhi will be the place of supply, else the location of Mr. Heeralal, which is Gurugram, will be the place of supply.

C. SECTION 12(3) - SERVICES IN RELATION TO IMMOVABLE PROPERTY OR LODGING ACCOMODATION IN A HOTEL/BOAT/VESSEL etc..

The place of supply of supply for the following services shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located.

Supply of services:

- a. 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 co -ordination of construction work
- b. by way of lodging accommodation by a
 - hotel,
 - inn,
 - guest house,
 - home stay,
 - club or campsite, by whatever name called, and

- including a house boat or any other vessel; or
- c. by way of accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or
- d. any services ancillary to the services referred to in clauses (a), (b) and (c)

Proviso: Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.

Examples:

1. *Sunami Builders (Mumbai) is constructing a factory building for Skylab Pvt. Ltd. (Kolkata), in New Delhi. The place of supply is the location of immovable property, i.e. New Delhi.*
2. *Shah and Shah, an architectural firm at Kolkata, has been hired by Maurya Builders of Mumbai to draw up a plan for a high rise building to be constructed by them in Ahmedabad, Gujarat. The place of supply is the place where the immovable property is intended to be located, i.e. Ahmedabad.*
3. *Kautilya, a Chartered Accountant, (New Delhi) travels to Mumbai for business and stays in a hotel there. The place of supply of accommodation service is the place where the hotel is located, i.e. Mumbai.*
4. *Goluram, a consulting engineer based in Mumbai, Maharashtra renders professional services in respect of an immovable property of Bholuram of Bangalore located in Australia. Since the immovable property is located outside India, the place of supply of service is the location of recipient, i.e. Bangalore and not the place where the immovable property is located (Australia).*

➤ **Immovable property/Boat/Vessel located in more than one State/Union territory:**

- a. Where the immovable property or boat or vessel is located in more than one State/Union territory, the service is deemed to have been supplied in each of the respective States/Union territories, in proportion to the value for the services determined in terms of the contract or agreement entered into in this regard.
- b. **Manner of determining proportionate value of service in the absence of a contract or agreement – Rule 4 of IGST Rules:**

Service provided by way of lodging accommodation by hotel, inn, guest house etc. and its ancillary services (other than the cases where such property is a single property located in 2 or more contiguous States/ Union territories or both)	<u>Number of nights stayed</u> in such property
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Example:

1. *Dondrila Hotel chain charges a consolidated sum of ₹ 30,000/- for stay in its two establishments in Delhi and Agra, where the stay in Delhi is for 2 nights and the stay in Agra is for 1 night. The place of supply in this case is both Delhi and Uttar Pradesh and the service shall be deemed to have been provided in Delhi and Uttar Pradesh in the ratio of 2:1 respectively. The value of services provided will thus be apportioned as ₹ 20,000/- in Delhi and ₹ 10,000/- in Uttar Pradesh.*

<ul style="list-style-type: none"> • All other services provided in relation to immovable property including services by way of accommodation in any immovable property for organising any marriage or reception etc. and in cases of supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called where such property is a single property located in 2 or more contiguous States or/and Union territories • Services ancillary to services mentioned above 	Area of the immovable property lying in each State/ Union territories
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Example

There is a piece of land of area 20,000 square feet which is partly in State S1 say 12,000 square feet and partly in State S2, say 8000 square feet. Site preparation work has been entrusted to Munna Constructions. The ratio of land in the two States works out to 12:8 or 3:2 (simplified). The place of supply is in both S1 and S2. The service shall be deemed to have been provided in the ratio of 12:8 or 3:2 (simplified) in the States S1 and S2 respectively. The value of the service shall be accordingly apportioned between the States.

Services by way of lodging accommodation by a house boat or vessel and its ancillary services	Time spent by the boat or vessel in each such State/ Union territories, to be determined on the basis of declaration made by the service provider
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Example:

A company C provides the service of 24 hours accommodation in a houseboat, which will transit both in Kerala and Karnataka in as much as the guests board the house boat in Kerala and stay there for 22 hours but it also moves into Karnataka for 2 hours (as declared by the service provider). The place of supply of this service is in the States of Kerala and Karnataka. The service shall be deemed to have been provided in the ratio of 22:2 or 11:1

(simplified) in the States of Kerala and Karnataka, respectively. The value of the service shall be accordingly apportioned between the States.

- D. SECTION 12(4) - Restaurant and catering service, personal grooming, fitness, beauty and health services:** The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery is the location where such services are actually performed.

Examples:

1. *Mr. Dadlani, a businessman from Hyderabad dines in a restaurant at Mumbai while on a business trip. The place of supply of restaurant service is the location where such service is performed, i.e. Mumbai.*
2. *Timmy Ferreira, a makeup artist at Kolkata, goes to Jaipur, Rajasthan for doing the makeup of Ms. Simran Kapoor, a Bollywood actress based in Mumbai. The place of supply is the location where such service is performed, i.e. Jaipur.*

- E. SECTION 12(5) - Training and performance appraisal services:** The place of supply of services in relation to training and performance appraisal to
- a. A registered person, shall be the location of such person;
 - b. A person other than a registered person, shall be the location where the services are actually performed.

Example:

Mr. Suresh (unregistered person based in Noida) signs up with Excellent Linguistics (New Delhi) for receiving training on English speaking at their New Delhi Centre. Since the recipient is unregistered, the place of supply is the location where services are provided, i.e. New Delhi.

- F. SECTION 12(6) – Admission to events/amusement park/other places:**

The place of supply of following services-

1. Services provided by way of **ADMISSION** to following types of events:
 - a. Cultural
 - b. Sporting
 - c. Educational
 - d. Scientific
 - e. Entertainment
 - f. Artistic
 2. Services provided by way of ADMISSION to amusement park or any other place
 3. Services ancillary to the above-mentioned services
- the place where the event is actually held or where the park or such other place is located.

Examples:

1. *Virubhai Virani, a resident of Ghaziabad, Uttar Pradesh, buys a ticket for a circus organized at Gurugram, Haryana by a circus company based in New Delhi. The place of supply is the location where the circus is held, i.e. Gurugram.*
2. *Manasvi of New Delhi buys a ticket for an amusement park located in Noida, Uttar Pradesh. The place of the supply is the location where the park is located, i.e. Noida.*

G. SECTION 12(7) – Organisation of events / Assigning sponsorship to such events: For supplies related to ORGANISATION of events or assigning sponsorship to such events, the place of supply depends on whether the supply is made to a registered person or an unregistered person.

- a. When such service is provided to a registered person, the place of supply is location of recipient.
- b. When it is provided to an unregistered person, the place of supply is the location where the event is actually held and if the event is held outside India, the place of supply is the location of recipient.

Example:

1. *Mega Events, an event management company at New Delhi, organizes an award function for Shah Diamond Merchants of Ahmedabad (registered in Gujarat), at Mumbai. Since the recipient is a registered person, the place of supply is the location of the recipient, i.e. Ahmedabad.*
2. *Mega Events, an event management company at New Delhi, organizes an award function for Shah Diamond Merchants of Ahmedabad (registered in Gujarat), in Mauritius. Since the recipient is a registered person, the place of supply is the location of the recipient, i.e. Ahmedabad.*

➤ **Event held in more than one State/Union territory**

1. If the event is held in more than one State/Union territory and a consolidated amount is charged for services relating to such event, the place of supply of such services is deemed to be in each of the respective States/Union territories in proportion to the value for services determined in terms of the contract or agreement entered into in this regard.

Note: The above provision is applicable only when the recipient is unregistered, as for a registered recipient, the place of supply is the location of such recipient.

2. **Manner of determining proportionate value of service in the absence of a contract or agreement:** In the absence of a contract or agreement between the supplier and recipient of services, the proportionate value of services made in different States/Union territories (where the event is held) is computed in accordance with rule 5 of the IGST Rules by the application of generally accepted accounting principles.

Example:

An event management company - Moonlight Events Private Limited - has to organize some promotional events in States S1 and S2 for a recipient Mr. Atmaram (unregistered). 3 events

are to be organized in S1 and 2 in S2. They charge a consolidated amount of ₹ 10,00,000 from Mr. Atmaram.

The place of supply of this service is in both the States S1 and S2. Say the proportion arrived at by the application of generally accepted accounting principles is 3:2. The service shall be deemed to have been provided in the ratio 3:2 in S1 and S2 respectively. The value of services provided will thus be apportioned as ₹ 6,00,000/- in S1 and ₹ 4,00,000/- in S2.

H. SECTION 12(8) - Transportation of goods including mail or courier: The place of supply of services by way of transportation of goods, including by mail or courier to,—

- a. A registered person, shall be the location of such person;
- b. A person other than a registered person, shall be the location at which such goods are handed over for their transportation.

Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.

Examples:

1. M/s Sukhiram Pvt. Ltd. is a registered company in New Delhi. It sends its courier to Pune through M/s Brue Air Courier Service. The recipient being registered person, the place of supply is the location of recipient, i.e. New Delhi.
2. Mr. Bindisaar, an unregistered person, of New Delhi sends a courier to his brother in Amritsar, Punjab. The recipient being unregistered person, the place of supply is the location where goods are handed over for their transportation, i.e. New Delhi.
3. Pinelaps Pvt. Ltd., a Goods Transportation Agency based in Kanpur, Uttar Pradesh, is hired by Hezal Enterprises (registered supplier in Kanpur) to transport its consignment of goods to a buyer in New Delhi. The recipient being registered, the place of supply is the location of recipient, i.e. Kanpur.
4. Sukhwinder Transports Pvt. Ltd., a Goods Transportation Agency based in Noida, Uttar Pradesh, is hired by Chhaya Trade Links (registered supplier in New Delhi) to transport its consignment of goods to a buyer in Kanpur, Uttar Pradesh. The recipient being registered, the place of supply is the location of recipient, i.e. New Delhi.
5. Mr. Srikant, a manager in a Bank, is transferred from Bareilly, Uttar Pradesh to Bhopal, Madhya Pradesh. Mr. Srikant's family is stationed in Kanpur, Uttar Pradesh. He hires Goel Carriers of Lucknow, Uttar Pradesh (registered in Uttar Pradesh), to transport his household goods from Kanpur to Bhopal. The recipient being unregistered person, the place of supply is the location where goods are handed over for their transportation, i.e. Kanpur.

I. SECTION 12(9) – Transportation of Passengers: The place of supply of passenger transportation service to,—

- a. A registered person, shall be the location of such person;
- b. A person other than a registered person, shall be the place where the passenger embarks on the conveyance for a continuous journey.

Provided that where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in accordance with the provisions of sub-section (2).

Issue of right to passage for future use and the point of boarding not known at the time of issue of right to passage	<p>a. If the address of the unregistered person is available in the records of the supplier, the location of such unregistered person.</p> <p>b. In other cases, the location of the supplier of services</p>
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Explanation – For the purposes of this sub-section, the return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time.

Examples

1. Mr. Amar (registered person in New Delhi) travels from Mumbai to Bangalore in Airjet flight. Mr. Amar has bought the tickets for the journey from Airjet's office registered in New Delhi. The place of supply is the location of recipient, i.e. New Delhi.
2. Mr. Subramanian (unregistered person in Chennai) has come to Delhi on a vacation. He buys pre-paid Delhi Metro Card from Delhi Metro (New Delhi) for hassle free commute in the National Capital Region. Recipient being unregistered person, the place of supply is the address of Mr. Subramanian, i.e. Chennai. If address of Mr. Subramanian is not available with the Delhi Metro, the place of supply will be the location of the supplier of services, i.e. New Delhi.
3. Mr. Shyam, an unregistered person, based in Gurugram, Haryana books a two-way air journey ticket from New Delhi to Mumbai on 5th December. He leaves New Delhi on 10th December in a late-night flight and lands in Mumbai the next day. He leaves Mumbai on 14th December in a morning flight and lands in New Delhi the same day. The return journey is treated as a separate journey, even if the tickets for onward and return journey are issued at the same time. Thus, being an unregistered person, the place of supply for the outward and return journeys are the locations where the unregistered person embarks on the conveyance for the continuous journey, i.e. New Delhi and Mumbai respectively.

- J. SECTION 12(10) – Services on board a conveyance:** The place of supply of services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.

Example: Mr. Raidhan is travelling from Delhi to Mumbai in an Airjet flight. He desires to watch an English movie during the journey by making the necessary payment. The place of supply of such service of showing 'movie on demand' is the first scheduled point of departure of the conveyance for the journey, i.e. Delhi.

K. SECTION 12(11) – Telecommunication service: The place of supply of the various types of telecommunication services is tabulated as under:

Nature of Supply	Place of Supply
a. Fixed telecommunication line b. Leased circuits c. Internet leased circuit d. Cable or dish antenna	Location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services
Post-paid mobile connection and internet services	<ul style="list-style-type: none"> Location of billing address of the recipient of services in the records of the supplier of services Location of the supplier of services, if the address is not available
Pre-paid mobile connection, internet services and DTH services (recharge coupon, vouchers, net pack etc.) Services provided through a a. selling agent b. re-seller c. distributor of subscriber identity module card or recharge voucher	Address of the selling agent/ re-seller/ distributor at the time of supply
Services provided by any person to final subscriber	Location where such pre-payment is received or such vouchers are sold
Pre-paid services, the payment for which is made through internet banking/other electronic mode of payment	Location of the recipient of services in the records of the supplier of services
Other cases	<ul style="list-style-type: none"> The address of the recipient as per the records of the supplier of services Location of the supplier of services, if the address is not available

Examples:

1. Mr. Samudragupta (Kolkata) gets a landline phone installed at his home in Kolkata from Skybel Ltd. The place of supply is the location where the telecommunication line is installed, i.e. Kolkata.
2. Mr. Rajkumar (Mumbai) gets a DTH installed at his home in his village in Uttar Pradesh from RT Ltd. The place of supply is the location where the DTH is installed, i.e. Uttar Pradesh.
3. Mr. Shastri (Mumbai) takes a post-paid mobile connection in Mumbai from Blubel Ltd. and gives his residence address at Mumbai as the address for billing with supplier. The place of supply is the location of billing address of the recipient, i.e. Mumbai.
4. Mr. George (New Delhi) gets his post-paid mobile bill (billing address New Delhi) paid online from Goa. The place of supply is the location of the billing address of the recipient, i.e. New Delhi.

5. Mr. Jhumroo (Pune) purchases a pre-paid card from a selling agent in Mumbai. The place of supply is the address of the selling agent or re-seller, i.e. Mumbai.
6. Mr. Freddy (Puducherry) gets a pre-paid mobile recharged from a grocery shop in Chennai. The place of supply is the location where such pre-payment is received, i.e. Chennai.

➤ **Leased circuit is installed in more than one State/Union territory**

1. If the leased circuit is installed in more than one State/Union territory and a consolidated amount is charged for supply of services, the place of supply is deemed to be in each of the respective States/Union territories in proportion to the value for services determined in terms of the contract or agreement entered into in this regard.
2. **Manner of determining proportionate value of service in the absence of a contract or agreement:**
 - a. In the absence of a contract or agreement between the supplier and recipient of services, the value of services supplied in different States/Union territories (where the leased circuit is installed) is determined in accordance with rule 6 of the IGST Rules in proportion to the number of points lying in each such State/ Union territory.
 - b. The number of points in a circuit is determined in the following manner –
 - i. In the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points.
 - ii. Any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point.

Example:

1. Trinity Ltd. installs a leased circuit between the Delhi and Mumbai offices of Inertia Pvt. Ltd. The starting point of this circuit is in Delhi and the end point of the circuit is in Mumbai. Hence, one point of this circuit is in Delhi and another in Maharashtra. The place of supply of this service is in the Union territory of Delhi and the State of Maharashtra. The service shall be deemed to have been provided in the ratio of 1:1 in the Union territory of Delhi and the State of Maharashtra, respectively.
2. Turbo Ltd. installs a leased circuit between the Chennai, Bengaluru and Mysuru offices of Rio Ltd. The starting point of this circuit is in Chennai and the end point of the circuit is in Mysuru. The circuit also connects Bengaluru. Hence, one point of this circuit is in Tamil Nadu and two points in Karnataka. The place of supply of this service is in the States of Tamil Nadu and Karnataka. The service shall be deemed to have been provided in the ratio of 1:2 in the States of Tamil Nadu and Karnataka, respectively.
3. Sriram Ltd. installs a leased circuit between the Kolkata, Patna and Guwahati offices of Srishyam Ltd. There are 3 points in this circuit in Kolkata, Patna and Guwahati. One point each of this circuit is, therefore, in West Bengal, Bihar and Assam. The place of supply of this service is in the States of West Bengal, Bihar and Assam. The service shall be deemed to have been provided in the ratio of 1:1:1 in the States of West Bengal, Bihar and Assam, respectively.

L. Section 12(12) - Financial and stock broking services:

1. The place of supply of banking and other financial services, including stock broking services to any person is the location of the recipient of services in the records of the supplier of services.
2. However, if the location of recipient of services is not available in the records of the supplier, the place of supply is the location of the supplier of services.

Examples

1. Mr. Debdas (Chennai) buys shares from a broker in BSE (Mumbai). The place of supply is the location of the recipient of services in the records of the supplier, i.e. Chennai.
2. Mr. Arihant (New Delhi) withdraws money from Best Bank's ATM in Amritsar. Mr. Arihant has crossed his limit of free ATM withdrawals. The place of supply is the location of the recipient of services in the records of the supplier, i.e. New Delhi.
3. Mr. Rishabh from Varanasi, Uttar Pradesh, visits a bank registered in New Delhi to get a demand draft made. Mr. Rishabh does not have any account with the said bank. Therefore, since the location of recipient is not available in the records of the supplier, the place of supply is the location of the supplier of services, i.e. New Delhi.

M. Section 12(13) - Insurance services:

1. The place of supply of insurance services is the location of recipient when provided to a registered recipient.
2. If such services are provided to a person other than a registered person, the place of supply is the location of the recipient of services in the records of the supplier of services.

Examples:

1. Mr. Shantaram, CEO of Shaurya Ltd., Mumbai (a company registered in Maharashtra) buys insurance cover for the inventory stored in company's factory located at Mumbai, from Excellent Insurers, Chennai (registered in Tamil Nadu). The place of supply is the location of the registered recipient, i.e. Mumbai.
2. Ms. Barbie (unregistered resident of Kolkata) goes to her native place Patna, Bihar and buys a medical insurance policy for her parents there from Safe Insurers, Patna (registered in Bihar). The place of supply is the location of the recipient of services in the records of the supplier, i.e. Patna.

N. SECTION 12(14) - Advertisement service to the Government:

Nature of Supply	Place of Supply
Advertisement service to the Central Government/ State Government/ Statutory body/ Local authority meant for the State/Union territory identified in contract or agreement	Each of such States/ Union territories where the advertisement is broadcasted/ run / played/ disseminated.

The value of such supplies specific to each State/Union territory is in proportion to the amount attributable to the services provided by way of dissemination in the respective States/Union territories determined in terms of the contract or agreement entered into in this regard.

Manner of determining proportionate value of service in the absence of a contract or agreement [Rule 3 of IGST Rules]:

Sl.No	Type of advertisement	Value of service attributable to dissemination in different States/Union territories where the advertisement is broadcasted/ run /played/disseminated
1.	Advertisements in newspapers and publications	Amount payable for publishing an advertisement in all the editions of a newspaper or publication, which are published in each State/Union territory

Example:

ABC is a government agency which deals with the all the advertisement and publicity of the Government. It has various wings dealing with various types of publicity. In furtherance thereof, it issues release orders to various agencies and entities. These agencies and entities thereafter provide the service and then issue invoices to ABC indicating the amount to be paid by them.

ABC issues a release order to a newspaper for an advertisement on 'Beti bachao beti padhao', to be published in the newspaper DEF (whose head office is in Delhi) for the editions of Delhi, Pune, Mumbai, Lucknow and Jaipur. The release order will have details of the newspaper like the periodicity, language, size of the advertisement and the amount to be paid to such a newspaper.

The place of supply of this service shall be in the Union territory of Delhi, and the States of Maharashtra, Uttar Pradesh and Rajasthan. The amounts payable to the Pune and Mumbai editions would constitute the proportion of value for the State of Maharashtra which is attributable to the dissemination in Maharashtra. Likewise, the amount payable to the Delhi, Lucknow and Jaipur editions would constitute the proportion of value attributable to the dissemination in the Union territory of Delhi and States of Uttar Pradesh and Rajasthan respectively. DEF should issue separate State-wise and Union territory-wise invoices based on the editions.

2.	Advertisements through printed material like pamphlets, leaflets, diaries, calendars, Tshirts, etc	Amount payable for the distribution of a specific number of such material in each State/Union territory
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Example:

As a part of the campaign 'Swachh Bharat', ABC has engaged a company GH for printing of 1,00,000 pamphlets (at a total cost of ₹ 1,00,000) to be distributed in the States of Haryana, Uttar Pradesh and Rajasthan. In such a case, ABC should ascertain the breakup of the pamphlets to be distributed in each of the three States, i.e. Haryana, Uttar Pradesh and Rajasthan, from the Ministry or department concerned at the time of giving the print order. Let us assume that this breakup is 20,000, 50,000 and 30,000 respectively. This breakup should be indicated in the print order.

As a part of the campaign 'Swachh Bharat', ABC has engaged a company GH for printing of 1,00,000 pamphlets (at a total cost of ₹ 1,00,000) to be distributed in the States of Haryana, Uttar Pradesh and Rajasthan. In such a case, ABC should ascertain the breakup of the pamphlets to be distributed in each of the three States, i.e. Haryana, Uttar Pradesh and Rajasthan, from the Ministry or department concerned at the time of giving the print order. Let us assume that this breakup is 20,000, 50,000 and 30,000 respectively. This breakup should be indicated in the print order.

3.	Advertisements in hoardings (other than those on trains)	Amount payable for the hoardings located in each State/ Union territory
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Example:

ABC as part of the campaign 'Saakshar Bharat' has engaged a firm IJ for putting up hoardings near the Airports in the 4 metros, i.e. Delhi, Mumbai, Chennai and Kolkata. The release order issued by ABC to IJ will have the city-wise, location-wise breakup of the amount payable for such hoardings.

The place of supply of this service is in the Union territory of Delhi and the States of Maharashtra, Tamil Nadu and West Bengal. In such a case, the amount actually paid to IJ for the hoardings in each of the 4 metros will constitute the value attributable to the dissemination in the Union territory of Delhi and the States of Maharashtra, Tamil Nadu and West Bengal respectively. Separate invoices will have to be issued State-wise and Union territory-wise by IJ to ABC indicating the value pertaining to that State/UT.

4.	Advertisements on trains	Amount attributable to each State/Union territory calculated in the ratio of length of the railway track in each of such State/Union territory, for that train
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Example:

ABC places an order on KL for advertisements to be placed on a train with regard to the 'Janani Suraksha Yojana'. The length of a track in a State will vary from train to train. Thus, for advertisements to be placed on the Hazrat Nizamuddin Vasco Da Gama Goa Express which runs through Delhi, Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra, Karnataka and Goa, KL may ascertain the total length of the track from Hazrat Nizamuddin to Vasco Da Gama as well as the length of the track in each of these States and Union territory from the website www.indianrail.gov.in.

The place of supply of this service is in the Union territory of Delhi and States of Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra Karnataka and Goa. The value of the supply in each of these States and Union territory attributable to the dissemination in these States will be in the ratio of the length of the track in each of these States and Union territory. If this ratio works out to say 0.5:0.5:2:2:3:3:1, and the amount to be paid to KL is Rs. 1,20,000, then KL will have to calculate the State-wise and Union territorywise breakup of the value of the service, which will be in the ratio of the length of the track in each State and Union territory.

In the given example, the State-wise and Union territory-wise breakup works out to Delhi (₹ 5,000), Haryana (₹ 5,000), Uttar Pradesh (₹ 20,000), Madhya Pradesh (₹ 20,000), Maharashtra (₹ 30,000), Karnataka (₹ 30,000) and Goa (₹ 10,000). Separate invoices will have to be issued State-wise and Union territory-wise by KL to ABC indicating the value pertaining to that State or Union territory

5.	Advertisements on the back of utility bills of oil and gas companies, etc.	Amount payable to each State/Union territory for the advertisements on bills pertaining to consumers having billing addresses in each of such State/Union territory
6.	Advertisements on railway tickets	Amount attributable to each State/Union territory calculated in the ratio of number of Railway Stations in each of such State/Union territory
<p>Example:</p> <p>ABC has issued a release order to MN for display of advertisements relating to the 'Ujjwala' scheme on the railway tickets that are sold from all the Stations in the States of Madhya Pradesh and Chattisgarh. The place of supply of this service is in Madhya Pradesh and Chattisgarh. The value of advertisement service attributable to these two States will be in the ratio of the number of railway stations in each State as ascertained from the Railways or from the website www.indianrail.gov.in. Let us assume that this ratio is 713:251 and the total bill is ₹ 9,640. The breakup of the amount between Madhya Pradesh and Chattisgarh in this ratio of 713:251 works out to ₹ 7,130 and ₹ 2,510 respectively. Separate invoices will have to be issued State-wise by MN to ABC indicating the value pertaining to that state.</p>		
7.	Advertisements on radio stations	Amount payable to such radio station, which by virtue of its name is part of each State/Union territory
<p>Example:</p> <p>For an advertisement on 'Pradhan Mantri Ujjwala Yojana', to be broadcast on a FM radio station OP, for the radio stations of OP Kolkata, OP Bhubaneswar, OP Patna, OP Ranchi and OP Delhi, the release order issued by ABC will show the breakup of the amount which is to be paid to each of these radio stations. The place of supply of this service is in West Bengal, Odisha, Bihar, Jharkhand and Delhi. The place of supply of OP Delhi is in Delhi even though the studio may be physically located in another State. Separate invoices will have to be issued State wise and Union territory-wise by MN to ABC based on the value pertaining to each State or Union territory.</p>		
8.	Advertisement on television channels	<p>Amount attributable to each State/Union territory calculated basis the viewership of such channel in each of such State/ Union territory which shall be derived as under:</p> <ol style="list-style-type: none"> Viewership can be ascertained from the channel viewership figures published by the Broadcast Audience Research Council. Figures for the last week of a given quarter is used for calculating viewership for the succeeding quarter. Where the channel viewership figures relate to a region comprising of more than one State/Union territory, the viewership figures for a State/ Union territory of that region, is calculated in ratio of the populations of that

		State/Union territory, as determined in the latest Census.
		d. The ratio of the viewership figures for each State or Union territory so calculated, when applied to the amount payable for the service, shall represent the portion of the value attributable to the dissemination in that State or Union territory

Example:

ABC issues a release order with QR channel for telecasting an advertisement relating to the 'Pradhan Mantri Kaushal Vikas Yojana' in the month of November, 2017. In the first phase, this will be telecast in the Union territory of Delhi, States of Uttar Pradesh, Uttarakhand, Bihar and Jharkhand. The place of supply of this service is in Delhi, Uttar Pradesh, Uttarakhand, Bihar and Jharkhand. In order to calculate the value of supply attributable to Delhi, Uttar Pradesh, Uttarakhand, Bihar and Jharkhand, QR has to proceed as under —

- I. QR will ascertain the viewership figures for their channel in the last week of September 2017 from the Broadcast Audience Research Council. Let us assume it is 1,00,000 for Delhi and 2,00,000 for the region comprising of Uttar Pradesh and Uttarakhand and 1,00,000 for the region comprising of Bihar and Jharkhand.
- II. Since the Broadcast Audience Research Council clubs Uttar Pradesh and Uttarakhand into one region and Bihar and Jharkhand into another region, QR will ascertain the population figures for Uttar Pradesh, Uttarakhand, Bihar and Jharkhand from the latest census.
- III. By applying the ratio of the populations of Uttar Pradesh and Uttarakhand, as so ascertained, to the Broadcast Audience Research Council viewership figures for their channel for this region, the viewership figures for Uttar Pradesh and Uttarakhand can be calculated. Let us assume that the ratio of the populations of Uttar Pradesh and Uttarakhand works out to 9:1. When this ratio is applied to the viewership figures of 2,00,000 for this region, the viewership figures for Uttar Pradesh and Uttarakhand work out to 1,80,000 and 20,000 respectively.
- IV. In a similar manner, the breakup of the viewership figures for Bihar and Jharkhand can be calculated. Let us assume that the ratio of populations is 4:1 and when this is applied to the viewership figure of 1,00,000 for this region, the viewership figure for Bihar and Jharkhand works out to 80,000 and 20,000 respectively.
- V. The viewership figure for each State works out to Delhi (1,00,000), Uttar Pradesh (1,80,000), Uttarakhand (20,000), Bihar (80,000) and Jharkhand (20,000). The ratio is thus 10:18:2:8:2 or 5:9:1:4:1 (simplification).
- VI. This ratio has to be applied when indicating the breakup of the amount pertaining to each State. Thus, if the total amount payable to QR by ABC is ₹ 20,00,000, the State-wise breakup is ₹ 5,00,000 (Delhi), ₹ 9,00,000 (Uttar Pradesh) ₹ 1,00,000 (Uttarakhand), ₹ 4,00,000 (Bihar) and ₹ 1,00,000 (Jharkhand). Separate invoices will have to be issued State-wise and Union territory-wise by QR to ABC indicating the value pertaining to that State or Union territory.

9.	Advertisements in cinema halls	Amount payable to a cinema hall or screens in a multiplex in each State/ Union territory
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Example:

ABC commissions ST for an advertisement on 'Pradhan Mantri Awas Yojana' to be displayed in the cinema halls in Chennai and Hyderabad. The place of supply of this service is in the States of Tamil Nadu and Telangana. The amount actually paid to the cinema hall or screens in a multiplex, in Tamil Nadu and Telangana as the case may be, is the value of advertisement service in Tamil Nadu and Telangana respectively. Separate invoices will have to be issued State-wise and Union territory-wise by ST to ABC indicating the value pertaining to that State.

10.	Advertisements on internet. It is deemed that such service is provided all over India.	Amount attributable to each State/Union territory calculated basis the internet subscribers in each of such State/ Union territory which shall be derived in the following manner: a. Internet subscribers can be ascertained from the internet subscriber figures published by the Telecom Regulatory Authority of India (TRAI). b. Figures for the last quarter of a given financial year will be used for calculating the number of internet subscribers for the succeeding financial year. c. Where the internet subscriber figures relate to a region comprising of more than one State/Union territory, the subscriber figures for a State/Union territory of that region shall be calculated in the ratio of the populations of that State/Union territory, as determined in the latest census. d. The ratio of the subscriber figures for each State or Union territory so calculated, when applied to the amount payable for the service, shall represent the portion of the value attributable to the dissemination in that State or Union territory
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Example:

ABC issues a release order to WX for a campaign over internet regarding linking Aadhaar with one's bank account and mobile number. WX runs this campaign over certain websites. In order to ascertain the State-wise breakup of the value of this service which is to be reflected in the invoice issued by WX to ABC, WX has to first refer to the Telecom Regulatory Authority of India figures for quarter ending March, 2017, as indicated on their website www.trai.gov.in. These figures show the service area wise internet subscribers. There are 22 service areas. Some relate to individual States some to two or more States and some to part of one State and another complete State. Some of these areas are metropolitan areas.

In order to calculate the State-wise breakup, first the State-wise breakup of the number of internet subscribers is arrived at. (In case figures of internet subscribers of one or more States are clubbed, the subscribers in each State is to be arrived at by applying the ratio of the respective populations of these States as per the latest census.). Once the actual number of subscribers for each State has been determined, the second step for WX involves calculating the State-wise ratio of internet subscribers. Let us assume that this works out to 8:1:2..... and so on

for Andhra Pradesh, Arunachal Pradesh, Assam... and so on. The third step for WX will be to apply these ratios to the total amount payable to WX so as to arrive at the value attributable to each State. Separate invoices will have to be issued State-wise and Union territory-wise by WX to ABC indicating the value pertaining to that State or Union territory

11.	Advertisements through SMS	<p>Amount attributable to each State/Union territory calculated on the basis of the telecom subscribers in each of such State/ Union territory.</p> <p>a. Telecom subscribers in a telecom circle can be ascertained from the telecom subscribers figures published by the TRAI. Figures for a given quarter will be used for calculating the subscribers for the succeeding quarter.</p> <p>b. Where such figures relate to a telecom circle comprising of more than one State/Union territory, the subscriber figures for that State/Union territory shall be calculated in the ratio of the populations of that State/Union territory, as determined in the latest census.</p>
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Example:

1. In the case of the telecom circle of Assam, the amount attributed to the telecom circle of Assam is the value of advertisement service in Assam.
2. The telecom circle of North East covers the States of Arunachal Pradesh, Meghalaya, Mizoram, Nagaland, Manipur and Tripura. The ratio of populations of each of these States in the latest census will have to be determined and this ratio applied to the total number of subscribers for this telecom circle so as to arrive at the State-wise figures of telecom subscribers. Separate invoices will have to be issued State-wise by the service provider to ABC indicating the value pertaining to that State.
3. ABC commissions UV to send short messaging service to voters asking them to exercise their franchise in elections to be held in Maharashtra and Goa. The place of supply of this service is in Maharashtra and Goa. The telecom circle of Maharashtra consists of the area of the State of Maharashtra (excluding the areas covered by Mumbai which forms another circle) and the State of Goa. When calculating the number of subscribers pertaining to Maharashtra and Goa, UV has to –
 - I. obtain the subscriber figures for Maharashtra circle and Mumbai circle and add them to obtain a combined figure of subscribers;
 - II. obtain the figures of the population of Maharashtra and Goa from the latest census and derive the ratio of these two populations;
 - III. this ratio will then have to be applied to the combined figure of subscribers so as to arrive at the separate figures of subscribers pertaining to Maharashtra and Goa;
 - IV. the ratio of these subscribers when applied to the amount payable for the short messaging service in Maharashtra circle and Mumbai circle, will give breakup of the amount pertaining to Maharashtra and Goa. Separate invoices will have to be issued State-wise by UV to ABC indicating the value pertaining to that State.
4. The telecom circle of Andhra Pradesh consists of the areas of the States of Andhra Pradesh, Telangana and Yanam, an area of the Union territory of Puducherry. The subscribers

attributable to Telangana and Yanam will have to be excluded when calculating the subscribers pertaining to Andhra Pradesh.

SUPPLIES IN TERRITORIAL WATERS [SECTION 9 OF THE IGST ACT]

Notwithstanding anything contained in this Act –

- a. where the location of the supplier is in the territorial waters, the location of such supplier; or
- b. where the place of supply is in the territorial waters, the place of supply,

shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

SHRESHTA

QUESTIONS:

1. In case of a domestic supply, what is the place of supply where goods are removed?

Answer:

As per section 10(1)(a), the place of supply of goods is the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.

2. What will be the place of supply if the goods are delivered by the supplier to another person on the direction of a third person?

Answer:

As per section 10(1)(b), it would be deemed that the third person has received the goods and the place of supply of such goods will be the principal place of business of such person.

3. What is the place of supply where the goods or services are supplied on board a conveyance, such as a vessel, an aircraft, a train or a motor vehicle?

Answer:

As per section 10(1)(e), in respect of goods, the place of supply is the location at which such goods are taken on board.

However, in respect of services, the place of supply is the location of the first scheduled point of departure of that conveyance for the journey in terms of sections 12(10).

4. The place of supply in relation to immovable property (situated in India) is the location of immovable property. Suppose a road is constructed from Delhi to Mumbai covering multiple states. What will be the place of supply of construction services?

Answer:

Where the immovable property is located in more than one State, the supply of service is treated as made in each of the States in proportion to the value for services separately collected or determined, in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf [Explanation to section 12(3)].

In the absence of a contract or agreement between the supplier and recipient of services in this regard, the proportionate value of services supplied in different States/Union territories (where the immovable property is located) is computed on the basis of the area of the immovable property lying in each State/ Union territories [Rule 4 of the IGST Rules].

5. What would be the place of supply of services provided by an event management company for organizing a sporting event for a Sports Federation which is held in multiple States?

Answer:

In case of an event, if the recipient of service is registered, the place of supply of services for organizing the event is the location of such person. However, if the recipient is not registered, the place of supply is the place where event is held.

Since the event is being held in multiple states and a consolidated amount is charged for such services, the place of supply will be deemed to be in each State in proportion to the value for services determined in terms of the contract or agreement entered into in this regard [Explanation to section 12(7)].

In the absence of a contract or agreement between the supplier and recipient of services, the proportionate value of services made in each State (where the event is held) will be computed in accordance with rule 5 of the IGST Rules by the application of generally accepted accounting principles.

6. What is the place of supply of services by way of transportation of goods, including by mail or courier when both the supplier and the recipient of the services are located in India?

Answer:

If the recipient is registered, the location of such person is the place of supply. However, if the recipient is not registered, the place of supply is the place where the goods are handed over for transportation. Further, if the goods are transported outside India, the destination of such goods is the place of supply [Section 12(8)].

7. What will be the place of supply of passenger transportation service, if a person travels from Mumbai to Delhi and back to Mumbai?

Answer:

If the person is registered, the place of supply of passenger transportation service will be the location of recipient. If the person is not registered, the place of supply for the forward journey from Mumbai to Delhi will be Mumbai, the place where he embarks [Section 12(9)].

However, for the return journey, the place of supply will be Delhi as the return journey has to be treated as separate journey [Explanation to section 12(9)].

8. What is the place of supply for mobile connection? Can it be the location of supplier?

Answer:

The location of supplier of mobile services cannot be the place of supply as the mobile companies are providing services in multiple states and many of these services are inter-state. The consumption principle will be broken if the location of supplier is taken as place of supply and all the revenue may go to a few states where the suppliers are located.

The place of supply for mobile connection would depend on whether the connection is on postpaid or prepaid basis. In case of postpaid connections, the place of supply is the location of billing address of the recipient of services on the record of supplier of services.

In case of pre-paid connections, if the service is supplied:-

- (i) through a selling agent or a re-seller or a distributor of SIM card or re-charge voucher, the place of supply is the place address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply; or
- (ii) by any person to the final subscriber, the place of supply is the location where such prepayment is received or such vouchers are sold;

- (iii) in other cases, the place of supply is the address of the recipient as per the records of the supplier of services and where such address is not available, the place of supply shall be location of the supplier of services.

However, if the recharge is done through internet/e-payment, the location of recipient of service on record of the supplier will be taken as the place of supply [Section 12(11)].

9. A person from Mumbai goes to Kullu-Manali and takes some services from ICICI Bank in Manali. What is the place of supply?

Answer:

The place of supply in case of banking services to any person shall be the location of the recipient of services on the records of the supplier of services. However, if the location of recipient of services is not on the records of the supplier, the place of supply shall be the location of the supplier of services i.e. Kullu-Manali, Himachal Pradesh [Section 12(12)].

10. An unregistered person from Gurugram travels by Air India flight from Mumbai to Delhi and gets his travel insurance done in Mumbai. What is the place of supply of insurance services?

Answer:

When insurance service is provided to an unregistered person, the location of the recipient of services on the records of the supplier of insurance services is the place of supply. So Gurugram is the place of supply [Section 12(13)].

15. ACCOUNTS AND RECORDS

SECTION 35: ACCOUNTS AND RECORDS

1. Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of
 - a. production or manufacture of goods
 - b. inward and outward supply of goods or services or both;
 - c. stock of goods;
 - d. input tax credit availed;
 - e. output tax payable and paid; and
 - f. such other particulars as may be prescribed

Proviso 1: Provided that where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business

Proviso 2: Provided further that the registered person may keep and maintain such accounts and other particulars in electronic form in such manner as may be prescribed.

2. Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed.
3. The Commissioner may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified therein.
4. Where the Commissioner considers that any class of taxable persons is not in a position to keep and maintain accounts in accordance with the provisions of this section, he may, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in such manner as may be prescribed.

RULE 56: MAINTENANCE OF ACCOUNTS BY REGISTERED PERSONS

- (1) **Additional records to be maintained by registered person:** Every registered person shall keep and maintain, in addition to the particulars mentioned in Section 35(1), a true and correct account of the
 - a. goods or services imported or exported or
 - b. of supplies attracting payment of tax on reverse charge
 - c. along with the relevant documents, including invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers and refund vouchers.

- (2) **Stock Records:** Every registered person, other than a person paying tax under section 10, shall maintain the accounts of stock in respect of goods received and supplied by him, and such accounts shall contain
- particulars of the opening balance,
 - receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and
 - the balance of stock including raw materials, finished goods, scrap and wastage thereof.
- (3) **Records relating to advances:** Every registered person shall keep and maintain a separate account of advances received, paid and adjustments made thereto.
- (4) **Details of Tax:** Every registered person, other than a person paying tax under section 10, shall keep and maintain an account, containing the details of tax payable (including tax payable in accordance with the provisions of sub-section (3) and sub-section (4) of section 9), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.
- (5) **Address details:** Every registered person shall keep the particulars of –
- names and complete addresses of suppliers from whom he has received the goods or services chargeable to tax under the Act;
 - names and complete addresses of the persons to whom he has supplied goods or services, where required under the provisions of this Chapter;
 - the complete address of the premises where goods are stored by him, including goods stored during transit along with the particulars of the stock stored therein.
- (6) If any taxable goods are found to be stored at anyplace(s) other than those declared under sub-rule (5) without the cover of any valid documents, the proper officer shall determine the amount of tax payable on such goods as if such goods have been supplied by the registered person.
- (7) Every registered person shall keep the books of account at the principal place of business and books of account relating to additional place of business mentioned in his certificate of registration and such books of account shall include any electronic form of data stored on any electronic device.
- (8) **No entry to be erased/overwritten:** Any entry in registers, accounts and documents shall not be erased, effaced or overwritten, and all incorrect entries, otherwise than those of clerical nature, shall be scored out under attestation and there after the correct entry shall be recorded and where the registers and other documents are maintained electronically, a log of every entry edited or deleted shall be maintained.
- (9) Each volume of books of account maintained manually by the registered person shall be serially numbered.
- (10) Unless proved otherwise, if any documents, registers, or any books of account belonging to a registered person are found at any premises other than those mentioned in the certificate of registration, they shall be presumed to be maintained by the said registered person.
- (11) **Records to be maintained by an agent:** Every agent referred to in clause(5) of section 2 shall maintain accounts depicting the,-
- Particulars of authorisation received by him from each principal to receive or supply goods or services on behalf of such principal separately;

- b. Particulars including description, value and quantity(wherever applicable) of goods or services received on behalf of every principal;
 - c. Particulars including description, value and quantity(wherever applicable) of goods or services supplied on behalf of every principal;
 - d. Details of accounts furnished to every principal; and
 - e. Tax paid on receipts or on supply of goods or services effected on behalf of every principal.
- (12) **Manufacturer:** Every registered person manufacturing goods shall maintain monthly production accounts showing quantitative details of raw materials or services used in the manufacture and quantitative details of the goods so manufactured including the waste and by products thereof.
- (13) **Service provider:** Every registered person supplying services shall maintain the accounts showing quantitative details of goods used in the provision of services, details of input services utilised and the services supplied.
- (14) **Works contractor:** Every registered person executing works contract shall keep separate accounts for works contract showing –
- a. The names and addresses of the persons on whose behalf the works contract is executed;
 - b. Description, value and quantity (wherever applicable) of goods or services received for the execution of works contract;
 - c. Description, value and quantity (wherever applicable) of goods or services utilized in the execution of works contract;
 - d. The details of payment received in respect of each works contract; and
 - e. The names and addresses of suppliers from whom he received goods or services.
- (15) The records under the provisions of this Chapter may be maintained in electronic form and the record so maintained shall be authenticated by means of a digital signature.
- (16) Accounts maintained by the registered person together with all the invoices, bills of supply, credit and debit notes, and delivery challans relating to stocks, deliveries, inward supply and outward supply shall be preserved for the period as provided in section 36 and shall, where such accounts and documents are maintained manually, be kept at every related place of business mentioned in the certificate of registration and shall be accessible at every related place of business where such accounts and documents are maintained digitally.

RULE 57: GENERATION AND MAINTENANCE OF ELECTRONIC RECORDS

- (1) Proper electronic back-up of records shall be maintained and preserved in such manner that, in the event of destruction of such records due to accidents or natural causes, the information can be restored within a reasonable period of time.
- (2) The registered person maintaining electronic records shall produce, on demand, the relevant records or documents, duly authenticated by him, in hard copy or in any electronically readable format.
- (3) Where the accounts and records are stored electronically by any registered person, he shall, on demand, provide the details of such files, passwords of such files and explanation for codes used, where necessary, for access and any other information which is required for such access along with a sample copy in print form of the information stored in such files.

RULE 58: RECORDS TO BE MAINTAINED BY OWNER OR OPERATOR OF GODOWN OR WAREHOUSE AND TRANSPORTERS

1. Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed.
2. **Enrolment, if not already registered in GST:**
 - a. If such persons are not already registered, they shall obtain a unique enrolment number by applying electronically [In **Form GST ENR-01**] at the GST Common Portal.
 - b. The person enrolled as aforesaid in any other State or Union territory shall be deemed to be enrolled in the State or Union territory.
 - c. Such person may also amend the details furnished in the prescribed form.
 - d. Such person, once obtained unique enrolment number, shall not be eligible to use any of the GSTIN.
3. **Transporter:** Any person engaged in the business of transporting goods shall maintain records of goods transported, delivered and goods stored in transit by him along with GSTIN of the registered consignor and consignee for each of his branches.
4. **Owner/operator of a warehouse/ godown:**
 - a. Every owner or operator of a warehouse or godown shall maintain books of accounts with respect to the period for which particular goods remain in the warehouse, including the particulars relating to dispatch, movement, receipt, and disposal of such goods.
 - b. The owner or the operator of the godown shall store the goods in such manner that they can be identified item-wise and owner-wise and shall facilitate any physical verification or inspection by the proper officer on demand.

SECTION 36 – PERIOD OF RETENTION OF ACCOUNTS

Every registered person required to keep and maintain books of account or other records in accordance with the provisions of section 35(1) shall retain them until the expiry of 72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records.

Provided that a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.

QUESTIONS

- 1. Who is required to maintain books of accounts and at which place in terms of Section 35 read with relevant rules?**

Answer:

Every registered person shall keep and maintain, his books of accounts at his principal place of business and books of account relating to additional place of business as mentioned in the certificate of registration. Where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business.

- 2. Mr. Sky is engaged in the business of trading of mobiles. He is eligible for composition scheme and has opted for the same. He seeks your advice for records which are not required to be maintained by him as composition taxable person.**

Answer:

A supplier who has opted for composition scheme is not required to maintain records relating to;

- a. **Stock of goods:** Accounts of stock in respect of goods received and supplied by him, and such accounts shall contain particulars of the opening balance, receipt, supply, goods lost stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock including raw materials, finished goods, scrap and wastage thereof.
- b. **Details of tax:** Account, containing the details of tax payable (including tax payable under reverse charge), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period. Thus, Mr. Sky is not required to maintain above mentioned records.

- 3. Mr. Harsh Manjula is engaged in the business of works contract services and request your guidance as to specific records required to be maintained by him under GST law, if any.**

Answer:

Mr. Harsh Manjula, executing works contract shall keep separate accounts for works contract showing –

- a. the names and addresses of the persons on whose behalf the works contract is executed;
- b. description, value and quantity (wherever applicable) of goods/services received for the execution of works contract;
- c. description, value and quantity (wherever applicable) of goods/services utilized in the execution of works contract;
- d. the details of payment received in respect of each works contract; and
- e. the names and addresses of suppliers from whom he received goods or services.

4. Chill Chain Cold is operating cold storage warehouse and seeks your guidance on the GST accounts and records to be maintained by them in terms of Section 35.

Answer:

Chill Chain Cold shall maintain records of the consigner, consignee and other relevant details of the goods in the prescribed manner.

Chill Chain Cold shall also maintain books of accounts with respect to the period for which particular goods remain in the warehouse, including the particulars relating to dispatch, movement, receipt, and disposal of such goods.

Chill Chain Cold shall store the goods in such manner that they can be identified item-wise and owner-wise and shall facilitate any physical verification or inspection by the proper officer on demand.

5. Mr. X is of the view that records are to be mandatorily maintained manually only. You are required to examine the view taken by Mr. X?

Answer:

The view taken by Mr. X is not valid in law. Books of account include any electronic form of data stored on any electronic device. The registered person may keep and maintain such accounts and other particulars in electronic form stored on any electronic device and record so maintained shall be authenticated by means of a digital signature. The registered person maintaining electronic records shall produce, on demand, the relevant records or documents, duly authenticated by him, in hard copy or in any electronically readable format.

Where the accounts and records are stored electronically by any registered person, he shall, on demand, provide the details of such files, passwords of such files and explanation for codes used, where necessary, for access and any other information which is required for such access along with a sample copy in print form of the information stored in such files.

16. TAX DEDUCTION AT SOURCE AND COLLECTION OF TAX AT SOURCE

SECTION 51: TAX DEDUCTION AT SOURCE

5. **SEC 51(1) – WHO ARE REQUIRED TO DEDUCT TDS:** Notwithstanding anything to the contrary contained in this Act, the Government may mandate, —
- a department or establishment of the Central Government or State Government [*certain prescribed authorities of Ministry of Defence*]; or
 - local authority; or
 - Governmental agencies; or
 - such persons or category of persons as may be notified by the Government on the recommendations of the Council,
- (hereafter in this section referred to as “the deductor”),
- to deduct tax at the rate of one per cent [1% CGST + 1% SGST]
 - from the payment made or credited to the supplier (hereafter in this section referred to as “the deductee”) of taxable goods or services or both,
 - where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees.
- **Individual supplies may be less than ₹ 2,50,000/-, but if total value of supplies under a contract is more than ₹ 2,50,000/-, TDS has to be deducted.**

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

- The above proviso can be explained in the following situations:
- Supplier, place of supply and recipient are in the same state:** It would be intra-State supply and TDS (Central plus State tax) shall be deducted. It would be possible for the supplier (i.e. the deductee) to take credit of TDS in his electronic cash ledger.
 - Supplier as well as the place of supply are in different states:** In such cases, Integrated tax would be levied. TDS to be deducted would be TDS (Integrated tax) and it would be possible for the supplier (i.e. the deductee) to take credit of TDS in his electronic cash ledger.
 - Supplier as well as the place of supply are in State A and the recipient is located in State B:** The supply would be intra-State supply and Central tax and State tax would be levied. In such case, transfer of TDS (Central tax + State tax of State B) to the cash ledger of the supplier (Central tax + State tax of State A) would be difficult. So, in such cases, TDS would not be deducted.
Thus, when both the supplier as well as the place of supply are different from that of the recipient, no tax deduction at source would be made.

Location of Supplier	Place of Supply	Registration of Recipient	TDS u/s 51
State A	State A	State A	Yes
State A	State A	State B	No
State A	State B	State B	Yes
UT1	UT1	UT1	Yes
UT1	UT2	UT2	Yes
UT1	UT1	UT2	No

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

- **Persons notified under 51(1)(d):** The following persons have been notified under clause (d) of sub-section (1) of section 51 of the CGST Act by the Central Government:
 - a. An authority or a board or any other body, -
 - (i) set up by an Act of Parliament or a State Legislature; or
 - (ii) established by any Government, with 51% or more participation by way of equity or control, to carry out any function;
 - b. Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860;
 - c. Public sector undertakings:
 - **Categories of persons not liable to deduct TDS:** Tax is not liable to be deducted at source in the following cases:-
 - a. When goods and/or services are supplied from a public sector undertaking (PSU) to another PSU, whether or not a distinct person
 - b. When supply of goods and/or services takes place between one person to another person specified in clauses (a), (b), (c) and (d) of section 51(1) of the CGST Act.
- 6. SEC 51(2) – TDS DEDUCTED SHOULD BE DEPOSITED WITH THE GOVERNMENT:** The amount deducted as tax under this section shall be paid to the Government by the deductor within ten days after the end of the month in which such deduction is made, in such manner as may be prescribed.
- 7. SEC 51(3) – CERTIFICATE OF TAX DEDUCTION:** A certificate of tax deduction at source shall be issued in such form and in such manner as may be prescribed.
- **TDS Certificate:** A TDS certificate is required to be issued by deductor (the person who is deducting tax) in prescribed form to the deductee (the supplier from whose payment TDS is deducted). The content of Form GSTR 7A (TDS Certificate) are given below:
 1. TDS Certificate No.
 2. GSTIN of deductor

3. Name of deductor
4. GSTIN of deductee
5. Legal name of the deductee
6. Trade name, if any
7. Tax period in which tax deducted and accounted for in GSTR-7
8. Details of supplies
9. Amount of tax deducted

8. SEC 51(5) – DEDUCTEE SHALL CLAIM CREDIT OF TDS AMOUNT: The deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor furnished under sub-section (3) of section 39, in such manner as may be prescribed.

➤ **GSTR-7 - Return for tax deducted at source [Section 39(3) read with rule 66]**

- a. **Monthly return:** Deductor shall furnish a monthly return in Form GSTR-7.
- b. **Last date of filing return:** The details in GSTR-7 should be furnished on/before 10th of the month succeeding the calendar month in which tax has been deducted at source.
- c. **TDS details available to deductee on common portal:** The details of TDS furnished by the deductor in GSTR-7 shall be made available electronically to each of the deductees on the common portal after filing of Form GSTR-7. The supplier can take this amount as credit in his electronic cash ledger after validation and use the same for payment of tax or any other liability.

➤ **Reflection of amount of TDS**

1. The amount of tax deducted is reflected in
 - a. Electronic Cash Ledger of deductee.
 - b. Return filed by deductor under section 39(3). [GSTR-7]
2. The deductee can claim credit of the tax deducted, in his electronic cash ledger.
3. This provision enables the Government to cross check whether the amount deducted by the deductor is correct and that there is no mis-match between the amount reflected in the electronic cash ledger and the amount shown in the return filed by deductor.
4. This is similar to existing practice in income tax relating to E-TDS returns filed by deductor and 26AS statement available for viewing the TDS remitted in respect of transactions by deductee

9. SEC 51(6) – DEDUCTOR FAILS TO PAY TDS TO GOVERNMENT: If any deductor fails to pay to the Government the amount deducted as tax under sub-section (1), he shall pay interest in accordance with the provisions of sub-section (1) of section 50, in addition to the amount of tax deducted.

10. SEC 15(7): The determination of the amount in default under this section shall be made in the manner specified in section 73 or section 74.

11. SEC 15(8): The refund to the deductor or the deductee arising on account of excess or erroneous deduction shall be dealt with in accordance with the provisions of section 54.

12. COMPULSORY REGISTRATION [Rule 12 of CGST Rules, 2017]:

- a. Any person required to deduct tax in accordance with the provisions of section 51 shall electronically submit a registration application in prescribed form through the common portal.
- b. The proper officer shall, after due verification, grant registration within 3 working days from the date of the application.
- c. Also, on a request or upon an enquiry or pursuant to any other proceeding under the Act, if the proper officer is satisfied that a person is no longer liable to deduct tax at source under section 51, then the said officer may cancel the said registration, following procedures as provided in Rule 22 of the CGST Rules for the cancellation of registration.

SECTION 52: COLLECTION OF TAX AT SOURCE

1. SEC 52(1): Notwithstanding anything to the contrary contained in this Act,

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

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

- **Notified rate of TCS:** Half percent of the net value of intra-State taxable supplies. 1% of the net value of inter-State taxable supplies.

Suppose a certain product is sold at ₹ 1,120 [including GST @12%] through an Operator by a supplier. The operator would collect tax @ 1% of the net value of ₹ 1,000 i.e. ₹ 10 in case of inter-State supplies.

- **Services notified under section 9(5) of CGST Act, 2017:** Currently, services notified under section 9(5) of CGST Act, 2017 as given as below:

- a. Services by way of transportation of passengers by a radio-taxi, motorcab, maxicab, motor cycle, omnibus or any other motor vehicle;

- b. Services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under section 22(1) of the CGST Act.
 - c. Services by way of house-keeping, such as plumbing, carpentering etc, except where the person supplying such service through electronic commerce operator is liable for registration under sub-section 22(1) of the CGST Act.
 - d. Supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises.
2. **SEC 52(2):** The power to collect the amount specified in sub-section (1) shall be without prejudice to any other mode of recovery from the operator.
3. **SEC 52(3) – Amount collected shall be paid to government:** The amount collected under sub-section (1) shall be paid to the Government by the operator within ten days after the end of the month in which such collection is made, in such manner as may be prescribed.
4. **SEC 52(4) – Operator to furnish a monthly statement:** Every operator who collects the amount specified in sub-section (1)
- shall furnish a statement [**GSTR 8**], electronically,
 - containing the details of outward supplies of goods or services or both effected through it,
 - including the supplies of goods or services or both returned through it,
 - and the amount collected under sub-section (1) during a month,
 - in such form and manner as may be prescribed,
 - within ten days after the end of such month.

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

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

5. **SEC 52(5) – Operator to furnish a annual statement:** Every operator who collects the amount specified in sub-section (1)
- shall furnish an annual statement [**GSTR 9B**], electronically,
 - containing the details of outward supplies of goods or services or both effected through it,
 - including the supplies of goods or services or both returned through it,
 - and the amount collected under the said sub-section during the financial year,
 - in such form and manner as may be prescribed,
 - before the thirty first day of December following the end of such financial year.

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

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

- 6. SEC 52(6) – Rectification of errors in monthly statement:** If any operator after furnishing a statement under sub-section (4)
- discovers any omission or incorrect particulars therein,
 - other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities,
 - he shall rectify such omission or incorrect particulars
 - in the statement to be furnished for the month during which such omission or incorrect particulars are noticed,
 - subject to payment of interest, as specified in sub-section (1) of section 50

Provided that no such rectification of any omission or incorrect particulars shall be allowed after

a. the thirtieth day of November following the end of the financial year or

b. the actual date of furnishing of the relevant annual statement,

whichever is earlier.

- 7. SEC 52(7) – Supplier shall claim credit:** The supplier who has supplied the goods or services or both through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under sub-section (4), in such manner as may be prescribed.
- 8. SEC 52(12) – Operator to furnish the details:** Any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to –
- a. supplies of goods or services or both effected through such operator during any period; or
- b. stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.

- 13. SEC 52(13) – Operator to furnish the details within 15 days:** Every operator on whom a notice has been served under sub-section (12) shall furnish the required information within fifteen working days of the date of service of such notice.

- 14. SEC 52(14) – Operator fails to furnish the information:** Any person who fails to furnish the information required by the notice served under sub-section (12) shall, without prejudice to any

action that may be taken under section 122 , be liable to a penalty which may extend to twenty-five thousand rupees.

15. Compulsory Registration [Rule 12 of CGST Rules, 2017]:

- a. Any person required to deduct tax in accordance with the provisions of section 52 shall electronically submit a registration application in prescribed form through the common portal.
- b. The proper officer shall, after due verification, grant registration within 3 working days from the date of the application.
- c. Also, on a request or upon an enquiry or pursuant to any other proceeding under the Act, if the proper officer is satisfied that a person is no longer liable to deduct tax at source under section 52 then the said officer may cancel the said registration, following procedures as provided in Rule 22 of the CGST Rules for the cancellation of registration.

SHRESHTA

QUESTIONS

- 1. Mr. X is a supplier selling his own products through a web site hosted by him. Does he fall under the definition of an “electronic commerce operator”? Whether he is required to collect TCS on such supplies?**

Answer:

As per the definitions in Section 2(44) and 2(45) of the CGST Act, 2017, Mr. X will come under the definition of an “electronic commerce operator”. However, according to Section 52 of the Act *ibid*, TCS is required to be collected on the net value of taxable supplies made through it by other suppliers where the consideration is to be collected by the ECO. In cases, where someone is selling their own products through a website, there is no requirement to collect tax at source as per the provisions of this Section. These transactions will be liable to GST at the prevailing rates.

- 2. If Mr. A purchase goods from different vendors and in turn Mr. A, is selling them on his own website under his own billing, Is TCS required to be collected on such supplies?**

Answer

No. According to Section 52 of the CGST Act, 2017, TCS is required to be collected on the net value of taxable supplies made through E-commerce operator by other suppliers where the consideration is to be collected by the ECO. In this case, there are two transactions - Mr. A purchase the goods from the vendors, and those goods are sold through his own website. For the first transaction, GST is leviable, and will need to be paid to vendor, on which credit is available to Mr. A. The second transaction is a supply on own account of Mr. A, and not by other suppliers and there is no requirement to collect tax at source. The transaction will attract GST at the prevailing rates.

- 3. Whether the rate of tax of 1% notified under section 52 is CGST or SGST or a combination of both CGST and SGST?**

Answer:

The rate of TCS as notified under CGST Act is payable under CGST and the equal rate of TCS is expected under the SGST Act also, in effect aggregating to 1%.

- 4. Is every e-commerce operator required to collect tax on behalf of actual supplier?**

Answer:

Yes, every e-commerce operator is required to collect tax where consideration with respect to the supply is being collected by the e-commerce operator. However, no TCS is required to be collected in the following cases:-

- a. on supply of services notified under section 9(5) of the CGST Act, 2017.
- b. on exempt supplies
- c. on supplies on which the recipient is required to pay tax on reverse charge basis.

5. State whether the provisions pertaining to tax collected at source under section 52 of CGST Act, will be applicable, if Fitan Ltd. sells watch on its own through its own website?

Answer:

As per Section 52, every electronic commerce operator not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator. Hence, if the person sells on his own, provisions pertaining to tax collected at source (TCS) won't be applicable.

6. \There is no onus of filing any monthly & annual statements by ECO. Examine the technical veracity of the statement by explaining relevant provisions.

Answer:

The given statement is invalid. An electronic statement has to be filed by the ECO containing details of the outward supplies of goods and/ or services effected through it, including the supplies returned through it and the amount collected by it as TCS during the month within 10 days after the end of the each month in which supplies are made.

Additionally, the ECO is also mandated to file an Annual Statement on or before 31st day of December following the end of the financial year.

The Commissioner has been empowered to extend the due date for furnishing of monthly and annual statement by the person collecting tax at source.

7. State whether the provisions pertaining to tax collected at source under section 52 of CGST Act, will be applicable, if ABC limited who is dealer of Royul brand sells watches through Slipkart, an electronic commerce operator?

Answer

As per Section 52, every electronic commerce operator not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator. If ABC limited who is dealer of Royul brand sells watches through Slipkart, then the provision of TCS will be applicable to Slipkart.